

DEPARTMENT OF SOCIAL SERVICES

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<p><u>Reason For This Transmittal</u></p> <p><input checked="" type="checkbox"/> State Law Change</p> <p><input checked="" type="checkbox"/> Federal Law or Regulation Change</p> <p><input type="checkbox"/> Court Order or Settlement Agreement</p> <p><input type="checkbox"/> Clarification Requested by one or More Counties</p> <p><input type="checkbox"/> Initiated by CDSS</p>

October 13, 2004

ALL-COUNTY LETTER NO. 04-43

TO: ALL COUNTY WELFARE DIRECTORS ALL
IHSS PROGRAM MANAGERS

SUBJECT: IN-HOME SUPPORTIVE SERVICES (IHSS) IN THE WORKPLACE

This All-County Letter (ACL) provides information regarding the implementation of portions of Assembly Bill (AB) 925 (Chapter 1088, Statutes of 2002) relating to the coverage of In-Home Supportive Services (IHSS) in the workplace.

Background

The Department of Health Services (DHS), with the assistance of the California Department of Social Services (CDSS), applied for and received a Medicaid Infrastructure Grant from the federal Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration). These grants were offered to states under the Ticket to Work and Work Incentives Improvement Act (TWWIIA) in order to enable individuals with disabilities to return to the workplace.

The Medicaid Infrastructure Grant funds have been used to:

1. Provide media outreach regarding the existing Medi-Cal 250% Working Disabled Program (WDP) and
2. Determine how to implement IHSS in the workplace.

CDSS was charged with the responsibility for the IHSS in the workplace element of the grant project. With the assistance of IHSS program stakeholders, DHS, and CDSS, it was decided to amend both the federal Medicaid State Plan and California legislation in order to affect this change to both the IHSS program and the Personal Care Services Program (PCSP).

AB 925 -- IHSS in the Workplace

AB 925 is designed to remove barriers to employment and independence for Californians with disabilities. The changes in State law carried in AB 925 affected several State Departments. This ACL only addresses implementation of Sections 6 and 9 of AB 925, which pertain to the IHSS and PCSP programs.

Specifically, this letter discusses the provisions of AB 925 that amended Welfare and Institutions Code (WIC) section 12300 and added WIC section 14132.955 to allow IHSS and PCSP recipients to transfer service hours authorized for use in the recipient's home to a workplace in order to support employment. Recipients being served in the new IHSS Independence Plus Waiver (IPW) are also eligible to transfer service hours to the workplace in the same manner as IHSS and PCSP recipients.

CDSS is also revising State regulations contained in the Social Services Standards Manual of Policy and Procedures (MPP) to reflect the changes made to the IHSS/PCSP programs as a result of AB 925.

The provisions in AB 925 took effect on January 1, 2003. The DHS Medicaid Eligibility Branch submitted a State Plan Amendment (SPA) to CMS in December 2002. CMS approved the amendment to California's Medicaid State Plan expanding coverage of PCSP to the workplace in June 2003, with an effective date of January 1, 2003.

This ACL will only address how to implement IHSS/PCSP/IPW in the workplace to allow recipients to begin utilizing the new program coverage. CDSS will provide further instructions at a later date as to how the Case Management, Information and Payrolling System (CMIPS) will be modified to provide a tracking mechanism for recipients requesting and utilizing IHSS/PCSP/IPW in the workplace.

Eligibility for IHSS/PCSP/IPW in the Workplace

All IHSS/PCSP/IPW participants are eligible to transfer a portion of their current authorized service hours to the workplace if they choose to do so. This includes recipients in all three modes of service delivery for IHSS/PCSP/IPW.

It is important to note that IHSS/PCSP/IPW recipients cannot receive additional service hours in the workplace beyond those currently authorized in the home. In addition, income and resource limits for the IHSS Residual and PCSP/IPW have not changed, so income generated by a recipient could affect program eligibility. When appropriate, counties must evaluate the recipient's eligibility for the Medi-Cal 250% Working Disabled Program (WDP) or other Medi-Cal coverage (note: income and resource limits for the IPW are based on Medi-Cal eligibility rules). The 250% WDP allows an individual to retain income up to 250% of the federal poverty level and for the preservation of additional resources, while still maintaining eligibility for Medi-Cal benefits. Please refer to ACL 01-65 for more information about the 250% WDP.

AB 925 states that only authorized IHSS program services that are relevant and necessary in supporting and maintaining employment may be transferred. IHSS in the workplace is not an alternative resource that reduces or substitutes for supports and services that are an employer's responsibility under programs such as the Americans with Disabilities Act (ADA).

Workplace

The new law specifically allows an IHSS/PCSP/IPW recipient to transfer service hours to a workplace setting in order to "obtain, retain or return to work."

Authorized IHSS service hours cannot be transferred to other locations outside the home, except for the specific exceptions in the IHSS Regulations that already exist, e.g., for accompaniment to medical appointments and alternative resource sites.

CDSS is promulgating regulations that will define the word "obtain" for purposes of the AB 925 IHSS in the workplace provisions to mean only those recipient activities directly related to securing employment, such as going on a job interview or complying with pre-employment activities that are required by the employer. Coverage of IHSS in the workplace will not include services required by a recipient to attend college classes or vocational training, but will include pre-employment training that is offered or required by an employer in the workplace.

Services Available for Transfer to the Workplace

AB 925 allows the transfer of services that are "relevant and necessary in supporting and maintaining employment."

CDSS has determined that certain services are not appropriate or necessary in the workplace. Such services will not be available for transfer. For instance, yard hazard abatement, laundry and heavy cleaning are examples of services that are not considered relevant and necessary to support employment, and hours for these services will not be eligible for transfer to the workplace.

Services that could be considered relevant and could be transferred to the workplace if necessary are:

IHSS Residual

1. Related Services, consisting of Preparation of Meals, Meal clean-up, Planning of Menus and Restaurant Meal Allowance, as described in the Social Services Standards MPP Chapter 30-757.13.
2. Personal Care Services, as described in MPP 30-757.14, with the exception of MPP 30-757.14(d) - Routine bed baths

3. Paramedical Services, as described in MPP 30-757.19.

IPW

Recipients being served in the new IHSS IPW are former IHSS Residual recipients who have a parent or spouse provider, or receive Advance Pay or Restaurant Meal Allowance. The services listed above under IHSS Residual may be transferred to the workplace for IHSS IPW recipients.

PCSP

1. Personal Care Services, as described in MPP 30-780.1(a).
2. Meal Preparation and Cleanup, as described in MPP 30-780.1(b)(4).

NOTE: State law (WIC 12300(d)(1) and 14132.955(a)) requires that services requested for transfer must be both relevant and necessary to support employment. IHSS program services not listed above are not considered relevant and necessary to supporting employment, and are not available for transfer to the workplace.

Assessed and Authorized Services Only

An IHSS recipient who wants to transfer service hours to the workplace can only transfer hours that they have already been assessed and authorized for the recipient in their home. For instance, a recipient who does not have a need for assistance with feeding in the home cannot receive IHSS services for that task in the workplace. The recipient can only transfer hours for those services that he/she already receives or is authorized to receive at home, and cannot obtain additional new service hours as a result of employment. The social worker is not required to complete a new needs assessment solely because a recipient wants to transfer IHSS hours to the workplace.

Any workplace arrangements are the sole responsibility of the recipient, and the details are to be worked out between the IHSS recipient (the employee) and the employer. Neither the State nor the county social worker is responsible for workplace arrangements when an IHSS recipient enters into employment. Counties should be aware that the recipient's choice of service providers has not changed. Under the Individual Provider Mode, the recipient still chooses his or her service provider regardless of whether the IHSS/PCSP/IPW services are being provided in the home or in the workplace.

County Approval of Recipient Use of IHSS in the Workplace

In order for a recipient to utilize program service hours in a workplace, the recipient must first notify his/her IHSS social worker and obtain county approval. Prior to receiving county approval to transfer IHSS service hours to the workplace, the

IHSS/PCSP recipient must specify the number of hours to be transferred for each specific service. The social worker must verify that the recipient has authorized service hours from the approved list of transferable services contained in this ACL, and that the recipient has not requested to transfer more hours to the workplace than currently exist for their utilization in the home. The social worker must then notify the recipient of their approval and record the total number of hours in each service category that the recipient plans to transfer. The counties are not responsible for determining whether the provider is legally eligible to work under State and federal law, as that is the recipient's responsibility.

For data collection purposes, it is important that social workers document and retain the specified case details for any individual who chooses to utilize IHSS in the workplace until a permanent tracking method is put into place. The social worker should record the total number of hours that a recipient has been approved for transferring to the workplace, as well as a breakdown of those hours by service type. Detailed information regarding the enrollment process and entering this information into CMIPS will be released in a separate ACL.

Counties are requested to submit questions to the Adult Programs Branch as soon as possible. Once all questions are received, CDSS will issue a question and answer All County Letter. Additionally, if a county is working with a specific recipient who has requested IHSS in the workplace and needs technical assistance, the county may call their assigned operations and technical assistance contact for help.

If you have questions or concerns, please contact your Operations and Technical Assistance Unit analyst at (916) 229-4000.

Sincerely,

Original Document Signed By Joseph M. Carlin on 10/13/04

JOSEPH M. CARLIN
Acting Deputy Director
Disability and Adult Programs Division

c: CWDA