

August 2, 2022

CALIFORNIA DEPARTMENT OF SOCIAL SERVICES

**EXECUTIVE SUMMARY**

**ALL COUNTY LETTER NO. 22-65**

This All-County Letter provides instruction to counties on the establishment and implementation of a back-up provider system for In-Home Supportive Services and Waiver Personal Care Services programs as required under Welfare and Institutions Code section 12300.6.



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GAVIN NEWSOM  
GOVERNOR

August 2, 2022

ALL COUNTY LETTER NO. 22-65

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

SUBJECT: **ESTABLISHMENT OF A BACK-UP PROVIDER SYSTEM FOR IN-HOME SUPPORTIVE SERVICES AND WAIVER PERSONAL CARE SERVICES**

REFERENCE: [ALL-COUNTY LETTER \(ACL\) 11-12](#) (JANUARY 26, 2011), [16-01](#) (JANUARY 7, 2016), [20-29](#) (MARCH 30, 2020), [20-139](#) (DECEMBER 17, 2020), [22-18](#) (MARCH 9, 2022), AND [22-25](#) (MARCH 18, 2022); [ASSEMBLY BILL 135](#) (CHAPTER 85, STATUTES OF 2021); [SENATE BILL 187](#) (CHAPTER 50, STATUTES OF 2022); WELFARE AND INSTITUTIONS CODE SECTION [12300.5](#) AND [12300.6](#)

This All-County Letter provides instruction to counties on the establishment and implementation of a back-up provider system (BUPS) for In-Home Supportive Services (IHSS) and Waiver Personal Care Services (WPCS) programs as required under Welfare and Institutions Code (WIC) section 12300.6.

### **BACKGROUND**

As part of the state effort to alleviate concerns regarding IHSS recipient health and safety during the COVID-19 pandemic, the California Department of Social Services (CDSS) released All-County Letter (ACL) 20-29 (March 30, 2020) which implemented an emergency BUPS for IHSS recipients whose providers could no longer work due to COVID-19 related impacts. The ACL 20-29 further provided for a salary differential of two dollars above the current hourly rate for those IHSS providers assigned to emergency back-up services due to circumstances related to COVID-19. Although the BUPS and the pay differential were both due to expire on December 31, 2020, due to the continued impact of the COVID-19 pandemic, the CDSS extended the expiration date of both the BUPS and the pay differential to June 30, 2021, as stated in ACL 20-139 (December 17, 2020). The expiration date of the BUPS for IHSS recipients

whose providers could not work due to COVID-19 related impacts including the two dollar per hour salary differential was further extended from June 30, 2021, to December 31, 2021. The expiration date of the BUPS including the two dollar per hour salary differential was extended again pursuant to ACL 22-25 (March 18, 2022) through June 30, 2022.

On July 16, 2021, Assembly Bill (AB) 135 was signed by Governor Gavin Newsom which added WIC section 12300.5 allowing the CDSS, in consultation with stakeholders, to create the framework for a permanent BUPS. However, as stated in WIC section 12300.5, the permanent BUPS would not be implemented or funded until statutes were enacted to define the parameters of the BUPS, including, but not limited to, the criteria and circumstances under which those services may be approved for a recipient who is authorized to receive IHSS or WPCS.

On June 30, 2022, Governor Newsom signed into law Senate Bill (SB) 187 (Chapter 50, Statutes of 2022) which added WIC section 12300.6. The WIC section 12300.6 establishes the framework for a permanent BUPS for IHSS and WPCS and will become effective no sooner than October 1, 2022, and no later than 60 days after the date of this All-County Letter.

### **EMERGENCY BACK-UP PROVIDER SYSTEM**

WIC section 12300.6 allows counties and public authorities to establish a list of enrolled IHSS/WPCS providers who are able to provide emergency back-up services for recipients whose regular providers are unable to provide their IHSS or WPCS.

Under the BUPS established by WIC section 12300.6, an IHSS recipient would be eligible to receive temporary IHSS or WPCS from a back-up provider if they have an urgent need for back-up supportive services related to personal care services that cannot be met by an existing provider or the urgent need cannot be met because the recipient is transitioning to home-based care and does not yet have an identified provider.

The maximum total number of hours received under the BUPS shall not exceed 80 hours per California State fiscal year (July 1 to June 30) for each eligible recipient and shall be reset to 80 hours on July 1 of each year. Exceptions to this 80-hour annual limit may be granted on an as-needed basis for severely impaired recipients (as defined under Manual of Policies and Procedures section 30-701(s)(1)) but shall not exceed 160 hours per California State fiscal year. Such exceptions may only be granted if funding for the exception is appropriated in the annual State Budget Act. The CDSS will notify the counties at the beginning of each fiscal year regarding the funding to allow for these exceptions.

For purposes related to the use of the BUPS, an “urgent need” shall be aligned with the criteria set forth in ACL 16-01 (January 7, 2016):

- The need must be immediate and cannot be postponed until the provider is available to provide the need; and
- The need has a direct impact upon the IHSS recipient and delaying the need would potentially jeopardize the health and/or safety of the IHSS recipient and may result in the need for emergency services and/or out-of-home placement.

In evaluating recipients who are transitioning to home-based care, counties shall work with the recipient requesting back-up services to take into consideration the following factors when determining if use of the BUPS is appropriate for that individual:

- Recipients and/or their authorized representative should be advised that the BUPS is intended to be used for temporary assistance that is capped at 80 hours (or 160 hours for severely impaired recipients) and that they will need to hire a permanent provider. Counties and recipients and/or their authorized representative need to consider how much urgent care the recipient would need upon transition and whether the use of the BUPS would be appropriate and safe in the specific situation being requested, taking into account the other resources and services that are in place (e.g., case management, Home & Community-Based Alternatives Waiver services, and Medi-Cal Managed Care Plan services such as Enhanced Care Management).
- Whether or not the recipient would have difficulty managing a provider from the BUPS with whom the recipient is not acquainted and can manage without the assistance of an authorized representative if no authorized representative is available.
- For a newly discharged recipient, whose care needs are significant, counties should advise the recipient or their authorized representative that a BUPS provider can only provide services temporarily and they may also need the direct support of friends and/or family, until such a time as they are able to hire a permanent provider.

Counties should try to assist recipients with obtaining a back-up provider whenever possible. Some examples of when use of the BUPS while transitioning would be appropriate and safe may include, but are not limited to:

- A newly-approved recipient who is being released from a hospital and has a support system of family and friends and a family member who will be the designated authorized representative to manage the BUPS provider during the time the permanent provider is being located.
- An existing recipient who suffered from a health condition which required an extended hospital stay. Because of the lengthy hospitalization, the permanent provider sought new employment. The recipient was released from the hospital and had an urgent need for supportive services and required access to the BUPS until they could locate a new permanent provider.

The county or Public Authority should work with those recipients to establish a permanent provider as soon as possible to avoid exceeding their BUPS time limit for the fiscal year.

All service hours received under the BUPS shall count towards the recipient's total monthly authorized IHSS/WPCS hours and shall not impact a recipient's authorized monthly hours or the maximum number of hours allowed pursuant to WIC section 12303.4 and WIC section 14132.95(g).

For recipients with two or more regular providers, if a recipient has a need to use the BUPS, an exception from the provider workweek limitations may be authorized for one of the other regular providers, as authorized pursuant to WIC section 12301.1(b)(1)(C), in lieu of finding a back-up provider. As stated in ACL 16-01, in such a situation, the recipient may assign the hours to his/her other provider without requesting approval from the county so long as the hours worked by the single provider do not cause him/her to work more than the recipient's maximum weekly hours or, if the provider works for more than one recipient, causes him/her to work in excess of 66 hours in the workweek as providers who provide IHSS/WPCS for multiple recipients may only work a maximum of 66 hours per workweek.

*Example: Recipient Nicole has two providers working for her. Nicole has 220 authorized monthly hours which, when divided by four, equal 55 authorized weekly hours. Provider Steve works 30 hours per week for Nicole and Provider Kelly works 25 hour per week for Nicole. However, one week, Kelly gets ill and cannot work. Nicole decides to assign Kelly's 25 hours to Steve, increasing his weekly work hours to 55 hours per week. Because Steve's temporary 55-hour workweek does not exceed Nicole's maximum weekly hours of 55 hours per week, Nicole does not need to request permission from the county to temporarily increase Steve's weekly work hours in this manner. Furthermore, Nicole does not need to contact the county or Public Authority to request an emergency back-up provider from the BUPS.*

*However, if Steve works for another recipient, he will only be able to work a maximum of 66 hours per workweek. If Steve works for his other recipient 11 hours or more per workweek, Steve will have to decline all of the additional hours which will require Nicole to access the BUPS in order to obtain an emergency back-up provider for her urgent care needs until such time as Kelly can return to work.*

The requirements of the BUPS shall not restrict or interfere with the right of the recipient to hire, terminate, and supervise the back-up provider. However, if a recipient chooses to not use or terminates the back-up provider referred to them by the county or public authority, it will become the responsibility of the recipient to find and hire a back-up provider. This recipient-chosen provider, who is not part of the BUPS, will not be paid the two-dollar salary differential. The chosen provider must be an eligible and enrolled provider within the IHSS program in the county in which the recipient resides. Counties

are not prohibited from continuing to assist the recipient if they need continued access to the BUPS.

### **BACK-UP PROVIDER ELIGIBILITY**

To be eligible to serve as a back-up IHSS/WPCS provider within the BUPS and receive payment as a back-up provider, the provider must meet the following criteria:

- The provider shall not have been convicted of any crime specified in WIC section 12305.81 (referred to as Tier 1 crimes, as set forth in ACL 11-12 (January 26, 2011)) or section 12305.87 (referred to as Tier 2 crimes) within the previous ten years. Although a provider with a Tier 2 criminal conviction is permitted to work for a recipient that has submitted an Individual Waiver, due to the requirements of WIC section 12300.6(e)(1), waivers cannot be used for providers in the BUPS; and
- The provider shall have met all requirements of provider enrollment including the submission of the provider enrollment form (SOC 426), attendance at the provider orientation, signing of the provider enrollment agreement (SOC 846), and submission of fingerprints to undergo a criminal background check conducted by the California Department of Justice, as specified in WIC sections 12301.24(a), 12301.24(b), 12305.81(a), and 12305.86.
- The provider shall be enrolled as a provider through the county or Public Authority and shall meet all applicable local requirements to be included on the local county or Public Authority BUPS registry. An individual who is listed on the county or Public Authority registry but who has not yet completed all enrollment requirements to serve as an IHSS provider cannot be included on the BUPS registry.

Effective October 1, 2022, all eligible providers who provide emergency back-up provider services shall be paid a wage that is two dollars per hour above the current county/public authority locally negotiated wage rate for an IHSS/WPCS provider, subject to an appropriation in the annual State Budget Act. Additionally, the current two-dollar salary differential for emergency back-up providers related to COVID-19, provided pursuant to ACL 20-29 which was extended to June 30, 2022, as set forth in ACL 22-25, will continue through September 30, 2022.

### **COUNTY RESPONSIBILITIES**

The BUPS shall be operated at a minimum by the county or public authority during normal county operating hours Monday through Friday, excluding holidays. In operating the BUPS, counties and public authorities shall be responsible for:

- Recruiting, enrolling, and making reasonable efforts to identify and recruit any available provider, to the extent possible, into the county BUPS.
- Responding to recipient requests for an emergency back-up provider.

- Referring recipients to one or more back-up providers, if available and consistent with the recipient's preferences and needs. This shall not be construed to require the county or public authority to ensure the provision of BUPPS in the event the county or public authority is unable to locate an available provider for referral.
- Entering information into the Case Management, Information, and Payrolling System (CMIPS) for purposes of tracking and making payments to back-up providers.

### **CMIPS PROGRAMMING CHANGES**

The CMIPS will be modified to support the statewide back-up provider system. Modifications include new CMIPS functions to allow county staff to assign back-up providers with the applicable pay rates, grant exceptions, and track service usage. Data downloads will also be modified to include the back-up provider payment information. Additional details will be provided in a forthcoming ACL.

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 & Operations Bureau at (916) 651-5350.

Sincerely,

***Original Document Signed By:***

LEORA FILOSENA  
Deputy Director  
Adult Programs Division