

December 21, 2023

CALIFORNIA DEPARTMENT OF SOCIAL SERVICES

EXECUTIVE SUMMARY

ALL COUNTY LETTER NO. 23-106

The purpose of this All County Letter (ACL) is to provide implementing guidance for Assembly Bill (AB) 120 (Chapter 43, Statutes of 2023) which eliminated provider eligibility requirements for minor recipients in the In-Home Supportive Services (IHSS) program.



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GAVIN NEWSOM
GOVERNOR

December 21, 2023

ALL COUNTY LETTER NO. 23-106

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

SUBJECT: **ELIMINATION OF PROVIDER ELIGIBILITY REQUIREMENTS
FOR MINOR RECIPIENTS IN THE IN-HOME SUPPORTIVE
SERVICES PROGRAM**

REFERENCE: [ASSEMBLY BILL \(AB\) 120 \(CHAPTER 43, STATUTES OF 2023\);](#)
[CODE OF FEDERAL REGULATIONS TITLE 42 \(CFR 42\)](#)
[SECTION 440.167\(a\)\(2\); WELFARE AND INSTITUTIONS CODE](#)
[\(WIC\) SECTION 12301.24, WIC SECTION 12301.6\(e\)\(2\)\(A\)\(i\),](#)
[WIC SECTION 12305.81, WIC SECTION 12305.86, WIC](#)
[SECTION 14132.95\(f\); MANUAL OF POLICIES AND](#)
[PROCEDURES \(MPP\) SECTIONS 30-763.44 THROUGH 30-](#)
[763.45, MPP SECTIONS 30-776.41 THROUGH 30-776.414, MPP](#)
[SECTIONS 30-776.42 THROUGH 30-776.44; ALL COUNTY](#)
[LETTER \(ACL\) 00-83 \(DECEMBER 7, 2000\), ACL 15-45 \(May 1,](#)
[2015\), ACL 16-01 \(JANUARY 7, 2016\); ACL 18-31 \(MARCH 27,](#)
[2018\), ACL 19-02 \(JANUARY 9, 2019\); ALL COUNTY](#)
[INFORMATION NOTICE \(ACIN\) I-40-17 \(JUNE 23, 2017\)](#)

The purpose of this All County Letter (ACL) is to provide implementing guidance for AB 120 (Chapter 43, Statutes of 2023) which eliminated provider eligibility requirements for minor recipients in the In-Home Supportive Services (IHSS) program by amending Welfare and Institutions Code (WIC) section 12300(e). In accordance with the statutory change, effective 60 days from the date of this ACL publication, Manual of Policies and Procedures (MPP) sections 30-763.44 through MPP 30-763.455 will no longer be in effect. The elimination of these requirements is an important step in achieving equity within the IHSS program and will result in improved provider access for minor recipients and their families.

BACKGROUND

Prior to the passage of AB 120, the IHSS minor recipient provider eligibility requirements were implemented statewide in accordance with WIC section 12300(e), WIC section 14132.95(f), and MPP sections 30-763.44 through MPP 30-763.457. These rules required social workers to assess parental ability and availability to provide IHSS care to their minor child. Assembly Bill 120 eliminated the provider eligibility requirements for minor recipients in the IHSS programs in WIC section 12300(e). After the passage of AB 120, WIC section 14132.95(f) and MPP sections 30-763.456 and MPP 30-763.457 remain in effect, which establish provider reimbursement requirements and prohibit parent providers in the Personal Care Services Program.

Prior to the passage of AB 120, a recipient could only hire a non-parent provider if the parents were not able or available to care for the minor child. Under MPP section 30-763.44, able parents were only considered unavailable to care for their child if they were at work, attended school/vocational training, or received ongoing health care treatment when the child requires an IHSS service. Additionally, parents may have been considered unavailable for up to eight hours per week when they were conducting shopping and errands for the family, searching for employment, or attending to the care of other minor children in the home. Furthermore, WIC section 12300(e) and MPP section 30-763.45 previously specified that parents may only become a paid provider for their minor child if there were no other suitable providers available and the parent was prevented from full-time employment due to the care needs of the child.

These provider eligibility rules for minor IHSS recipients have inadvertently resulted in inequities which prevented certain minor recipients from utilizing IHSS service hours for which they have been authorized. This inequity is most apparent for minor recipients with a parent in the home that is not authorized to work in the United States (including undocumented individuals). Under previous guidance, the minor recipient provider eligibility rules did not consider a parent that was prevented from full-time employment due to immigration status work restrictions as unable or unavailable to care for the child. As such, hiring a non-parent IHSS provider to provide the minor recipient's authorized service hours was not an option. At the same time, parents not authorized to work in the United States (including undocumented individuals) were not eligible to be paid IHSS providers even if the care needs of the child would have otherwise prevented full-time employment. Therefore, an IHSS eligible minor recipient with a parent in this category was unable to hire anyone as a provider, effectively preventing the child from receiving the services they were entitled to through the IHSS program. Additionally, parents convicted of a Tier 1 offense as defined by WIC section 12305.81 are not eligible to be a IHSS providers; however, they are not considered unable or unavailable to provide the IHSS services as a result of this limitation. As such, hiring a non-parent provider to provide the minor recipient's authorized service hours was not an option. This prevented these minor recipients from receiving services they are entitled to through the IHSS program.

In order to eliminate these inadvertent inequities within the program, California enacted AB 120, which eliminated the state-mandated eligibility rules for providers of minor recipients in WIC section 12300(e). However, as described below, the elimination of the minor provider eligibility requirements in WIC section 12300(e) did not impact the requirement that minor IHSS recipients living with their parents in the Personal Care Service Program (PCSP) are not permitted to hire their parents as paid IHSS providers pursuant to WIC section 14132.95(f) and MPP section 30-763.457. In addition, WIC section 12300(e) and MPP section 30-763.456 specifies what services providers of minor recipients may be reimbursed for performing. Welfare and Institutions Code section 12300(e) previously specified that reimbursement for parents was limited to certain service categories. These provider reimbursement limitations currently apply to all providers for minor recipients.

ELIMINATION OF STATE-MANDATED MINOR RECIPIENT PROVIDER ELIGIBILITY RULES

The amendment of WIC section 12300(e) eliminated the IHSS provider eligibility requirements for a minor child receiving services in the IHSS program contained in that section. Prior to these amendments, WIC section 12300(e) specified that a person who has the legal duty pursuant to the Family Code to provide for the care of their child could only be a paid IHSS provider under limited circumstances. Such a person could only be paid to perform IHSS when they left full-time employment or were prevented from obtaining full-time employment because no other suitable care provider was available, and the inability of the provider to provide supportive services could result in inappropriate placement or inadequate care. Removing the parent provider limitations in WIC section 12300(e) allows parent or non-parent providers to provide authorized supportive services to a minor.

WIC section 12300(e) also specifies that providers serving IHSS minor recipients will only be paid for specific categories of services. These services include services related to domestic services (MPP section 30-757.13), personal care services (MPP section 30-757.14), accompaniment during necessary travel to health-related appointments or alternative resource sites (MPP section 30-757.15), protective supervision (MPP section 30-757.17), and paramedical services (MPP section 30-757.19). This law remains in effect.

Effective 60 days from the date of this ACL publication, pursuant to WIC section 12300(f) [AB 120 (Chapter 43, Statutes of 2023)], counties will cease to apply the minor recipient provider eligibility rules set forth in MPP sections 30-763.44 through MPP 30-763.455. This will ensure that all minor recipients have access to their provider of choice. As such, minor recipients will have the same access to IHSS providers that is currently available to adult recipients.

Effective 60 days from the date of this ACL publication, counties will update the provider assignment of hours on all minor cases upon the authorized representative's request or

by the next scheduled reassessment, whichever comes first. Counties should document in the notes or the assessment narrative when a minor recipient or their authorized representative has requested a provider change or when the social worker has explained the change in provider eligibility rules.

MINOR RECIPIENTS IN THE PERSONAL CARE SERVICES PROGRAM

Continued Parent Provider Limitation for Minors in the Personal Care Services Program

Assembly Bill 120 eliminated provider eligibility requirements for all minor recipients enrolled in the Community First Choice Option (CFCO), the IHSS Plus Option (IPO), and the IHSS Residual program (IHSS-R). However, parents with minor recipients in the Personal Care Services Program (PCSP) continue to be ineligible to be paid parent providers pursuant to WIC section 14132.95(f) and MPP section 30-763.457.

The PCSP is required to adhere to federal rules set forth by 42 Code of Federal Regulations (CFR) section 440.167(a)(2) and therefore, state law for PCSP cannot be changed without a change in federal law. As such, minor recipients in this program may hire a non-parent provider but continue to be prevented from hiring a parent provider.

Counties should ensure that minor recipients who wish to hire a parent are enrolled in CFCO, IPO, or IHSS-R; whichever is most appropriate for their eligibility and care needs. The minor recipient must be placed in the program for which they qualify taking into account their preference for a parent provider. The Case Management Information Payrolling System (CMIPS) will select the appropriate funding source based on the county's data entry of case information.

Institutionally Deemed Minors Enrolled in PCSP

All-County Letter 19 02 specified that minor recipients who are institutionally deemed (6V/6W) and enrolled in PCSP may hire a non-parent provider without limitation in accordance with the minor's service authorization. As such, before the elimination of the IHSS provider eligibility requirements for a minor child receiving services in WIC section 12300(e), some minor recipients elected to be enrolled in PCSP over CFCO in order to be eligible for the exception to minor provider eligibility requirements.

The IHSS program is funded through four subprograms: CFCO, PCSP, IPO, and IHSS-R. The Centers for Medicare and Medicaid Services (CMS) provides additional federal funding for individuals enrolled in CFCO; as such, it is in the best interests of the IHSS program to transfer institutionally deemed minors back into CFCO as this change will not result in a change in service authorization. This change will only impact the funding source the federal government uses to pay for the services received and will allow the IHSS program to receive increased federal financial participation to fund IHSS program operations.

Effective 60 days from the date of this ACL publication, counties should transfer qualifying recipients from PCSP to CFCO upon request of the recipient or at the next scheduled reassessment, whichever comes first. To complete this transfer in the CMIPS system, counties should make changes in CMIPS by submitting their case evidence for a change or reassessment, thereby modifying the program evidence. They should uncheck the box labeled "Recipient Declines CFCO" to transfer minor recipients into CFCO. Counties should make sure to explain the change to recipients and their families and assure them that no IHSS services will be lost as a result of the funding source change.

ASSESSING SERVICES ON MINOR CASES

Counties must assess IHSS for minors in accordance with WIC section 12300(e). This statute and its accompanying regulation, MPP section 30-763.456, specifies that providers of minors may only be reimbursed for services related to domestic services, personal care services, accompaniment to health-related appointments/alternative resource sites, protective supervision, and paramedical services. It should be noted that MPP section 30-763.456 previously applied only to parents. However, WIC section 12300(e) now places limitations on reimbursements for all providers of minor recipients. As such, an individual who provides a service that is not available for purchase in accordance with WIC section 12300(e) will not receive reimbursement for such services under this statute. As such, domestic services, heavy cleaning, yard hazard abatement, and teaching and demonstration shall be considered met by individuals who have a legal duty to care for the child and therefore, IHSS will not be assessed in those service categories.

Additionally, if an individual voluntarily provides a service that is eligible for provider reimbursement under WIC section 12300(e), the county must obtain a Voluntary Services form (SOC 450) to count that service as met in accordance with MPP section 30-763.64.

In-Home Supportive Services Program—Provider Requirements For Minor Recipients Living With Their Parents (SOC 2323)

Due to the change in provider eligibility rules for minors, counties shall temporarily discontinue the use of form SOC 2323, as the form is now outdated. Please note that CDSS plans to update and release a revised SOC 2323 in the future.

Completion of In-Home Supportive Services—Recipient Request for Assignment of Authorized Hours to Providers Form (SOC 838)

Counties should also be advised that the use of form SOC 838 may still be used to assign provider hours when there are multiple providers serving a single recipient. The elimination of the IHSS provider eligibility requirements for minors has no impact on the use of SOC 838.

PROGRAM ELIGIBILITY

Minor recipients in the IHSS program will continue to have their program eligibility determined in accordance with established IHSS program requirements. IHSS program eligibility remains unchanged by the elimination of provider eligibility requirements for minors.

PROVIDER ENROLLMENT

Eliminating the minor recipient provider eligibility requirements does not change the provider enrollment process, as the provider enrollment process is a separate and distinct inquiry from the changes being made to provider eligibility. A person who wants to become an IHSS provider shall continue to complete all provider enrollment requirements described in MPP section 30-776 and as summarized below:

- Complete the Provider Enrollment form (SOC 426) (WIC section 12305.81 and MPP section 30-776.41)
- Present a state or federal government-issued photo identification and social security card (WIC section 12305.81 and MPP section 30-776.414)
- Complete an in-person Provider Orientation (WIC section 12301.24 and MPP section 30-776.42)
- Sign and submit the Provider Enrollment Agreement (SOC 846) (WIC section 12301.24(b) and MPP section 30-776.43)
- Complete a Criminal Background Check (WIC section 12301.6(e)(2)(A)(i) and WIC section 12305.86, and MPP section 30-776.44)

Counties that delegate provider enrollment responsibilities to Public Authorities should ensure that the process now reflects the new regulatory changes which eliminated the minor recipient provider eligibility requirement, in accordance with the guidance in this ACL.

Minor recipients and their authorized representatives have the right to select a provider of their choice as long as that provider has successfully completed provider enrollment. However, as previously specified, minors in the PCSP program may not hire a parent provider. Additionally, although authorized representatives have the authority to direct care, minors still have the right to notify the county of their choice of provider. If a minor expresses a different choice of provider from the authorized representative, the county should explore the reason for this choice and determine if there are any health and safety issues behind the minor's request for a different provider.

Parent is Not Authorized to Work in the United States

The elimination of the IHSS provider eligibility requirements for a minor child receiving services now allows minor recipients, including those with parents who are not authorized to work in the United States (including undocumented individuals), to hire a

provider to provide authorized IHSS care. Undocumented parents will have the authority to hire non-parent provider(s) for their children; however, the recipient's chosen provider must complete the IHSS provider enrollment process to be a paid provider.

Section 274a.12 of Chapter 8 of the Federal Code of Regulations (CFR) outlines the classes of noncitizens who are authorized to work in the United States based on their status or circumstances. If a noncitizen does not fall within one of these classes, they are not eligible to work in the United States, and therefore cannot enroll as an IHSS provider. Because undocumented individuals are not within the classes of noncitizens authorized to work under 8 CFR section 274a.12, they are ineligible to enroll as IHSS providers at this time. The United States Citizenship and Immigration Services (USCIS) within the federal Department of Homeland Security verifies employment eligibility via USCIS Form I-9, Employment Eligibility Verification. The IHSS providers must satisfy the Employment Eligibility Verification (Form I-9) requirements to be employed in the United States. (MPP section 30-776.431(d))

PROVIDER OVERTIME RULES AND EXEMPTIONS

As specified by WIC section 12300.4 and described in ACL 18-31, IHSS providers are paid overtime when they work more than 40 hours a week, which may include payment for transportation and wait time at medical appointments, if applicable, as well as payment for up to seven hours a week for approved travel time between recipients on the same day. Providers serving two or more recipients may provide IHSS up to 66 hours per week, and providers serving a single recipient may provide up to the recipient's maximum weekly hours (such as 70.75 hours for a recipient who is authorized the maximum number of IHSS monthly hours of 283 hours). (See ACL 16-01). In some cases, providers who provide care for multiple recipients could be approved for the IHSS Live-In Family Care Provider Exemption (Exemption 1) or the IHSS Extraordinary Circumstances Exemption (Exemption 2) which allows them to provide up to 90 hours per week/360 hours per month to qualifying recipients.

It should be noted that providers who have been assigned to their recipients after January 31, 2016, do not qualify for Exemption 1 according to WIC section 12300.4(d)(3)(A). Providers assigned to recipients after this date should not be encouraged to apply for this exemption. Providers assigned to their recipients after January 31, 2016, who feel they need an exemption to work for two or more recipients and claim over 66 hours per work week should contact their local county IHSS office to explore Exemption 2 requirements and the application process.

Providers who exceed these overtime limitations, as set forth by WIC section 12300.4, will incur violations that could result in provider termination for up to one year. These IHSS overtime and exemption requirements remain unchanged by the elimination of minor recipient provider eligibility requirements.

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If you have any questions or need additional guidance regarding the information in this ACL, contact the Policy and Operations Bureau within the Adult Programs Policy and Quality Assurance Branch at (916) 651-5350.

Sincerely,

Original Document Signed By

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Deputy Director
Adult Programs Division