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September 28, 2016

ALL COUNTY LETTER NO. 16-78

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

SUBJECT: **IMPLEMENTATION OF THE IN-HOME SUPPORTIVE SERVICES
PROGRAM HEALTH CARE CERTIFICATION REGULATIONS**

REFERENCE: [ALL COUNTY LETTER NO. 11-55](#); [ALL COUNTY LETTER NO. 11-76](#); [ALL COUNTY INFORMATION NOTICE NO. I-74-11](#)

This All County Letter (ACL) transmits the newly adopted In-Home Supportive Services (IHSS) Program Health Care Certification regulations (Manual of Policies and Procedures [MPP] Section 30-754), which include amendment of the Special Definitions section (MPP 30-701), and revisions to the IHSS Program Health Care Certification form (SOC 873) and IHSS Program Notice to Applicant of Health Care Certification Requirement (SOC 874).

IMPLEMENTATION DATE

The newly adopted Health Care Certification regulations, which were approved by the Office of Administrative Law on June 13, 2016, become effective on October 1, 2016. As of the effective date, the new regulations supersede the above-referenced, previously released ACLs relating to the IHSS program Health Care Certification requirements.

REASON FOR THIS TRANSMITTAL

- State Law Change
- Federal Law or Regulation Change
- Court Order
- Clarification Requested by One or More Counties
- Initiated by CDSS

BACKGROUND

Senate Bill (SB) 72 (Chapter 8, Statutes of 2011) added Welfare and Institutions Code (WIC) section 12309.1, which requires that, as a condition of receiving IHSS, an applicant for or recipient of services must obtain a certification from a Licensed Health Care Professional (LHCP) declaring that the applicant or recipient is unable to perform some Activities of Daily Living (ADLs) independently, and that without services to assist him/her with ADLs, he/she is at risk of placement in out-of-home care.

In addition, WIC section 12309.1:

- Defined the term LHCP;
- Established exceptions which, under certain limited circumstances, services could be authorized prior to receipt of the certification;
- Specified what information must be included on the certification and on alternative documentation which must be accepted in lieu of the certification; and
- Established time frames for individuals who were already receiving IHSS when SB 72 was enacted to meet the health care certification requirement.

On July 27, 2011, the California Department of Social Services (CDSS) released ACL No. 11-55 which provided counties with instructions for implementing the provisions of SB 72 relating to the health care certification requirement effective August 1, 2011. Subsequently, CDSS released ACL No. 11-76, which provided counties with guidance on exceptions to the rule requiring that the health care certification be received prior to the authorization of services. Finally, CDSS released All County Information Notice No. I-74-11, which transmitted revisions to the SOC 873, SOC 874, and the Notice to Recipient of the Health Care Certification Requirement (SOC 875) (now obsolete), and provided clarification of the policy pertaining to inter-county transfers of IHSS cases in relation to the health care certification requirements.

HEALTH CARE CERTIFICATION REGULATIONS

The newly adopted regulations are essentially unchanged from the implementation instructions and policies transmitted in the above-referenced ACLs. A brief summary of each section of the newly adopted Health Care Certification regulations as set forth within the MPP is provided below:

- MPP Section 30-701(l)(2) establishes a definition of a LHCP for the purposes of the health care certification.
- MPP Section 30-754.1 specifies that each IHSS applicant must obtain a health care certification before services can be authorized, and specifies the elements that must be included on the health care certification.

- MPP Section 30-754.2 specifies that the health care certification must be provided on the department-approved form but that alternative documentation must be accepted provided that it includes all of the requisite information.
- MPP Section 30-754.3 specifies at what point in time the county must request the health care certification from an applicant.
- MPP Section 30-754.4 specifies the timeframe in which the applicant must return the completed health care certification to the county.
- MPP Section 30-754.5 specifies that the county should not use the health care certification as the sole determining factor for establishing an applicant's need for services, but that it should be considered as one indicator of need.

Consistent with WIC section 12309.1 and the intent of SB 72, although the health care certification should not be considered the sole factor in determining an applicant's need for services, in order for the county to determine an applicant eligible and authorize services for him/her, the LHCP must have answered YES to questions 1 and 2 on the SOC 873. In situations in which the county IHSS worker has completed the in-home assessment and firmly believes there is a need for services to enable the individual to remain safely in his/her home but the LHCP has indicated NO to questions 1 and 2 on the SOC 873, the county IHSS worker is not precluded from contacting the LHCP to clarify the LHCP's responses and discuss the worker's own observations regarding the applicant's needs. If the LHCP determines, based on the discussion, that the individual requires services in order to remain safely in his/her own home after all, the county must obtain a new SOC 873 on which the LHCP has indicated YES to questions 1 and 2.

- MPP Section 30-754.6 specifies the limited circumstances under which services can be temporarily authorized prior to receipt of the health care certification.

There is one change of note from the initial implementation instructions provided in ACL No. 11-76. The newly adopted regulations permit an applicant who has been granted an exception to be granted additional time to return the completed health care certification to the county if good cause exists for his/her inability to submit it within the standard 45 calendar day timeframe. In such a circumstance, the individual must ask the county for additional time to submit the completed health care certification before the initial 45 calendar day period expires.

Documents related to the adoption of the Health Care Certification regulations, including the Initial Statement of Reasons, may be found on the CDSS Office of Regulations Development's web page at: <http://www.dss.cahwnet.gov/ord/PG4837.htm>.

REVISIONS TO THE SOC 873 AND SOC 874

Counties should begin using the revised SOC 873 and SOC 874 (for new applicants only) as of October 1, 2016, the date on which the newly adopted Health Care Certification regulations go into effect. Below is a brief summary of the minor revisions made to the forms.

SOC 873

One revision to the SOC 873 is on page 2, item 4, where the following language is added to the end of the sentence: “OR expected to result in death within 12 months.” This change was made to make the language consistent with Title 22 of the California Code of Regulations, section 51350(b), which states as follows: “Personal care services may be provided only to a categorically needy beneficiary as defined in Welfare and Institutions Code, Section 14050.1, who has a chronic, disabling condition that causes functional impairment that is expected to last at least 12 consecutive months or that is expected to result in death within 12 months and who is unable to remain safely at home without the services...”

Additionally, the following language was removed from the LHCP Certification section (Part D): “and/or certified as a Medi-Cal provider.” This change was made to conform with the definition of LHCP in WIC section 12309.1(a)(1), which states: “For purposes of this section, a licensed health care professional means an individual licensed in California by the appropriate California regulatory agency, acting within the scope of his or her license or certificate as defined in the Business and Professions Code.”

SOC 874

The SOC 874 was revised to include a statement indicating that an applicant who has been granted an exception, which, in certain limited and specific circumstances, allows services to be authorized prior to the county’s receipt of the health care certification, may be granted an additional 45 calendar days to return the completed health care certification to the county, if good cause exists for the individual’s inability to submit it within the standard 45-day timeframe. In such a circumstance, the individual must request additional time to submit the health care certification from the county before the initial 45-day period expires.

CAMERA-READY COPIES AND TRANSLATIONS OF FORMS

Camera-ready copies of the English language versions of the forms referenced in this ACL may be obtained (as of October 1, 2016) on the CDSS Forms and Publications webpage at: http://www.dss.cahwnet.gov/cdssweb/FormsandPu_271.htm. Any questions related to obtaining forms and notices may be directed to fmudss@dss.ca.gov.

Pursuant to Manual of Policies and Procedures Section (MPP) 21-115.2, camera-ready copies of the translations may be obtained (as of October 1, 2016) on the Translated Forms and Publications web page at:

http://www.dss.cahwnet.gov/cdssweb/FormsandPu_274.htm.

For questions on translated materials, please contact Language Services at (916) 651-8876.

Counties 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.

Questions regarding the Health Care Certification regulations or the information contained in this letter may be directed to the Adult Programs Division, Policy and Operations Bureau at (916) 651-5350.

Sincerely,

Original Document Signed By:

EILEEN CARROLL
Deputy Director
Adult Programs Division Attachments

c: CWDA