

July 3, 2019

CALIFORNIA DEPARTMENT OF SOCIAL SERVICES

EXECUTIVE SUMMARY

ALL COUNTY LETTER NO. 19-64

This All-County Letter (ACL) provides counties with information regarding newly enacted regulations within the California Department of Social Services (CDSS) Manual of Policies and Procedures (MPP) concerning IHSS provider general exceptions to exclusionary crimes



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GAVIN NEWSOM
GOVERNOR

July 3, 2019

ALL-COUNTY LETTER NO. 19-64

TO: ALL COUNTY WELFARE DIRECTORS
ALL IHSS PROGRAM MANAGERS

SUBJECT: IMPLEMENTATION OF IN-HOME SUPPORTIVE SERVICES
(IHSS) PROVIDER GENERAL EXCEPTIONS REGULATIONS

REFERENCES: [ALL-COUNTY LETTER 12-22](#) (JULY 20, 2012)

This All-County Letter (ACL) provides counties with information regarding newly enacted regulations within the California Department of Social Services (CDSS) Manual of Policies and Procedures (MPP) concerning IHSS provider general exceptions to exclusionary crimes. These newly enacted regulations added MPP 30-778, et. seq., to the MPP and are available for viewing at [Adult Services Regulations](#).

This ACL also transmits two revised forms and one revised notice relating to the IHSS provider general exception process.

IMPLEMENTATION DATE

The regulations detailed within this ACL will become operative on July 1, 2019.

BACKGROUND

These regulatory changes were initiated due to the enactment of Assembly Bill (AB) 1612 (Chapter 725, Statutes of 2010) which established new criminal offense convictions for which an applicant provider could be declared ineligible for enrollment as an IHSS provider, and the methods by which the applicant provider could be granted an exception (either through a personal waiver or general exception) in order to enroll as an IHSS provider. Exclusionary criminal convictions for which a waiver or general

exception can be granted are referred to as “Tier 2” criminal convictions. Prior to the enactment of these regulations, the general exception requirements were initially implemented via ACL 12-22 (July 20, 2012).

This ACL summarizes each section of the newly adopted regulations as they are set forth within the MPP.

SUMMARY OF GENERAL EXCEPTIONS REGULATIONS

Special Definitions

MPP Section 30-778.1 through MPP Section 30-778.18

These regulation sections provide the definitions of Applicant Provider, County, Criminal Offender Record Information, Denial Notice, Family Member, General Exception, State, Tier 2 or Disqualifying Crime, and Tier 2 or Disqualifying Conviction for purposes relating to the general exceptions process.

For the purposes of these regulations, a Family member is defined as a person who is related to the applicant provider either through blood or marriage.

The State is defined as the office of the Caregiver Background Check Bureau (CBCB) of the CDSS. This office is the State bureau specifically delegated with the task of evaluating general exception requests from IHSS applicant providers and providing determination of granting or denying of general exception requests.

Tier 2 crimes are specified in Welfare and Institutions Code (WIC) section 12305.87 and include:

- Serious or violent felonies, as specified in Penal Code (PC) sections 667.5(C) and 1192.7(c);
- Felony offense for which a person is required to register as a sex offender, pursuant to PC section 290(c); and
- Felony offenses for fraud against a public social services program, as defined in WIC sections 10980(c)(2) and 10980(g)(2).

Justification for General Exception Process

MPP Section 30-778.2 through MPP Section 30-778.3

These regulation sections allow for an applicant provider who has been denied eligibility to enroll as an IHSS provider due to a Tier 2 criminal conviction to submit documentation to the State to be evaluated to determine if he/she should be granted a general exception to allow him/her to be enrolled as an IHSS provider.

Time Limit for Submission of General Exception Request
MPP Section 30-778.4 through MPP Section 30-778.421

These regulation sections require the applicant provider to submit the IHSS Applicant Provider Request for General Exception (SOC 863) form and all required documentation to the State within 45 calendar days of the receipt date of the IHSS Program Notice to Applicant Provider of Provider Ineligibility Tier 2 Crimes (Serious/Violent Felonies; Sex Offender Felonies; Fraud Against Government Agencies) (SOC 852A) form from the county/Public Authority (PA)/Nonprofit Consortium (NPC).

Further, these regulation sections state that an applicant provider who does not submit all of the required documentation with the SOC 863 shall be sent an IHSS General Exception Incomplete Request notice (GE-5) stating which documents are missing and allow the applicant provider 15 calendar days from the date of the notice to submit the missing documentation. If the documentation is not submitted within the 15 calendar-day timeframe, the State will proceed with the evaluation process. If the general exception evaluation cannot be completed as a result of the missing documentation, the applicant provider's general exception case will be closed, and the applicant provider will be deemed ineligible to be granted a general exception.

General Exception Request Requirements
MPP Section 30-778.5 through MPP Section 30-778.529(b)

These regulations sections provide information on the completion and submission of the SOC 863. These sections detail the information that must be provided by the applicant provider on the SOC 863 and what specific documentation should be included with the SOC 863 when it is submitted to the State for review, including:

- Copy of the denial notice received from the county IHSS office;
- Copy of the IHSS Program Provider Enrollment Form (SOC 426) submitted to the county by the applicant provider;
- Documentation (such as a Minute Order, Court-Issued Judgment of Conviction, or letter from the Probation Department) showing that the applicant provider's current or last probation period was informal, if applicable;
- A description and verification (such as diplomas or certificates, if available) of any completed training, classes, treatment, counseling, or community service activities that would indicate rehabilitation or changed behavior;
- Evidence of an official pardon by the Governor, if applicable;
- Applicant provider's employment history for the previous ten years;
- Three signed character references (only one of which may be written by a family member of the applicant provider); and
- Signed personal statement by the applicant provider which details a description of the events surrounding the disqualifying crime(s) and of any actions taken by the applicant provider subsequent to the disqualifying conviction(s) to ensure he/she will not be involved in any further criminal activity. If the applicant

provider is unable to personally write this statement due to language proficiency or a mental or physical disability, the State will accept a document which has been dictated by the applicant provider to another individual as long as both individuals sign the document attesting to its validity.

Procedures for State Review of General Exception Requests
MPP Section 30-778.6 through MPP Section 30-778.639

These regulations sections provide information on the procedures that must be followed by CBCB when determining whether to grant or deny a general exception request. These regulations sections further require the county to deliver a copy of the applicant provider's CORI to the State upon request and that the State has the responsibility to determine if the applicant provider was correctly denied enrollment based on a Tier 2 criminal conviction within the ten-year exclusionary period. If the State determines the applicant provider should not have been denied enrollment, the general exception request and all accompanying documentation shall be forwarded to the CDSS, Appeals and Administrative Review Unit.

Further, these regulations sections provide guidelines for the State to follow to determine the way in which the general exception request should be evaluated to determine if the general exception should be granted or denied, including a consideration of the nature and seriousness of the crime(s) for which the applicant provider was disqualified and its relationship to the duties and responsibilities of an IHSS provider; the applicant provider's activities since conviction that would indicate changed behavior (such as employment, participation in therapy, education, or community service); the number of disqualifying convictions the applicant provider has on his/her CORI and the time that has elapsed since the conviction(s); the applicant provider's criminal history subsequent to the disqualifying conviction(s); and the applicant provider's compliance with any terms of probation, parole, restitution, or other sanction lawfully imposed against him/her.

Granting or Denial of General Exception Requests
MPP Section 30-778.7 through MPP Section 30-778.73

These regulations sections detail the process by which the applicant provider, his/her recipient(s), and the county/PA/NPC will be notified of the acceptance or denial of the general exception request. Further, the regulations sections require the State to retain all documentation related to the general exception request (including copies of the applicant provider's CORI and all related documentation) until the date on which the applicant provider's disqualifying conviction has passed the 10-year exclusionary period.

General Exception Denial Appeal Process and Procedures
MPP Section 30-778.8 through MPP Section 30-778.84

These regulations sections detail the process by which the applicant provider may appeal if his/her general exception request was denied by the State.

REVISED FORMS AND NOTICES

As a result of the new regulations, two existing forms and one existing notice that were initially adopted for use and released via ACL 12-22 have been revised with new language to reflect the newly adopted regulations. The following forms and notice have been newly revised:

- IHSS Applicant Provider Request for General Exception (SOC 863, rev. 5/19): This form is completed by the applicant provider to request a general exception from the State to allow him/her to enroll as an IHSS provider.

As provided in MPP section 30-776.631, the county must send the SOC 863 to any applicant provider to whom it has sent an SOC 852A informing him/her of the denial of his/her enrollment due to a Tier 2 criminal conviction,

- IHSS General Exception Incomplete Request (GE-5, rev. 5/19): This notice is completed by the State to inform the applicant provider that his/her general exception request is incomplete because he/she failed to submit required documentation.
- Statement of Facts (SOF) Preparation Checklist IHSS Program Caregiver Background Check Bureau (CBCB), General Exception Unit (GEU) (SOC 872, rev. 5/19): This is an internal form used by the staff of the CBCB to determine if all required documentation has been received by the State in preparation for the evaluation of the general exception request.

All three of these documents have been revised to remove the requirement that the applicant provider must provide copies of police reports involving the disqualifying crime(s) for which he/she was convicted or a letter from a law enforcement agency indicating that such a report no longer exists. The documents have been further revised to include language indicating that a dictated written statement to a third party who prepared the statement for the applicant provider's signature or personal mark can be included with the documentation in lieu of a personally prepared written statement by the applicant provider.

FORM ACCESS

Upon release of this ACL, each county will be required to send the revised form SOC 863 to all applicant providers who are denied eligibility for enrollment as an IHSS provider due to a Tier 2 criminal conviction 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.

CAMERA READY COPIES AND TRANSLATIONS

For camera-ready copies in English, contact the Forms Management Unit at fmudss@dss.ca.gov. If your office has internet access you may obtain this form from the CDSS webpage at: [Forms/Brochures](#).

When translations are completed per MPP Section 21-115.2, including Spanish form, they are posted on our website. Copies of the translated forms can be obtained at: [Translated Forms and Publications](#).

For questions on translated materials, please contact Language Services at (916) 651-8876. Until translations are available, recipients who have elected to receive materials in languages other than English should be sent the English version of the form or notice along with the *GEN 1365-Notice of Language Services* and a local contact.

The CWDs shall ensure that effective bilingual services are provided. This requirement may be met through utilization of paid interpreters, qualified bilingual employees, and qualified employees of other agencies or community resources. These services shall be provided free of charge to the applicant/recipient.

In the event that CDSS does not provide translations of a form, it is the county's responsibility to provide the translation if an applicant or recipient requests it. More information regarding translations can be found in MPP Section 21-115.

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

Sincerely,

Original Document Signed By:

DEBBI THOMSON
Deputy Director
Adult Programs Division

Attachments

IN-HOME SUPPORTIVE SERVICES (IHSS) APPLICANT PROVIDER REQUEST FOR GENERAL EXCEPTION

To request a general exception, you must submit the items listed on this form to the address listed on Page 3 within forty-five (45) calendar days of the date of your denial notice. If you request a general exception, it may take at least seventy-five (75) calendar days to process after a complete exception request and the applicant's criminal offender record information (CORI) are received by the California Department of Social Services (CDSS) Caregiver Background Check Bureau (CBCB). Once all the documents are received, you will receive a written notice stating whether the request has been approved or denied. **You cannot be paid by the IHSS program for any work performed for an IHSS recipient until the general exception request has been approved. (Please note that, if you are currently working for an IHSS recipient because that recipient completed the individual waiver process to hire you, you may continue to work for that recipient.)**

I, _____, am requesting a general exception to become an IHSS provider and work for any IHSS recipient who wishes to hire me. I understand that, at this time, I am denied eligibility to work as an IHSS provider, due to felony criminal conviction(s) listed on my CORI.

I am providing this information for the CBCB to evaluate my request for a general exception:

Applicant Provider Name:

Mailing Address:

Phone Number:

The CBCB will consider the following factors when considering whether to grant the general exception:

- A. The nature and seriousness of the crime(s) and the connection to the duties and responsibilities of an IHSS provider.
- B. Your activities since conviction, including (but not limited to) your employment, participation in therapy education, or community service that would show your changed behavior.
- C. The number of convictions and the time that has passed since the conviction(s).
- D. The extent to which you have met the terms of parole, probation, restitution, or other penalty imposed on you.
- E. Any evidence of rehabilitation that you have submitted. This includes character references submitted by others on your behalf.
- F. Your employment history and current or past employer recommendations. Additional consideration will be given to an employer recommendation from a person who has received in the past or wants to receive personal care services from you.
- G. Information about your involvement in the previous crimes(s) that would explain why it is unlikely you would repeat such an offense.
- H. The Governor's full and unconditional pardon that was granted to you.

Based on the CBCB factors A through H listed on the previous page, applicant providers must enclose all of the following with this form:

1. A copy of the denial notice (SOC 852A) stating your ineligibility to be an IHSS provider.
2. A copy of form SOC 426 (IHSS Program Provider Enrollment Form), which you previously completed and submitted to the county.
3. Documentation (Minute Order, Court-Issued Judgment of Conviction, or a letter from the Probation Department) showing that your current or last probation period was informal, if applicable.
4. A description of, and verification if available of, any completed training, classes, treatment, counseling, or community service activities that would indicate rehabilitation or changed behavior. Provide verification of completion (for example, certificates or diplomas), if applicable.
5. Evidence of an official pardon by the Governor, if applicable.
6. Employment history for the last 10 years.
7. Three (3) signed character reference statements that include the following information:
 - a. How long the person has known you
 - b. How the person knows you (this could be a description of how this person came to know you)
 - c. A statement of the person's opinion of your character
 - d. A description of any interaction between you and a person who is elderly, blind, or disabled who you have assisted
 - e. Other comments that would help describe your desire to work as an IHSS provider
7. The reference statements must be obtained and dated after the date of your denial notice. They may be completed by current or former employers or other persons you choose. You are limited to one reference from a family member.
8. A signed personal statement including the following information:
 - a. A description of the events surrounding the disqualifying crime(s) for which you were convicted, including what happened, why it happened, how it happened, description of the victim (if known, gender, approximate age, physical characteristics, relationship to victim), and other relevant information about the disqualifying crime(s) or any other conviction(s). The CBCB may compare your statement with police reports and court documents.

AND

- b. A description of what you have done since the conviction(s) to ensure you will not be involved in any criminal activity again.

If you are unable to prepare a personal written statement due to limitations involving disability, limited English proficiency, or limited writing skills, you may have another individual write the statement for you based on information you provide him or her. If you do this, you and the individual assisting you must sign the statement verifying the truth of the information contained in the statement. If, for whatever reason, you cannot sign your name to the document, you may sign the document with a personalized mark which must be witnessed by two other people. These witnesses must also sign their names on the document indicating they were witnesses as specified under California Civil Code section 14(a).

Send this form and all requested documentation within forty-five (45) calendar days from the date of your denial notice to the following address:

California Department of Social Services
Caregiver Background Check Bureau
744 P Street, MS 9-15-65
Sacramento, CA 95814

Until you receive a final decision either approving or denying this general exception request, you must notify the CDSS within ten (10) calendar days of any change to your address or telephone number at the contact information listed above.

Signature of Applicant Provider

Print Name

Date



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

Date

General Exception ID#

Applicant Provider Name

Applicant Provider Address

City, State, Zip Code

**IN-HOME SUPPORTIVE SERVICES (IHSS)
GENERAL EXCEPTION**

INCOMPLETE REQUEST

Your request for a general exception to become an IHSS provider is incomplete. The Caregiver Background Check Bureau, General Exception Unit (CBCB, GEU) has not received the information/document(s) indicated below. When you submit the required information, please include your General Exception ID# that appears on the upper right corner of this notice. You must submit these item(s) within ten (10) calendar days of the date on this notice to the address on the letterhead of this notice. If you do not submit these items within this time frame, your general exception request case will be evaluated based on the information you have provided. However, if, due to the missing information, CDSS cannot complete an evaluation, your general exception request case will be closed.

Items not received:

- ☐ A copy of your IHSS Program Notice to Applicant Provider of Provider Ineligibility - Tier 2 Crimes (SOC 852A) stating you are ineligible to be an IHSS provider.
- ☐ A copy of your IHSS Program Provider Enrollment Form (SOC 426), which you previously completed and submitted to the county.
- ☐ Documentation (such as Court Minute Order, Judgment of Conviction, or a letter from the Probation Department) showing that your current or last probation period was informal, if applicable.
- ☐ A description of, and verification (if available) of, any completed training, classes, treatment, counseling, or community service activities that would indicate rehabilitation or changed behavior. Provide verification of completion (for example, certificates or diplomas), if applicable.
- ☐ Evidence of an official pardon by the Governor, if applicable.
- ☐ Employment history for the last ten (10) years.

- ☐ Three (3) signed character reference statements that include the following information:
- a. How long the person has known you
 - b. How the person knows you (this could be a description of how this person came to know you)
 - c. A statement of the person's opinion of your character
 - d. A description of any interaction between you and a person who is elderly, blind, or disabled who you have assisted
 - e. Other comments that would help describe your ability to work as an IHSS provider

The reference statements must be obtained and dated after the date of your ineligibility notice. They may be completed by current employers, former employers, or other persons you choose. You are limited to one reference from a family member.

- ☐ A signed personal statement or a statement dictated to another individual which has been verified and signed by both you and the person assisting you. If you are unable to sign your name to the statement, you may sign the statement with a personalized mark which must be witnessed by two other people. These witnesses must also sign their names on the statement indicating they were witnesses. This statement must include the following information:

- A. A description of the events surrounding the disqualifying crime(s) for which you were convicted, including what happened, why it happened, how it happened, description of the victim (if known, gender, approximate age, physical characteristics, relationship to victim), and other relevant information about the disqualifying crime(s) or other related conviction(s). The CBCB may compare your statement with police report and court documents.

AND

- B. A description of what you have done since the conviction(s) to ensure you will not be involved in any criminal activity again.

If you are currently working for an IHSS recipient who was granted an individual waiver to hire you, you may continue to work for that recipient.

If you have any questions regarding this notice, you may write to the address on the letterhead of this notice, attention Analyst _____ or you may call (888) 422-5669. Please provide your General Exception ID# that appears on the upper right corner of page one.

STATEMENT OF FACTS (SOF) PREPARATION CHECKLIST IN-HOME SUPPORTIVE SERVICES (IHSS) PROGRAM CAREGIVER BACKGROUND CHECK BUREAU (CBCB), GENERAL EXCEPTION UNIT (GEU)

- Check the appropriate box [YES, NO, or N/A (Not Applicable)] in the right-hand column for each item.
- Attach checklist to the SOF Summary.

CHECK SOF SUMMARY FOR THE FOLLOWING:

1. Has all identifying information on Page 1 of the SOF Summary been completed?	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> N/A
2. Have copies of the following documents (submitted by the applicant provider) and the CBCB analyst's evaluation of those documents (if applicable) been included in the case file?	
a. IHSS Program Notice to Applicant Provider of Provider Ineligibility - Tier 2 Crimes (SOC 852A)	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> N/A
b. IHSS Program Provider Enrollment Form (SOC 426)	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> N/A
c. Documentation of informal probation, if applicable	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> N/A
d. Description and verification of completed training classes, treatment, counseling, or community services activities indicating rehabilitation or changed behavior	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> N/A
e. Evidence of an official pardon by the Governor, if applicable	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> N/A
f. Employment history for the last 10 years	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> N/A
g. Three (3) signed character reference statements	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> N/A
h. Signed personal statement OR a statement dictated by the applicant provider to another individual which has been verified and signed by both the applicant provider and the person assisting him/her	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> N/A
3. Has a copy of the Criminal Offender Record Information (CORI) been included in the case file?	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> N/A
4. Has a copy of the "Triage" form been included in the case file?	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> N/A