

September 29, 2021

CALIFORNIA DEPARTMENT OF SOCIAL SERVICES

**EXECUTIVE SUMMARY**

**ALL COUNTY LETTER NO. 21-91**

This All-County Letter (ACL) provides counties with clarification regarding the application of Able and Available Spouse regulations to In-Home Supportive Services (IHSS) cases.



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GAVIN NEWSOM  
GOVERNOR

September 29, 2021

ALL COUNTY LETTER NO. 21-91

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

SUBJECT: **CLARIFICATION OF IN-HOME SUPPORTIVE SERVICES ABLE  
AND AVAILABLE SPOUSE REGULATIONS**

REFERENCE: [WELFARE AND INSTITUTIONS CODE \(WIC\) SECTION 12301\(a\)](#); [FAMILY CODE \(FAM\) SECTIONS 297.5\(a\) and 300](#); [MANUAL OF POLICIES AND PROCEDURES SECTION 30-701\(s\)\(4\) and 30-763, ET SEQ.](#); [42 UNITED STATES CODE SECTION 1382c\(d\)](#); [TITLE 20 CODE OF FEDERAL REGULATIONS 416.1806](#); [ALL-COUNTY LETTER 08-18 \(APRIL 23, 2008\)](#); [ALL-COUNTY LETTER 09-30 \(JUNE 30, 2009\)](#); CASE MANAGEMENT INFORMATION AND PAYROLL SYSTEM II (CMIPS II) USERS' MANUAL

This All-County Letter (ACL) provides counties with clarification regarding the application of Able and Available Spouse regulations to In-Home Supportive Services (IHSS) cases.

The information contained in this ACL supersedes the response to Question 7 provided in ACL 08-18 (April 23, 2008) which incorrectly states that the regulations regarding Able and Available Spouses do not apply when a married couple, or a couple considered to be married for SSI/SSP purposes, do not reside together.

## **BACKGROUND**

Welfare and Institutions Code (WIC) Section 12301(a) sets forth that an “able spouse who is available to assist the recipient shall be deemed willing to provide, at no cost, any services under this article except nonmedical personal services and paramedical services. When a spouse leaves full-time employment or is prevented from obtaining full-time employment because no other suitable provider is available and where the inability of the provider to provide supportive services may result in inappropriate placement or inadequate care, the spouse shall also be paid for accompaniment when

needed during necessary travel to health-related appointments and protective supervision.”

For the purposes of IHSS, a spouse is defined as “a member of a married couple or a person considered to be a member of a married couple for SSI/SSP purposes.” (Manual of Policies and Procedures (MPP) Section 30-701(s)(4).)

Under the SSI/SSP regulations, set forth in Title 20, Code of Federal Regulations (20 CFR), Section 416.1806(a), the Social Security Administration (SSA) considers two individuals to be married under any one of the following conditions:

- The two individuals are legally married under the laws of the State where the couple’s permanent home is (or was when the couple lived together);
- The SSA determines that either of the two individuals is entitled to the other’s SSI benefits as the person’s spouse; or
- Two individuals of the opposite sex are living together in the same household at or after the time one of the individuals applies for SSI benefits and both individuals lead people to believe they are husband and wife.

Couples receiving benefits due to being treated as spouses for purposes of Social Security must also be treated as spouses for IHSS purposes.

## **APPLYING THE ABLE AND AVAILABLE SPOUSE REGULATIONS**

### **Determining Whether the Recipient Has a Spouse**

When applying the Able and Available Spouse regulations in an IHSS case, the county must first determine if two individuals living in the same household are considered married. The county may establish that the individuals are married in one of four different ways:

- If the IHSS recipient lists the other individual living in the same household as a spouse in Section 6 of the Application for In-Home Supportive Services (SOC 295).
- The SSA determines that either of the two individuals is entitled to the other’s SSI benefits as the person’s spouse; or
- Two individuals are living together in the same household at or after the time one of the individuals applies for SSI benefits and both individuals lead people to believe they are married.
- The recipient is in a registered domestic partnership.

If the county social worker is unsure if the two individuals are spouses under the Able and Available Spouse regulations, the social worker may request a copy of the couple’s marriage certificate during the initial assessment or could use public records to obtain a copy of the marriage certificate from the State Office of Vital Statistics or the county registrar’s office.

As long as the couple remains married and do not obtain a divorce or annulment of the marriage, or are not legally separated, the Able and Available Spouse regulations apply. This includes all legally married couples even if the couple live in separate locations and are estranged.

### Same Sex Marriage

As previously specified, the IHSS Program identifies a spouse in accordance with SSI/SSP rules. According to subsection (a) of 20 CFR Section 416.1806, the Social Security Administration (SSA) considers two individuals to be married if "...the two individuals are legally married under the laws of the State where [the couple's] permanent home is (or was when [the couple lived] together)."

In California, Family Code (FAM) Section 300 specifies that "marriage is a personal relation arising out of a civil contract between two persons, to which the consent of the parties capable of making that contract is necessary." As such, two individuals married under California state law are considered spouses for the purposes of the IHSS Program regardless of sex or gender.

### Domestic Partnerships

Additionally, FAM Section 297.5 specifies that "registered domestic partners shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon spouses." As such, registered domestic partners are considered spouses for the purposes of the IHSS Program. Spouses may provide proof of their registered domestic partnership with a certified copy of the Declaration of Domestic Partnership issued by the California Secretary of State.

### Determining the Ability of the Spouse to Provide IHSS

MPP Section 30-763.41 specifies that any spouse who does not receive IHSS benefits is presumed able to provide all IHSS tasks to a spouse without compensation except for Personal Care Services and Paramedical Services, unless there is medical verification of the spouse's inability to do so.

If a spouse submits medical verification of an inability to perform a task, the county should authorize hours for a non-spouse provider to provide the specified IHSS service(s) the spouse has been determined to be unable to perform. However, unless the spouse is determined unable to perform all IHSS tasks, the spouse would continue to be counted as an able spouse for the purposes of determining the individual's Household Member Relationship Status because the spouse has been determined to have the ability to perform some IHSS tasks.

*Example:* A recipient has an able and available spouse who has submitted medical verification that they cannot lift objects over 10 lbs. As such, the spouse would be determined unable to perform any IHSS which would require the spouse to lift objects over 10 lbs.; however, the spouse would continue to be expected to perform all other IHSS tasks uncompensated other than Personal Care Services and Paramedical Services in accordance with their ability and availability as set forth in this ACL. (MPP Section 30-763.41)

#### Determining the Availability of the Spouse to Provide IHSS

MPP Section 30-763.41 specifies that a spouse who is not receiving IHSS is also presumed available to perform all IHSS tasks without compensation with the exception of Personal Care Services and Paramedical Services unless the spouse is determined unavailable due to employment, health, or other unavoidable reasons and the services must be performed in the spouse's absence. Examples of unavoidable reasons for unavailability include incarceration, military deployment, a restraining order against the non-recipient spouse, or when the recipient spouse has left the home or evicted the non-recipient spouse from the home to escape documented domestic violence by the non-recipient spouse. Examples of documentation of domestic violence include, but are not limited to a police report, a report by a physician, or information from an abuse prevention entity. If the spouse is unavailable to provide IHSS to the recipient-spouse due to an unavoidable reason, the non-recipient spouse should not be the recipients' provider for any IHSS service, including Personal Care and Paramedical Services. The county IHSS office may, if necessary, require the recipient to provide documentation of the spouse's unavailability.

Furthermore, pursuant to MPP Section 30-763.412, CDSS has determined that if an able spouse is out of the home for employment, health, or for other unavoidable reasons for an extended period of time of 24 hours or more, the spouse is presumed unavailable to provide any IHSS to the recipient pursuant to MPP Section 30-763.41 for that period of unavailability. As such, hours may be authorized for a non-spouse provider to perform all of the recipient's authorized IHSS during the period of extended unavailability. However, the spouse would continue to be counted as an available spouse for the purposes of determining Household Member Relationship Status because the period of unavailability is temporary.

In such situations, the able spouse would be considered temporarily unavailable and the IHSS recipient would be able to hire another IHSS provider who would be eligible to be paid by the IHSS program for providing all authorized IHSS during the spouse's extended period of unavailability.

*Example:* The able spouse of an IHSS recipient is employed out of the area as a long-haul truck driver. The spouse is frequently away from the home for months at a time and would be unavailable to provide all authorized daily IHSS. The IHSS recipient would be allowed to hire a non-spouse provider to provide all of the recipient's authorized IHSS because the working able spouse would be considered unavailable for unavoidable reasons for an extended period of time as the spouse would not have an option to

return to the home each day to provide necessary services. However, upon the spouse's return to the home, the county would review the case to redetermine what IHSS the spouse and/or a non-spouse provider may be paid to perform in accordance with this ACL.

#### Determination of a Spouse's Able and Available Status

Once the county has determined that a recipient has an able and available spouse as part of the Household Evidence review process, the county will identify all household members. Once the Household Evidence has been determined, the county should assess the recipient's services in accordance with their shared living arrangement pursuant to MPP Section 30-763.

Once the recipient's need has been determined and service hours calculated in accordance with shared living arrangements, the county must further apply the Able and Available Spouse regulations (MPP Section 30-763.41) to the case to determine alternative resources [i.e. services that are the responsibility of the spouse to meet].

#### Assessing Alternative Resources for a Recipient with an Able and Available Spouse

MPP Section 30-763.415 specifies that a recipient with an able and available spouse may hire a provider, including the spouse, to provide Personal Care Services and Paramedical Services at any time, even during times of spousal availability. As such, spousal ability and availability will not count as an alternative resource for the purposes of determining service authorization for Personal Care Services and Paramedical Services. However, MPP Section 30-763.41 specifies that a spouse is expected to perform all other assessed IHSS tasks uncompensated unless the spouse meets specified requirements. As such, any IHSS the spouse is required to provide is counted as met by an alternative resource.

As part of the assessment and authorization of services, the county must consider all services that must be provided by the spouse. Any IHSS task(s) that must be performed by the spouse without compensation, i.e. not a Personal Care Service or Paramedical Service, will typically be counted as met by the spouse and therefore an alternative resource, unless the spouse has provided medical verification of their inability to perform the specified IHSS task, is unavailable for a valid reason, or is prevented from full-time employment because no other suitable provider is available.

#### *Domestic Services, Related Services, Yard Hazard Abatement, Teaching and Demonstration, and Heavy Cleaning*

MPP Section 30-763.413 specifies that no payment will be made to the spouse or any other provider for Domestic Services, Related Services, Yard Hazard Abatement, Teaching and Demonstration, and Heavy Cleaning when the recipient has access to an able and available spouse. As such, these IHSS categories shall be considered met by an alternative resource when the county determines the recipient has an able and available spouse. However, there are exceptions to this rule as an able and available

spouse may be unable to perform certain tasks or is periodically unavailable to perform care tasks. As such, the regulations should be applied to the case and alternative resources assessed appropriately.

If the spouse provides medical verification that they are unable to perform certain IHSS tasks, those IHSS tasks will not be counted as met by the spouse as an alternative resource. As previously specified, unless the medical verification indicates that the spouse is unable to perform any care tasks, the spouse would still be considered an able spouse and any IHSS tasks the spouse is able to perform would be required to be met by the spouse without compensation unless they are considered unavailable or prevented from full-time employment.

MPP Section 30-763.412 specifies that a spouse is only considered unavailable when IHSS must be performed and the reason for unavailability is due to employment, health, or other unavoidable reasons. As previously specified, examples of unavoidable reasons for unavailability include incarceration, military deployment, a restraining order against the non-recipient spouse, or when the recipient spouse has left the home or evicted the non-recipient spouse from the home to escape documented domestic violence by the non-recipient spouse. The county IHSS office may, if necessary, require the recipient to provide documentation of the spouse's unavailability. As such, unless the able spouse is considered permanently unavailable to care for the recipient, the spouse would be counted as able and available for the purposes of determining alternative resources for Domestic Services, Related Services, Yard Hazard Abatement, Teaching and Demonstration, and Heavy Cleaning.

*Meal Preparation, Medical Accompaniment (Transportation), and Protective Supervision*

MPP 30-763.414 further specifies that during periods of spousal unavailability, Meal Preparation, Transportation, and Protective Supervision will not be counted as met by the spouse as an alternative resource. Please note that the able spouse continues to be responsible for performing all other IHSS unless they are unable to perform the task or is prevented from full-time employment.

MPP Section 30-763.416 further specifies that if the spouse must leave full-time employment or is prevented from full time employment because no other suitable provider is available, he or she may be paid to provide Medical Accompaniment and Protective Supervision. However, unless the able spouse is prevented from full-time employment because there is no suitable provider available, Medical Accompaniment and Protective Supervision will be counted as met by the spouse as an alternative resource during times of spousal availability. If the county determines that the able spouse has been prevented from full-time employment because no other suitable provider is available, Medical Accompaniment and Protective Supervision will not be counted as met by an alternative resource and the spouse may be paid to perform those services.

The county should also assess all other alternative resources received by the recipient in accordance with MPP Section 30-763.6.

### Entering Alternative Resources into CMIPS II

To ensure appropriate determination of alternative resources for recipient cases with an able and available spouse, the county must enter Household Evidence in accordance with CMIPS User Manual – Chapter 3 – Section 4.6.2 and Appendix A as completing data entry to indicate access to an able and available spouse triggers CMIPS to automatically adjust alternative resources in accordance with MPP Section 30-763.413. As such, when the county identifies an able and available spouse, CMIPS automatically deducts all domestic and related services authorized as these IHSS tasks are presumed met through the spouse as an alternative resource. Please note that Yard Hazard Abatement, Teaching and Demonstration, and Heavy Cleaning should also be counted as met by the spouse as an alternative resource unless the spouse has submitted medical verification indicating an inability to perform the task.

Social workers should establish an IHSS care schedule with the spouse and the recipient to determine what IHSS care must be provided by the spouse during periods of spousal availability. Once the IHSS care schedule has been determined and documented in the case record, the county should enter or adjust alternative resources into each CMIPS service type in accordance with the spouse's ability and availability to perform IHSS tasks. The county should also enter any other alternative resources the recipient may be receiving. (See CMIPS User Manual – Chapter 3 – Section 4.7.2.1 and Appendix A – Pages 151 and 152.) Please note that any alternative resource entries should include a description in the "Modify Service Type Details" comment section.

### Establishing the Provider Schedule

Lastly, the county should determine who the provider(s) for the recipient will be and determine what IHSS service(s) each provider may be paid to perform. Please note that the family may choose to hire any eligible IHSS provider, including the spouse, to perform Personal Care Services and Paramedical Services (MPP Section 30-763.415). It should also be noted that the non-spouse provider may provide these services even when the able spouse is available in the home.

MPP 30-763.414 states that a non-spouse provider may be hired to perform Meal Preparation, Transportation, and Protective Supervision when an able spouse is considered unavailable because of employment, health, or other unavoidable reasons.

MPP Section 30-763.416 further specifies that if an able spouse must leave full-time employment or is prevented from full time employment because no other suitable provider is available, the able spouse may be paid to provide Medical Accompaniment and Protective Supervision.

Once the social worker has established that a provider can be paid for a recipient's services, the social worker should have the recipient complete a Recipient Request for Assignment of Authorized Hours to Providers (SOC 838) to document each provider's hours. Additionally, the IHSS hours should be assigned to providers in accordance with the completed SOC 838.

*Example of Able and Available Spouse Rules and Policy Application:* A recipient's spouse is able to provide IHSS services. The spouse works Monday through Friday from 8:00 am – 5:00 pm. The recipient is authorized domestic services, meal-prep and clean-up, dressing, bathing, oral hygiene and grooming, bowel and bladder care, laundry, administration of medications, shopping and errands, assistance with ambulation, protective supervision, and medical accompaniment. During a typical work week, the recipient wakes up around 7:00 am and generally has coffee while the spouse gets ready for work and makes the recipient breakfast. The recipient takes medication with breakfast (8:00 am) and then gets ready for the day by showering, brushing their teeth, grooming, and dressing. Lunch is served with medication at 1:00 pm and dinner with medication is at 6:00 pm. Protective supervision is provided throughout the day. Assistance with ambulation and using the restroom is provided as needed. Laundry is done weekly. Assistance with shopping is needed about once a week to pick up food and/or prescriptions. The recipient sees a specialist twice a month and their physician annually or as needed.

The county identifies that the recipient has access to an able and available spouse and therefore should complete data entry for an able and available spouse in the CMIPS Household Evidence. As such, CMIPS will automatically identify all Domestic and Related Services as met by an alternative resource. This includes meal preparation, meal clean-up, laundry, and shopping and errands. Meal Preparation and Meal Clean-Up for breakfast and dinner will be counted as met by an alternative resource as the spouse makes breakfast and cleans up for the recipient prior to leaving for work and is also home in time to provide dinner and clean up afterward. However, because the spouse is gone during lunch, the spouse will not be counted as alternative resource for Meal Preparation; however, the spouse will be responsible for lunch's Meal Clean-Up when they return home from work. The county social worker should make adjustments to Meal Preparation's alternative resources and insert a comment explaining the adjustment.

A spouse provider or any other provider may be paid to perform any bowel and bladder care, bathing, oral hygiene, grooming, dressing, and/or administration of medications at any time as these service categories are considered Personal Care Services and Paramedical Services. As such, an able and available spouse is not considered an alternative resource for these service categories and the recipient may hire any provider to perform these tasks at any time.

Additionally, because the spouse is unavailable due to employment Monday through Friday from 8:00 am – 5:00 pm, any Meal Preparation, Protective Supervision, and Medical Accompaniment to appointments that must be provided during the spouse's work hours are not counted as met by the spouse as an alternative resource. Furthermore, the non-spouse provider may be hired to perform Meal Preparation, Transportation, and Protective Supervision during the able spouse's periods of unavailability.

Although the spouse is able to be paid to provide Personal Care Services and Paramedical Services, the spouse may not be paid to perform Protective Supervision or

Medical Accompaniment as they are not prevented from full-time employment due to the lack of a suitable provider.

The county should enter in the alternative resources accordingly and have the couple complete an SOC 838 to determine how authorized hours will be assigned to providers for the recipient.

If you have any questions regarding the policy and requirements set forth in this ACL, you may direct them to the CDSS, Adult Programs Division, Policy and Operations Bureau at (916) 651-5350.

Sincerely,

***Original Document Signed By***

DEBBI THOMSON  
Deputy Director  
Adult Programs Division