

January 9, 2019

CALIFORNIA DEPARTMENT OF SOCIAL SERVICES

EXECUTIVE SUMMARY

ALL COUNTY LETTER NO. 19-02

The purpose of this All County Letter (ACL) is to further clarify the application of the In Home Supportive Services (IHSS) regulations concerning minor recipients living with parent(s).



PAT LEARY
ACTING DIRECTOR

STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF SOCIAL SERVICES
744 P Street • Sacramento, CA 95814 • www.cdss.ca.gov



GAVIN NEWSOM
GOVERNOR

January 9, 2019

ALL-COUNTY LETTER NO: 19-02

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

SUBJECT: CLARIFICATION OF REGULATIONS REGARDING MINOR
RECIPIENTS LIVING WITH PARENT(S)

REFERENCE: [WELFARE AND INSTITUTIONS CODE SECTIONS 12300\(e\) and 12300.4](#); [FAMILY CODE SECTION 7610](#); [MANUAL OF POLICIES AND PROCEDURES SECTIONS 30-763.44 through 30-763.457](#) and [SECTION 30-760.24](#); [ALL-COUNTY LETTERS 00-83 \(December 7, 2000\)](#), [15-25 \(March 19, 2015\)](#), [15-45 \(May 1, 2015\)](#), [18-31 \(March 27, 2018\)](#); [ALL COUNTY INFORMATION NOTICE 1-40-17 \(June 23, 2017\)](#)

Purpose

The purpose of this All-County Letter (ACL) is to further clarify the application of the In-Home Supportive Services (IHSS) regulations concerning minor recipients living with parent(s).

Background

Effective January 1, 2015, amendments were made to the California Department of Social Services' (CDSS) [Manual of Policies and Procedures \(MPP\), Sections 30-763.44 through 30.763.457](#), which pertain to IHSS being provided to a minor child by a parent. In addition, [ACL 15-45](#) was issued on May 1, 2015, providing counties with clarification regarding the implementation and application of these regulatory amendments.

[MPP Sections 30-763.44 through 30.763.457](#) apply to minor IHSS recipients living with their parents in the IHSS Residual (IHSS-R), IHSS Plus Option (IPO), and Community First Choice Option (CFCO) programs. Parents of minor IHSS recipients are not permitted to be paid IHSS providers for their child(ren) in the Personal Care Services

Program (PCSP) pursuant to [MPP Section 30-763.457](#). Minor recipients are defined as children under the age of eighteen.

Pursuant to [MPP Sections 30-763.44. and 30-763.45](#), a parent with a duty to care for their child under the Family Code, who lives with their minor recipient child, may only hire a paid IHSS provider under very specific circumstances. [Family Code Section 7610](#), states that a parent/child relationship exists between a child and their natural or legally adoptive parent(s). Because natural and legally adoptive parents have a duty to care for their child under the Family Code, this care is typically expected to be provided without compensation.

Hiring A Non-Parent IHSS Provider

Pursuant to [MPP Section 30-763.44](#), in each of the following circumstances, a parent living with their minor recipient child is considered unable or unavailable to provide the necessary care to their child, and therefore may hire a non-parent IHSS provider:

- When the parent(s) is unavailable because of employment or is enrolled in an educational or vocational training program.
- The parent(s) is physically or mentally unable to provide the needed IHSS services.
- The parent is unavailable because of on-going medical, dental or other health-related treatment.
- When the parent(s) must be unavailable to perform shopping and errands essential to the family, search for employment, or for essential purposes related to the care of the recipient's minor siblings, IHSS may be purchased from a provider other than the parent(s) for up to eight hours per week to perform IHSS tasks necessary during the unavailability of the parent(s).

Employed Parent

A parent is not considered available to perform IHSS duties pursuant to [MPP Section 30-763.441](#) when they are absent due to employment. Parents are considered unavailable during hours of employment whether it be full time employment or part time employment. *Note: A parent providing IHSS funded care to their own child is not full-time employment, regardless of the number of hours worked.* [MPP Section 30-763.451\(a\)](#). During the time a parent is working, regardless of worksite location (including working from home), a non-parent provider could be paid to provide the needed IHSS.

Educational or Vocational Training

A parent is not considered available to perform IHSS duties pursuant to [MPP Section 30-763.441](#) when they are absent due to an educational or vocational training program. This unavailability is limited to the hours of instruction.

Physically or Mentally Unable

A parent is not considered able to perform IHSS duties pursuant to [MPP Section 30-763.442](#) when they have mental or physical limitations which prevent them from adequately providing the needed IHSS. The limitation can be permanent or temporary. If a parent states that he/she is physically or mentally unable to provide the IHSS for his/her child, the county can ask for a description of that parent's limitations and any documentation that may substantiate the parent's inability to provide care to their own child. The parent is not legally required to disclose Health Insurance Portability and Accountability Act (HIPAA) protected information, but the county can ask for information about the parent's limitations and how this may affect their ability to perform the needed IHSS.

If a social worker observes abilities or behaviors that are contrary to the reported physical or mental limitation and it appears that the parent is capable of providing the minor child's needed IHSS services, this information should be documented in detail in the recipient's assessment narrative and/or the provider's person notes.

Ongoing Medical, Dental or Other Health Related Treatment

A parent is not considered available to perform IHSS duties pursuant to [MPP Section 30-763.443](#), when they are absent due to ongoing medical, dental or other health related treatment. This parental unavailability does not include routine medical or dental appointments.

Shopping, Errands, Search for Employment, and Care of Other Minor Children

A parent is not considered available to perform IHSS duties when the parent must perform shopping and errands essential to the family, search for employment, or for essential purposes related to the care of the recipient's minor siblings. In these situations, IHSS may be purchased from a provider other than the parent for up to eight hours per week to perform IHSS tasks necessary during the unavailability of the parents ([MPP Section 30-763.444](#)). Such activities may include grocery shopping, picking up prescriptions, school activities, medical and dental appointments, etc. Parents must be actively seeking employment in order to be determined unavailable due to employment searches.

The eight hours allowed pursuant to [MPP Section 30-763.444](#) are not IHSS hours in addition to existing authorized IHSS hours. This section permits eight hours per week to be paid to a non-parent IHSS provider from the existing authorized IHSS hours to perform IHSS tasks necessary during the unavailability of the parent.

If a parent is unable or unavailable to provide IHSS to their child due to any of the reasons listed above, and there is no other parent in the home who is able and available

to provide care to the minor recipient child, IHSS services may be provided by a non-parent IHSS provider.

When hours are authorized pursuant to [MPP Section 30-763.444](#), the completion of an [In-Home Supportive Services \(IHSS\) Recipient Request for Assignment of Authorized Hours to Providers \(SOC 838\)](#) is no longer required in order to assign the respite hours to the non-parent provider.

Any information collected regarding a parent's ability and availability to provide IHSS services to their child should be documented as part of the IHSS assessment or in the Case Management and Payrolling System II (CMIPS II) case notes.

Paid Parent IHSS Providers

Pursuant to [MPP Section 30-763.45](#), a parent who lives with their minor child may become a paid parent IHSS provider when the parent has left *full-time employment* or is prevented from obtaining full-time employment because *no other suitable provider is available* and the inability of the parent to perform supportive services may result in inappropriate placement or inadequate care.

Full-Time Employment

Full-time employment is defined by MPP section 30-763.451(a) as "...working an average of 40 or more hours per week regardless of worksite location. A parent providing IHSS-funded care to their own child is not full-time employment." Because parents' worksite locations are not considered, parents who work from home are considered to be employed full-time so long as they work an average of 40 or more hours per week.

If a parent was not previously employed, but his/her child's current IHSS needs prevent that parent from obtaining full-time employment, that parent may qualify to be the paid parent IHSS provider, pursuant to [MPP Section 30-763.451](#), if no other suitable provider is available. The paid parent IHSS provider requirements, set forth in [MPP Section 30-763.451](#), do not require nor imply that a parent must have marketable job skills or a work history to be their child's paid IHSS provider, as long as it is the recipient child's needs which prevent the parent from maintaining or obtaining full-time employment. However, if a parent is not employed full-time for a reason other than the recipient child's IHSS needs, such as seasonal employment or providing regular parental care to another child, that parent would not qualify as a paid parent IHSS provider.

As part of the IHSS assessment process, counties must gather information pertaining to the employment status and work schedule for parent(s) of minor recipients. This information allows the county to appropriately assess the parent's ability to provide the minor recipient's needed services throughout the day. Although it is appropriate for counties to request supporting information to verify parental employment, there is no regulatory requirement that a parent, or parents, must supply an affidavit or other

documentation concerning his/her employment status, employment history, or work schedule; therefore, counties cannot deny or terminate an IHSS case based *only* on the lack of a signed affidavit or other documentation of a parent's employment status, employment history, or work schedule.

If a social worker observes that the parent's work schedule is different from the reported schedule, and that parent appears to be available to provide the minor child's needed services, this information should be documented in detail in the recipient's assessment narrative and/or the provider's person notes.

Common Issues Related to Parental Fulltime Employment

The following are common situations related to employment when a parent cannot be a paid IHSS provider for their recipient child:

- The parent is employed full-time (40 or more hours a week).
- The parent is providing 40 or more hours a week of IHSS to another recipient who is not their own child (i.e. spouse, parent, unrelated recipient, etc.).
- The parent is working part-time as a condition of employment or seasonally due to reasons other than the need to provide IHSS care for their child. Note: If the part-time work schedule is a result of the parent's responsibility to provide needed IHSS for the minor recipient, the parent would qualify to be a paid parent provider.
- The IHSS needs of the child do not prevent the parent from obtaining full-time employment.
- The parent only has occasional physical custody, such as weekends or one or two days a week, if the custody schedule would not prevent the parent from full-time employment.
- The parent is an undocumented immigrant and therefore is not eligible to be an IHSS provider according to IHSS program rules. Note: The family may still be eligible to hire a non-parent provider pursuant to [MPP Section 30-763.44](#) if they meet the requirements.
- The parent has been convicted of a Tier 1 crime as defined by [WIC Section 12305.81](#) and therefore is not eligible to be an IHSS provider according to IHSS program rules.
- There is another suitable provider available as defined by [MPP Section 30-763.452](#).

Please note that the list above is not exhaustive.

Employment Leave

A parent who is employed full-time, but is on paid or unpaid leave, (such as State Disability Insurance (SDI), Family Medical Leave Act (FMLA), sick/vacation leave, etc.) is still considered employed full-time for the purposes of IHSS since the employer-employee relationship is not terminated. Accordingly, the parent does not qualify to be a paid parent IHSS provider, pursuant to [MPP Section 30-763.451](#).

Lay-off

A parent who was employed full-time, but is laid off by their employer, is not considered to have left full-time employment because of the need to care for their IHSS recipient child unless they are laid off due to their responsibility as a parent to meet the IHSS needs of the recipient child. However, if a parent is laid off for reasons other than circumstances surrounding the parental obligation to meet the IHSS needs of the child, the parent does not meet the requirements of [MPP Section 30-763.451](#) and cannot be the paid parent IHSS provider.

Retirement

A parent who retires from full-time employment, due to the need to provide IHSS to his/her minor child, may meet the regulatory requirements to be a paid parent IHSS provider, pursuant to [MPP Section 30-763.451](#). However, if the parent's retirement was due to a reason other than the need to provide IHSS to the child, they would not meet the regulatory requirements to be the paid parent IHSS provider unless they are then prevented from obtaining other full-time employment due to the need to provide IHSS to their minor child.

Suitable Provider

As referenced above, in order to be a paid parent IHSS provider, the parent must leave full-time employment, or be prevented from full-time employment because no other suitable provider is available. "Suitable provider" for non-parent providers is defined by [MPP Section 30-763.452](#) as any person who is willing, able, and available to provide the needed IHSS.

A suitable provider who is a person having a duty pursuant to the Family Code (in this case a natural parent or adoptive parent of a minor recipient) need only be able and available to provide the needed IHSS, i.e. it is presumed that the parent is willing to provide the needed IHSS. A parent is only considered to be unavailable if that unavailability occurs during a time the recipient must receive a specific service, due to employment, enrollment in an educational or vocational training program, or employment searches.

Any information collected regarding a parent's ability and availability to provide IHSS services to their child should be documented as part of the IHSS assessment or in the Case Management and Payrolling System II (CMIPS II) case notes.

Determining if a Parent is a Suitable Provider

In order to be a suitable provider, a parent must be able and available as defined by [MPP Section 30-763.452](#) to provide the needed IHSS services. A parent would not be considered a "suitable provider" for any of the following reasons:

- 1) The parent is unavailable because of employment. Note: Parents who are employed an average of 40 or more hours per week are considered unavailable to provide services; however, a parent that is employed part time is only considered unavailable to provide services during their hours of employment.
- 2) The parent is unavailable because they are enrolled in an educational or vocational training program. Note: A parent that holds full-time student status at their educational or vocational training program is considered unavailable to provide services; however, a parent that is going to school part-time is only considered unavailable to provide services during their hours of instruction.
- 3) The parent is unavailable due to employment searches. Note: Unavailability due to employment searches is limited to time spent actively seeking out employment for up to 8 hours per week as permitted by [MPP Section 30-763.444](#).
- 4) The parent is physically or mentally unable to provide the needed IHSS. Note: Physical or mental inability to provide needed IHSS services can be temporary or permanent. If a parent has been determined to be disabled by the Social Security Administration, the parent is not a suitable provider as it has been determined that their disability prevents them from working.
- 5) The parent is unavailable to provide care as they have reached one of the statutory workweek maximums defined by [WIC Section 12300.4](#).

Two-Parent Households

A parent provider who meets the requirements of [MPP Section 30-763.451](#) can be paid as an IHSS provider for performing authorized services regardless of the presence of the other parent in the home, including during non-work hours, weekends, and holidays. However, a non-parent provider cannot be paid to provide IHSS when one or both parents are able and available as defined by [MPP Section 30-763.44](#) and present in the home. [Note: See exception to this rule in the [Institutionally Deemed Cases \(6V/6W\)](#) section below.]

Example 1: Parent 1 and Parent 2 are employed full time, but are currently present in the home during their non-work hours. In this case, the non-parent provider would not be eligible to provide IHSS services to the recipient while the parents are home able and available to care for their child. Additionally, these parents cannot be paid to provide IHSS services to their child because they are not prevented from full-time employment due to their child's needs as required by [MPP Section 30-763.451](#). However, they are able to hire a non-parent provider to provide the necessary IHSS to their child while they are both unavailable at the same time due to employment.

Example 2: Parent 1 is away from home at work. Parent 2 is working from home. In this case, the parents may hire a non-parent IHSS provider to provide services to the recipients in the home during hours when both parents are working because although Parent 2 is present in the home, s/he is not considered available due to employment.

Example 3: If Parent 1 is considered unable or unavailable pursuant to [MPP Section 30.763.452](#) and Parent 2 leaves full time employment or is prevented from full time employment as defined by [MPP Section 30-763.451\(a\)](#) because no other suitable provider is available and the inability of the parent to perform supportive services may result in inappropriate placement or inadequate care, Parent 2 would qualify to be a paid parent IHSS provider for their minor child.

Example 4: Parent 1 states that, due to physical limitations resulting from an illness, he/she is physically unable to provide the needed IHSS for their minor child. Parent 2 is employed full-time as defined by [MPP Section 30-763.451\(a\)](#). In this situation, Parent 1 is not able to provide the needed services and Parent 2 is unavailable to provide the needed services due to employment; therefore, the family may choose to hire a suitable non-parent provider if one is available. However, if there is no other suitable provider available and the inability of Parent 1 to perform supportive services may result in inappropriate placement or inadequate care, and Parent 2 is required to leave their full time employment due to the care needs of the child, Parent 2 could become a paid parent IHSS provider pursuant to [MPP Section 30-763.451](#).

When both parents who have a duty to care for a minor child pursuant to the Family Code live in the same home as the minor recipient, and the county has determined that both parents are able and available pursuant to [MPP Sections 30-763.44 and 30-763.45](#) to provide care to the minor recipient, the parents are responsible for providing that care uncompensated and may not be authorized to hire a parent provider or a non-parent provider.

Authorization of Two Paid Parent IHSS Providers

On October 1, 2013, the United States Department of Labor (DOL) published the Final Rule on the Application of the Fair Labor Standards Act (FLSA) to Domestic Service (RIN 1235-AA05). The Final Rule extended the protections of the FLSA to IHSS providers by effectively removing the ability of CDSS to claim an exemption for IHSS providers from minimum wage and overtime pay. In response, the Legislature passed

[Senate Bills \(SB\) 855](#) and [SB 873](#) which added and then amended [Welfare and Institutions Code \(WIC\) Section 12300.4.](#), establishing limits on the number of authorized hours providers in the In-Home Supportive Services (IHSS) and Waiver Personal Care Services (WPCS) programs are permitted to work in a workweek.

After an evaluation of these new requirements it was determined that [MPP Section 30-763.45 et seq.](#) inadvertently places arbitrary restrictions on parent providers who have reached the statutory work week maximum imposed by [WIC Section 12300.4.](#) Due to the workweek limitations, they would not be allowed to provide any unmet authorized IHSS hours themselves, nor hire an additional non-parent provider because the parent has already been deemed the only “suitable provider” that is “able and available” to provide the needed IHSS services. In order to address this scenario, CDSS will consider a parent that reaches one of the statutory work week maximums imposed by [WIC Section 12300.4](#) to be “unavailable” to provide the needed IHSS services, and therefore no longer a “suitable provider” as defined by [MPP Section 30-763.452.](#)

Accordingly, as set forth in [ACL 18-31](#), CDSS will permit a second parent in the same household to also be a paid parent IHSS provider when the first parent who is providing IHSS has reached the statutory workweek limitation. The second parent may be paid as a parent IHSS provider to fulfill the remaining authorized hours of the minor recipient(s) in the home, once the first parent has reached the statutory workweek maximum, as long as the second parent meets all requirements set forth in [MPP Section 763.45 et seq.](#)

Example: Parent 1 is a paid parent provider to her two minor recipient children whose combined hours are 320 hours per month. The statutory work week maximum for a provider serving two recipients is 264 hours per month. Because she is no longer considered available to provide the needed IHSS services beyond 264 hours, she is no longer considered a suitable provider for the children as defined by [MPP Section 30-763.452.](#) Parent 2 used to work full-time, but has been prevented from full-time employment due to the care needs of the children and the absence of a suitable provider (i.e. the mother’s inability to work more than 264 hours); therefore, Parent 2 may be a paid parent IHSS provider for the remaining authorized hours. However, it should be noted that Parent 2 is also limited by the statutory workweek maximums imposed by [WIC 12300.4.](#)

Extraordinary Circumstances Exemption (Exemption 2) Considerations

Pursuant to [WIC Section 12300.4\(d\)\(3\)\(B\).](#) in certain extraordinary circumstances which make it difficult to find a second IHSS provider, a provider who serves two or more recipients may be granted an exemption from the standard workweek limitations, and may work up to 360 hours per month. If a parent provider in a two-parent household who is a paid parent IHSS provider to their two (or more) minor recipient children has qualified for such an exemption, and has reached the 360 hours a month maximum permitted by the exemption, the parent providing IHSS services would no longer be

considered available to provide the remaining authorized hours. Accordingly, the paid parent IHSS provider would not be considered “available” to provide the needed IHSS services as defined by [MPP Section 30-763.452](#) and therefore no longer a “suitable provider” for the hours in excess of the 360-hour monthly maximum. In this situation, the second parent may provide the remaining authorized hours of the minor recipient children up to the statutory workweek maximum, as long as they meet the requirements of [MPP Section 30-763.45 et seq.](#)

However, as explained above, the basis for such an exemption being granted is that extraordinary circumstances make it extremely difficult to find a second IHSS provider. In this situation, if a second parent qualifies as a paid parent IHSS provider once the first paid parent IHSS provider reaches the 360-monthly maximum, it is possible that the authorized hours of the recipients can be captured without the exemption. As explained above, the second parent may qualify to be a paid parent IHSS provider once the first parent reaches the standard workweek limitation. Because the basis for the exemption was the inability to find a second provider, county social workers should reevaluate the case and determine whether the recipients’ authorized hours can be worked by both paid parent IHSS providers within the standard workweek limitations, thereby negating the need for the exemption.

Example: Parent 1 is a paid parent provider for their two minor recipient children whose total combined authorized hours are 525 hours per month. The children are behaviorally complex and qualify for an extraordinary circumstances exemption. Parent 1 is able to work up to 360 hours per month, the statutory maximum with the exemption. Once Parent 1 has reached the statutory maximum of 360 hours, they would no longer be considered a suitable provider pursuant to [MPP Section 30-763.452](#). Parent 2 is employed full-time. The IHSS needs of the children are too great for Parent 1 to manage alone, so Parent 2 leaves full-time employment due to the IHSS needs of the children and the absence of a suitable provider. Parent 2’s situation meets the requirements to be a paid parent IHSS provider pursuant to [MPP Section 30-763.45](#), and therefore, Parent 2 may also be a paid parent IHSS provider. In this case, however, the extraordinary circumstances exemption should be re-evaluated as a change of circumstances has occurred on the case. During the re-evaluation, the parents would need to provide justification as to why an exemption would still be needed when it is possible for the hours to be distributed equitably between the two parents without the need for an exemption.

Shared Parental Custody

When parents are living separately and share custody of a minor recipient, the county shall assess the child at the primary parent’s home. If parents share custody of a child, but reside in separate counties, the primary county is the county with the active Medi-Cal case of the applicant /recipient. The primary county is responsible for all case related activities including assessments and payroll.

If either parent wishes to be a paid parent IHSS provider, the IHSS social worker must determine if each parent meets the parent provider requirements, pursuant to [MPP Section 30-763.45](#). If both parents meet the requirements of [MPP Section 30-763.45](#) and share custody of the child and qualify to be paid parent IHSS providers, the IHSS hours would be assigned to each parent based upon the recipient's needs when the child is in each parent's home.

Counties may request a copy of the custody arrangement or other documentation substantiating the parent's custody schedule; however, this information is not required, and services should not be denied based on a refusal to provide such documentation. Counties which have difficulty working with parents in determining how service hours are allocated to the provider in each home should request that the parents complete an [In-Home Supportive Services \(IHSS\) Recipient Request for Assignment of Authorized Hours to Providers \(SOC 838\)](#).

Institutionally Deemed Cases (6V/6W)

Pursuant to [ACL 00-83](#), when the recipient is an institutionally deemed child, a non-parent provider may provide Personal Care Services Program (PCSP) services even if the parent is present in the home and is able and available. Because PCSP eligibility requirements do not permit a spouse or a parent to provide authorized services to the recipient, this policy is intended to not limit a non-parent provider's ability to provide the needed services to the recipient.

It should be noted that this allowance does not extend to institutionally deemed cases (6V/6W) that are funded through the In-Home Supportive Services Plus Option (IPO) and the Community First Choice Option (CFCO) as both programs permit a parent to provide authorized services to the recipient.

This allowance also does not extend to the IHSS Residual (IHSS-R) program as that program does not include any institutionally deemed cases.

Foster Care

Foster parents are not subject to the parent IHSS provider rules because they are not natural or legally adoptive parents, and therefore are treated as non-parent providers. Because [MPP Sections 30-763.44](#) and [30-763.45](#) do not pertain to them, foster parents may choose to provide IHSS services to the minor recipient or hire another provider. Additionally, they are not limited in the services they may provide to the minor children as stated in [MPP Section 30-763.456](#).

Adoption

Because of the change in the legal relationship that occurs between the foster parent and the minor recipient during a completed adoption, the county must conduct a re-assessment of authorized providers.

Once the foster parent becomes the child's adoptive parent, they now have a parental relationship with the child and have a duty under the Family Code to provide care for the minor child. The adoptive parent is then subject to the parent IHSS provider rules and would be required to meet the requirements of [MPP Section 30-763.44](#) in order to hire a non-parent provider, or meet the requirements of [MPP Section 30-763.451](#) to become a paid parent IHSS provider. If the adoptive parent is approved to be a paid parent IHSS provider, the services they may be paid to provide are limited as specified in [MPP Section 30-763.456](#).

If the parent refuses to provide legal documentation to prove the adoption, the county should educate the parent that the change in legal status has affected the provision of IHSS services and that willfully failing to report changes makes them non-compliant with program requirements pursuant to [MPP Section 30-760.12](#). This non-compliance could result in the termination of IHSS services.

Alternative Resources

Pursuant to [MPP Section 30-763.6](#) social services staff is required to explore alternatives to IHSS which may be available from other agencies or programs to meet the needs of the recipient. Alternative resources are provided by another agency or program as a means to supplement the established care needs of the recipient receiving IHSS services. Unless the parental relationship is terminated with a parent, both parents continue to have the responsibility to care for their child even when the parents do not live together; accordingly, both parents are expected to care for their child uncompensated unless they meet the requirements of [MPP Section 30-763.45](#). This parental duty to provide for their child's care is not considered an alternative resource because it is not provided by an alternative agency or program. The county can ask the family to complete an [In-Home Supportive Services \(IHSS\) Recipient Request for Assignment of Authorized Hours to Providers \(SOC 838\)](#) to ensure the authorized hours are appropriately allocated to the IHSS provider(s) on the case.

Eligibility vs. Parent Provider Rules

It is important to remember that determining whether a parent can be a paid IHSS provider and/or hire a non-parent IHSS provider is a separate and distinct inquiry from whether their minor child is eligible for IHSS. The minor shall still be assessed for IHSS and authorized hours if appropriate, regardless of whether the parent is allowed be paid as a provider or allowed to hire another provider. If after applying [MPP Sections 30-763.44 and 30-763.45](#) to a case it is determined that both parents are able and available to provide the needed IHSS to their child and do not qualify to be paid parent IHSS providers, and are also ineligible to hire a paid non-parent IHSS provider, the child is technically still "eligible" for IHSS and therefore the case should not be terminated. If a parent's circumstances change and they meet the requirements of [MPP Section 30-763.44 or 30-763.45](#) in the future, the parent may hire a paid IHSS provider for the IHSS

services authorized; however, in some cases the family may choose not to continue with ongoing assessments which would result in termination of the case.

Example: The case includes a two-parent home with a minor recipient child authorized for a total of 60 IHSS hours per month. Parent 1 was recently laid off from his job due to cut backs. Parent 2 is a stay at home mom; however, the care needs of the child do not prevent her from seeking out full-time employment. Because neither parent was prevented from full-time employment due to the care needs of the child, they are not eligible to hire a paid parent provider pursuant to [MPP Section 30-763.45](#). Furthermore, because a parent is available to stay home to care for the minor recipient child while the other parent runs errands for the family or searches for employment, and neither parent is employed, in school, or physically or mentally unable to provide the needed care to the child, the family is not eligible to hire a non-parent provider pursuant to [MPP Section 30-763.44](#).

New Notice of Action (NOA) Messages

The California Department of Social Services (CDSS) created these specific NOA messages to ensure applicants or recipients understand the basis for provider ineligibility determinations. The County social worker will manually select the appropriate NOA message(s) in the Case Management Information and Payrolling System II (CMIPS II) based on the applicant's or recipient's circumstances. When the county worker authorizes IHSS for the minor recipient, these additional NOA messages will provide detailed information regarding provider ineligibility determinations. They may also assist applicants or recipients with discussing the determination when contacting the County social worker with questions or when deciding to request or pursue a State Hearing.

MPP Section 30-763.44 and MPP section 30-763.45

NOA Message:

Because your parent(s) has a duty to the Family Code to provide your care and is considered "able and available" pursuant to [MPP Section 30-763.44 or 30-763.45](#) to provide that care, your parent(s) is not authorized to be a paid parent provider, nor may you hire a non-parent provider to provide IHSS services at this time.

Although, your parent(s) is currently considered "able and available" to care for you and therefore you are not permitted to hire an IHSS provider, if circumstances change and your parent(s) meets the requirements of [MPP Section 30-763.44 or 30-763.45](#), your parent(s) may be able to be paid as your IHSS provider or you may hire a paid non-parent provider in the future.

[MPP Section 30-776.411\(a\)](#)

NOA Message:

Your selected provider is not eligible to be a paid provider for because s/he committed a Tier 1 crime within the last 10 years.

[MPP Section 30-776.431\(d\)](#)

NOA Message:

Your selected provider is not eligible to be a paid provider s/he is unable to complete the U.S. Citizenship and Immigration Services' (USCIS) Employment Eligibility Verification (Form I-9) required to be completed by every IHSS provider.

CMIPS Functionality for NOA Messages

Counties should select one or more of the above NOA messages in CMIPS II that addresses the provider ineligibility determination for the particular recipient or applicant.

These NOA messages are not auto-generated, but are instead manually selected to reflect the specific information for the particular recipient or applicant.

To Create or Modify a Manual NOA

1. In the Content Area tabs, click the Evidence & Authorization tab.
2. In the Page Navigation bar, click the Program Evidence link. The system displays the Program Evidence screen.
3. In the Manual NOAs area, click the Create/Modify NOAs button. The system displays the Modify Manual NOAs screen.
4. Select the applicable PS NOA Code checkbox.
5. Click the Save button. The selected Manual NOAs display on the Program Evidence screen.

Until the completion of the update to CMIPS, County social workers will enter the messages using the Manual NOA - Free Form Text (Code FF01) and enter in the appropriate NOA message.

County Responsibilities

Counties are responsible for informing parent(s) living with minor recipients about the rules and requirements of [MPP Sections 30-763.44 through 30-763.457](#) to ensure that families understand when they are authorized to hire a non-parent provider and when they may be authorized to become a paid parent provider. The county must also ensure that this discussion is appropriately documented. To assist counties in completing this documentation, CDSS developed the In-Home Supportive Services –

IHSS Minor Recipient Requirements form (SOC 2323), Attachment A. The SOC 2323 may be reviewed and completed at the time of the initial IHSS home assessment, and as necessary upon changes in the circumstances of the case thereafter. This is not a required form; however, it is recommended that the counties attempt to have both parents sign it. Signed copies of the SOC 2323 should be retained in the case file. If the parents decline to sign the SOC 2323, the county should leave a copy of the SOC 2323 with the parent(s) for educational purposes and fully document the discussion of these minor recipient requirements in the CMIPS II case narrative or person notes.

To ensure all cases with minor recipients living with parents comply with the regulatory requirements, counties shall review their existing process to verify that IHSS providers are appropriately enrolled. Prior to the enrollment of a new IHSS provider on minor recipient cases, the IHSS county staff shall verify that the case follows [MPP Sections 30-763.44 through .457](#). Counties that delegate provider enrollment responsibilities to Public Authorities should have a process in which the public authority staff confers with the county staff regarding the individual's provider eligibility prior to assigning a provider to any minor recipient case.

Counties must complete a review of impacted IHSS cases as soon as administratively possible, but no later than the next regularly scheduled reassessment. As cases of minor recipients living with their parents are reassessed, counties are responsible for ensuring that these cases follow the directions contained in this letter.

IHSS Minor Recipient Requirements Form (SOC 2323)

The new form, which is designated as "Required – No Substitutes Permitted," will be made available in camera-ready format upon completion of accessibility requirements. Counties will be able to access the form on the [CDSS Forms/Brochures web page](#) at:

<http://www.cdss.ca.gov/inforesources/Forms-Brochures>

Upon completion of translations, CDSS will post Armenian, Chinese and Spanish versions of the forms on the [Translated Forms and Publications webpage](#) at:

<http://www.cdss.ca.gov/inforesources/Translated-Forms-and-Publications>

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.

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

c: CWDA

Attachment

IN-HOME SUPPORTIVE SERVICES PROGRAM – PROVIDER REQUIREMENTS FOR MINOR RECIPIENTS LIVING WITH THEIR PARENTS

I, _____ (parent), have been informed by the County IHSS Social Worker that I have a legal duty pursuant to the Family Code for the care of my child, _____ (recipient), who is under the age of eighteen years. Below are the conditions under which parents and non-parents may be paid for providing IHSS to a minor child.

I have been informed by my social worker that a parent can only be authorized to be the IHSS paid parent provider if:

- The care needs of the child required that parent to leave full-time employment (40-hours a week) or that parent is now prevented from obtaining full-time employment due to the care needs of the recipient child, and
- There is no other suitable provider available, and
- The inability of the parent to perform supportive services may result in inappropriate placement or inadequate care.

I have been informed by my social worker that a provider other than a parent can only be authorized to be paid for performing IHSS services when the parent, or parents, are not available due to:

- Employment or attendance in an educational program.
- The parent(s) is physically or mentally unable to provide IHSS services.
- The parent(s) has on-going medical or dental treatment.

Additionally, a provider other than a parent can be paid to complete up to eight hours a week of services for a minor recipient when no parent is available because the parent(s) is completing errands or shopping essential to the family or recipient's siblings. This time is not an additional eight hours, but hours that can be paid to a non-parent provider from the existing authorized IHSS hours.

I understand the above conditions and agree to:

- Comply with laws and regulations relating to minor recipient and parent and non-parent provider's requirements as described above
- Inform County IHSS of changes in my employment status or hours
- Inform County IHSS of changes in the household members or parent's work schedules
- Inform the county of any change in mental or physical health status
- Inform the county of any change in educational or vocational program enrollment

- Inform the county of any changes in legal relationship with my child's status such as adoption, termination of parental rights, and legal guardianship
- Refrain from adding a second parent provider to the case of a minor recipient without the approval of the IHSS Social Worker

I further understand that non-compliance with these requirements may result in loss of status as an IHSS parent provider.

Printed Name

Relationship to Recipient

Signature

Date

Social Worker Name/Code

Date