



CDSS

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ALL-COUNTY LETTER (ACL) NO.: 10-35

TO: ALL COUNTY WELFARE DIRECTORS
ALL IHSS PROGRAM MANAGERS

SUBJECT: QUESTIONS AND ANSWERS REGARDING THE EXPANDED
IN-HOME SUPPORTIVE SERVICES (IHSS) PROVIDER
ENROLLMENT REQUIREMENTS

REFERENCES: ACL NO. 09-52, DATED OCTOBER 1, 2009; ACLs NO. 09-54 AND
09-63, DATED OCTOBER 28, 2009; ACL NO. 09-66, DATED
OCTOBER 29, 2009; ACLs NO. 09-69 AND 09-70, DATED
OCTOBER 31, 2009; ACL 09-78 DATED NOVEMBER 25, 2009; AND
ACL 10-05, DATED FEBRUARY 17, 2010

The above-referenced ACLs provided information and instructions to counties on the implementation of expanded IHSS provider enrollment requirements. These expanded requirements became effective November 1, 2009, as mandated by Assembly Bill (AB), Fourth Extraordinary Legislative Session (ABX4) 4 (Chapter 4, Statutes of 2009), and ABX4 19 (Chapter 17, Statutes of 2009). This ACL clarifies and updates several issues related to the implementation of those requirements. This ACL and the policies detailed herein should be considered the most current and valid information.

CRIMINAL BACKGROUND CHECKS

- 1. Does Welfare and Institutions Code (W&IC) section 12305.81, which “prohibits any individual who in the last 10 years has been convicted of, or incarcerated following a conviction for, a crime involving fraud against a government health care or supportive services program, or a violation of subdivision (a) of Section 273a of the Penal Code (PC) (abuse of a child under circumstances/conditions likely to produce great bodily harm or death), or Section 368 of the PC (abuse of an elder or dependent adult), or similar violations in another jurisdiction,” apply only to felony offenses?**

No. W&IC section 12305.81 applies to both felony and misdemeanor offenses. Hence, an individual who in the last 10 years has been convicted for or incarcerated following a conviction for a crime specified in W&IC section 12305.81 – regardless

REASON FOR THIS TRANSMITTAL

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

of whether the crime was a felony or a misdemeanor – would not be eligible to be enrolled as a provider or to receive payment for providing supportive services in the IHSS program.

2. Who pays for background checks?

W&IC section 12305.86(b) states that criminal background checks are to be conducted at the provider/applicant's expense. This statute, which was added by ABX4 19, supersedes earlier statute (W&IC section 15660(d)(2)) in regard to the fees charged for the criminal background checks. The statute does not address whether another entity (e.g., community based organization) would be prohibited from paying for the background check; however, the intent of the law is that state funds would not be used. Counties are advised to carefully research the statutes governing other programs to determine whether the funding could be used for these purposes.

The fee waiver for an indigent individual to obtain a copy of his/her criminal history record referred to in W&IC section 12305.86(c)(3) applies only to those individuals found ineligible to be providers based on the results of information found through an initial criminal background check. An individual cannot use the fee waiver process to avoid the costs of the initial criminal background check. The response to Question #8 in ACL 10-05 provides information about the fee waiver.

3. Does the fingerprinting/criminal background review process place the county, Public Authority (PA) or Non-Profit Consortium (NPC) in the position of the employer of record?

No. W&IC section 12305.86 requires that the counties perform background checks of current and potential providers. If a county/PA/NPC chooses not to perform background checks, they do so in violation of statute.

There is no statute that expressly or implicitly states that the county/PA/NPC becomes the "employer of record" either because they perform a provider background check or for any other reason. There are many instances in which a public agency performs a background check and this does not create an employment relationship between the subject and the agency (e.g. community care licensing, nursing/physician, state bar license).

The IHSS recipient is the employer for all purposes except where, by statute, another entity is specifically deemed the "employer." Notably, W&IC section 15660 (which grants DOJ the authority to perform the background checks at issue) specifically references the recipient as the employer. ("For purposes of this paragraph, 'employer' includes, but is not limited to, an in-home supportive services

recipient.”) W&IC section 12302.2, which obligates the state to make deductions from provider pay for income tax, disability benefits, and unemployment compensation, specifically refers to the recipient as the employer.

4. Would a conviction for, or incarceration following a conviction, under W&IC section 10980, within the past 10 years, disqualify an individual from being a provider?

County District Attorneys (DAs) have discretion under which code section(s) to prosecute crimes involving fraud against government programs. Whether an individual would be disqualified for a conviction under W&IC section 10980 depends upon which government program was involved. If the Criminal Offender Record Information (CORI) showing a conviction under W&IC section 10980 does not specify which program the individual committed fraud against, it will be necessary for the county/PA to obtain additional information from either the court or law enforcement to determine whether the fraud involved a health care or supportive services program. The California Department of Social Services (CDSS) is consulting with county DAs to obtain additional information about the prosecution of crimes involving fraud against government programs so that guidance can be provided to counties/PAs at a later date.

Fraud against a public social services program, such as California Work Opportunity and Responsibility to Kids (CalWORKs), would not disqualify an individual from being an IHSS provider. This is because CalWORKs is not considered “a government health care or supportive services program” per W&IC section 12305.81 and, it is funded under Title IV, rather than Titles V, XX or XXI, of the Social Security Act. Other non-disqualifying programs would include the Foster Care Program, the Food Stamps Program, the Supplemental Nutrition Program for Women, Infants and Children (WIC), etc.

5. W&IC section 12305.81 states that, “a person shall not be eligible to provide or receive payment for providing supportive services for 10 years following a conviction for, or incarceration following a conviction for, fraud against a government health care or supportive services program, including Medicare, Medicaid, or services provided under Title V, Title XX, or Title XXI of the federal Social Security Act...” Which specific health or supportive services programs would be included in this description?

Prior fraud against the IHSS program would disqualify an individual from being an IHSS provider. In addition, fraud against one of the programs listed below which are fully or partially funded under Titles V, XX and XXI of the Social Security Act, would make an individual ineligible. (Note: This list of programs is not exhaustive.)

- Title V. (Maternal and Child Health Services Block Grant): Sudden Infant Death Syndrome Program, Oral Health Program, Breastfeeding Program, California Birth Defects Monitoring Program, California Diabetes and Pregnancy Program, Childhood Injury Prevention Program, Fetal and Infant Mortality Review Program, Local Health Department Maternal, Child and Adolescent Health Program, Maternal, Child and Adolescent Health in Schools Program, and Regional Perinatal Programs of California.
- Title XX. (Block Grants to States for Social Services): There are currently no identified government health care or supportive services programs funded under Title XX in California.
- Title XXI. (State Children's Health Insurance Program): Healthy Families Program, and the Access for Infants and Mothers (AIM) Program.

PROVIDER ENROLLMENT REQUIREMENTS

6. What are the rules for “existing” vs. “new” providers?

A new provider is any provider who was not enrolled prior to November 1, 2009 and who did not exist in Legacy CMIPS prior to that date. New providers must complete the new provider enrollment process and be determined eligible before their timesheets can be processed and a warrant issued.

An existing provider is any provider who exists in the legacy Case Management, Information, and Payrolling System (CMIPS), in any status, from January 1, 2001, to October 31, 2009. These “existing providers” may continue to work and be paid for authorized hours they work for a recipient if they were enrolled as an active provider for that recipient prior to July 1, 2010 and he/she completed at least one of the provider enrollment requirements by June 30, 2010. Providers who meet the above condition will have until December 31, 2010 to complete any remaining provider enrollment requirements. Additionally, after June 30, 2010, an existing provider cannot receive payment for providing services to another (new) recipient, until he/she completes all of the enrollment requirements and is determined eligible.

If an existing provider did not complete at least one of the enrollment requirements prior to July 1, 2010, he/she has been terminated. In order to be re-employed as an IHSS provider and be paid by the IHSS program, he/she must complete all the enrollment requirements and be determined eligible.

Please refer to ACL 10-33 dated June 15, 2010, for additional information regarding the above provider requirements.

7. Are recipients required to submit the Recipient Designation of Provider form (SOC 426A) even if there has been no change in the provider?

Yes. All recipients, regardless of whether their providers are new or existing, eventually will be required to have on file a completed SOC 426A for each provider. However, if there has been no change in a recipient's provider and there is currently on file a copy of the 9/02 version of the Provider Enrollment Form (SOC 426) with the client certification (Part II) completed, a recipient need not complete the SOC 426A at the present time. Because all providers will be required to complete the revised SOC 426 (currently under development), and because the revised SOC 426 will not include a client certification, all recipients will need to complete the SOC 426A when their provider completes the revised SOC 426. Once the revised SOC 426 is released, counties will be required to obtain the revised SOC 426 from providers and the SOC 426A from recipients. This may be done at the time of a recipient's reassessment, or at some other time at the discretion of the county. For recipients who select a new provider or who make a change in their existing provider, the SOC 426A must be completed at the time the recipient makes his/her selection/change.

8. Are new providers eligible to receive retroactive pay for services they provide for recipients once they have completed all of the provider enrollment requirements?

Yes. If an individual seeking to be a provider begins providing services for an eligible recipient prior to completing all of the provider enrollment requirements, and he/she is ultimately determined to be eligible to be a provider, he/she would be eligible to receive retroactive payment to the start date of employment for the services he/she provided.

However, if the individual is ultimately found ineligible to be a provider for any reason, he/she cannot receive payment from the IHSS program. The recipient will have to pay for services provided from his/her own pocket. For this reason, CDSS strongly encourages counties/PAs/NPC to ensure that recipients fully understand the potential financial responsibility they accept by allowing individuals to provide services prior to completing all of the provider enrollment requirements. CDSS suggests that counties provide this clarification at the same time that they provide direction to recipients on their responsibilities as employers, i.e., when recipients complete the Application for Social Services (SOC 295) and the Recipient/Employer Responsibility Checklist (SOC 332).

9. Why is there no start date field on the SOC 426A?

CDSS is revising the SOC 426A to include a start date field and will release the revised form shortly. Both the SOC 426 and SOC 426A are mandated forms. Counties are not permitted to substitute county-developed forms or to revise these forms in any way.

10. Are the counties required to retain copies of the Provider Enrollment Agreement (SOC 846) indefinitely?

Yes. W&IC section 12301.24(d) states that counties shall indefinitely retain the SOC 846 in the provider's file. Retaining the provider enrollment agreement form can serve as verification of a provider's eligibility and his/her understanding of the IHSS program rules and procedures which benefits both the provider and recipient. Counties may consider archiving these documents electronically or by other means. Government Code section 12168.7 requires that storing such documents be done in a manner that would not substantially alter their original form.

11. What identification must an individual present when submitting the SOC 426?

A provider/applicant must present one piece of current and valid U.S. government-issued (federal or state) picture ID along with an original Social Security card or original official correspondence from the Social Security Administration (SSA) verifying his/her Social Security number (SSN). Refer to ACL 09-52 for acceptable forms of identification. If the spelling, order, or other details of the provider's/applicant's name as it appears on the SOC 426 and other ID does not match the Social Security card, the SSA may not verify the SSN. See Question #25 for information on the SSN verification process.

12. Can the Medi-Cal Eligibility Data System (MEDS) be used to obtain an individual's SSN if they do not have an original Social Security card or original official correspondence from the SSA?

No. Providers/applicants must present documentation in the form of an original Social Security card or original official correspondence from the SSA.

13. Would an individual be required to present a Social Security card when he/she presents a United States (U.S.) passport as the primary identification?

Yes. A U.S. passport is acceptable as identification; however, it does not allow for the verification of the SSN. Therefore, the county must also view an original Social Security card or original official documentation from the SSA so that the SSN provided on the SOC 426 can be confirmed.

TRANSLATED MATERIALS

14. When will the translated provider enrollment forms and orientation materials be made available?

The languages that currently meet the five percent statewide IHSS recipient population threshold are: Armenian, Chinese and Spanish. Pending further court action in the Beckwith, et al. v. Wagner litigation, revisions may be necessary to the SOC 426. When the revision of the SOC 426 is completed, the form will be translated into all three threshold languages and camera-ready copies will be posted on the below-referenced web page.

A camera-ready copy of the version of SOC 426 currently in use (dated 9/02) is available in Spanish on the CDSS Translated Forms and Publications web page at: <https://www.cdss.ca.gov/inforesources/translated-forms-and-publications>.

Translations of the Provider Orientation Guide and handouts in the threshold languages are now available on the new IHSS Provider Orientation page of the CDSS Adult Programs web site at: <https://www.cdss.ca.gov/inforesources/ihss/ihss-providers/resources>.

Pursuant to the Dymally-Alatorre Bilingual Services Act (Government Code section 7290 et seq.) and state regulation (Manual of Policies and Procedures Division 21, Civil Rights Nondiscrimination, section 115), counties are responsible for providing translation/interpretation services for non-English speaking or limited English proficient populations.

Questions relating to these translated materials should be directed to the CDSS Language Services Unit, at (916) 651-8876 or LTS@dss.ca.gov.

PROVIDER ORIENTATION

15. When will written provider orientation materials be available?

All provider orientation materials have been made available. The CD-ROM and the required handouts were distributed to counties on October 20, 2009. The written Provider Guide and required handouts were mailed on November 23, 2009.

Translations of the orientation materials in Spanish, Armenian and Chinese have been completed. See Question #14 above for information on where the translated documents can be accessed online. These materials were mailed to counties in mid-December 2009. Translation of the Provider Orientation CD-ROM was completed and the translations were mailed to counties in mid-January 2010.

16. Are existing providers required to attend an on-site orientation session?

No. Existing providers are not required to attend an on-site orientation session. They also have the option of reviewing the Provider Orientation Guide or CD-ROM, whichever they prefer and find most accessible.

Existing providers are required, however, to submit the SOC 426 in person and present their original government-issued ID and Social Security card. Existing providers must also return a signed SOC 846. It is not necessary for the either form to be signed in the presence of county/PA staff.

17. When will the orientation materials include the final list of crimes that would disqualify a provider?

Pending further court action, at this time the ruling of the Alameda County Superior Court in the Beckwith, et al. v. Wagner court case provides the crimes that would make an individual ineligible to be a provider in the IHSS program. These are limited to a conviction (or incarceration following a conviction) within the last 10 years for those crimes specified in W&IC section 12305.81:

- 1) Fraud against a governmental health care or supportive services program;
- 2) Violation of subdivision (a) of Section 273a of the PC (abuse of a child under circumstances/conditions likely to produce great bodily harm or death); or
- 3) Violation of Section 368 of the PC (abuse of an elder or dependent adult).

This change will be incorporated into the provider orientation training curriculum at the next revision of the materials.

18. Will the provider orientation be made available in DVD format?

The provider orientation training covers detailed information and instructions. It was determined that it was best suited to a power-point presentation format and, as a result, the format dictated use of the CD-ROM. However, the training materials will be revised in the next fiscal year and other formats will be considered at that time.

19. Can counties present other information that new providers would need to know about the IHSS program during the orientation?

Yes. As stated in ACL 09-54, counties are required to use the materials developed by CDSS, but they may supplement the orientation with county-specific information and/or directions.

PROVIDER APPEALS

20. Is there a new form counties will be required to use for appeals?

CDSS developed a Fact Sheet Supporting Denial form that Provider Enrollment Appeals Unit (PEAU) staff forward to counties or PAs each time an appeal has been filed. The form requests the criminal conviction code(s) and conviction date(s) used by counties/PAs as the basis for declining to enroll a prospective provider or to find a provider ineligible. Counties should also provide any additional documentation not obtained from the Department of Justice (DOJ) that was used as part of the eligibility determination as an attachment to this form. If a county/PA has concerns or questions regarding transferring/sharing relevant conviction data obtained from the DOJ with CDSS via the form, they are urged to contact the Record Access & Security Program, DOJ, at (916) 227-3460 or RecordSecurity@doj.ca.gov for guidance. Although the form is intended to simplify the transmission of this information from the county to the state, counties are not mandated to use this form; a locally-developed form may be used as long as it contains all of the required information.

CMIPS ISSUES

21. Does the input of a termination reason code on the CMIPS Provider Enrollment screen pose any county liability in terms of violation of confidentiality of CORI received from DOJ?

No. The reason codes in CMIPS were updated to identify ineligibility reasons in a general way. According to DOJ, the county can input the reason for ineligibility/termination into CMIPS and it would not violate the confidentiality of the CORI. Further, DOJ indicated that it is acceptable for CMIPS to be updated with information that indicates that an individual is not eligible as a result of information from the criminal background check.

22. CMIPS is a point-in-time system. It does not track provider enrollment process. Will the new provider enrollment screens only be completed when the provider has completed the enrollment process and is either eligible or ineligible for payment?

No. The ENRL screen can be accessed at any time using the provider's SSN. Since it is unlikely that most providers will complete the entire enrollment process at one time, the screen was designed to allow counties to check off the necessary items as they are completed. Providers who have not completed the entire process are in pending "P" status. Once all of the steps have been completed, county staff must change the provider to "E" (eligible) status on the PELG screen. However, be aware that the system will not allow a change in the provider's status to "E" on the PELG screen until the enrollment process has been completed.

Additionally, the system requires both the ENRL enrollment process to be completed AND the SSNV field on the PELG screen to be verified in "V" before the PELG status can be changed to "E."

23. Will the Informing Notices to providers link to the new provider enrollment screen so that notices/letters to providers can be generated automatically as they are currently when counties make changes to client eligibility and NOAs are generated?

No. As stated in ACL 09-66, page three, counties will be responsible for generating and mailing provider enrollment eligibility notification letters.

24. How will county staff record provider ineligibility based on a conviction received as a result of the background check?

The county staff will enter the ENRL screen in either "A" (add) or "C" (change) mode. In the Fingerprint/BI field on the ENRL screen they will enter a "Y" to show the background check has been completed. In the Enrollment Status field they will enter "I" (ineligible) and enter Termination Reason Code 11.

25. What is the SSN verification process and how often are the results posted on provider records?

The SSN verification process is a batch process that is performed twice a week by the CMIPS vendor. The new provider records are sent to the SSA for verification. The results of each batch will be posted to each provider record within 3 business days of when the batch was run. The batch is customarily run on Tuesdays and Fridays, but holidays may change this schedule. If the SSN is correct and has been verified it will be followed by a "V" on the H3 line of the PELG screen. If the SSN does not match the SSA records the provider will be included on the CMIPS Online SSN Verification Report to be resolved by county staff. A new provider is not eligible to be paid until their SSN is in "V" status.

26. Why are the forced manual edit and extra steps necessary when entering a P.O. Box on the provider screen?

At this time, system functionality necessitates that the forced edit be used to meet the new residential address and mailing requirements. This programming ensures that a county worker examines this requirement while still allowing counties the option of overriding the restriction on mailing checks to P.O. Boxes, if the county has approved an exemption. Information and instructions regarding the use of a P.O. Box as a mailing address will be transmitted in an upcoming ACL.

SOC 295

27. Why has CDSS included additional language on the revised SOC 295 that seems to go beyond what is required by ABX4 4?

In addition to revisions to meet the requirements of ABX4 4, the revised SOC 295 includes language that informs IHSS applicants of some key program aspects and recipient responsibilities, including:

- The basic responsibilities of IHSS recipients as the employer of their provider of IHSS service;
- The new requirements individuals must meet to be paid as IHSS providers; and
- New program integrity and fraud detection and prevention activities.

28. ACL 09-63 indicates that the application form SOC 295 will be further updated and an ACL “issued with new requirements as they are implemented.” Does this mean that these instructions are not final?

ACL 09-63 was released with the new form and instructions to use the revised SOC 295. The new form is posted on CDSS’ Forms and Publications website (<https://www.cdss.ca.gov/inforesources/forms-brochures>). The statement regarding the application being further updated was included simply to inform counties that this form will be revised again as other requirements, such as recipient fingerprinting and timecard fingerprinting, are implemented at a later date.

29. The application states, “To promote program integrity, I may be subject to unannounced visits to my home and that I or my provider(s) may receive letters identifying program requirement concerns” from DHCS, CDSS, and/or the county. This statement does not specify why such visits might occur. Aren’t these visits and letters to be in a more targeted fashion and per protocols that are still to be developed per ABX4 19?

This reference conveys that recipients/providers may be subject to an unannounced home visit. The protocols are being developed with input from stakeholders. County staff may provide clarification to recipients and providers as needed. The SOC 295 will be further updated as new program requirements become effective.

PROVIDER I-9 POLICIES

30. Are counties/PAs/NPC required to obtain and retain a copy of Form I-9? If so, how should the signed form be maintained?

No. Counties/PAs/NPCs are not required to obtain and retain a copy of Form I-9. Completing the Form I-9 is a requirement of the U. S. Citizenship and Immigration Services (USCIS). The Form I-9 instructions state that the form is not filed with the

USCIS; it must be retained by the employer, which in the case of IHSS would be the recipient.

As stated in ACL 09-69, some counties/PAs/NPCs have made it a practice to retain these forms to assist their recipients. Counties/PAs/NPC may continue to do so provided that these forms are filed in a secure and confidential manner, such as in the IHSS provider's file or in a specific Form I-9 file. Additionally, counties/PAs/NPC may consider archiving the documents electronically or by other means. State law specifies that storing such documents shall be accomplished in a manner that would not substantially alter its original form (Government Code section 12168.7) and federal regulations permit that Form I-9 may be signed and retained electronically (8 Code of Federal Regulations, section 274a.2).

31. How should the county/PA/NPC proceed with provider enrollment when an individual presents a Social Security card imprinted with "Valid for Work Only with DHS Authorization"?

For the purpose of verifying an individual's SSN in order to complete the provider enrollment process, the county/PA/NPC may accept a Social Security card imprinted with "Valid for Work Only with DHS Authorization."

However, when an individual who possesses a Social Security card with this notation is hired by a recipient as a provider and he/she completes the Form I-9, additional steps would need to be taken to verify whether the individual is authorized to work in the U.S. For more information on the steps needed to verify this employment eligibility, refer to the USCIS's website ([U.S. Citizenship and Immigration Services](#)) and click on the link to the E-Verify Homepage.

INTER-COUNTY TRANSFERS

32. When a recipient moves from one county to another and begins receiving services from a new provider, how long does the transferring county continue to pay the case?

Consistent with regulations for the inter-county transfer process, upon acknowledgement from the receiving county that the new provider is an eligible provider, the transferring county has the responsibility for authorizing services and continuing payment to the new provider until the transfer period ends, at which time the receiving county becomes responsible. The receiving county has the responsibility for assisting the recipient in obtaining an existing enrolled provider or ensuring the recipient's new provider has completed the provider enrollment requirements.

33. When a recipient moves from one county to another along with his/her existing provider, must the provider undergo a criminal background check in the new county?

Yes. The provider must submit fingerprints and undergo a criminal background check in the new county even if the individual has completed one in the originating county. However, an existing provider who has completed at least one of the provider enrollment requirements by June 30, 2010, has until December 31, 2010 to complete the remaining provider enrollment requirements, including the criminal background check.

Questions or requests for clarification on policies included in this ACL should be directed to appropriate Bureau within the Adult Programs Branch, as follows:

- Criminal Background Check, Provider Enrollment Requirements, Application for Social Services, or Provider I-9 PoliciesPolicy Bureau, at (916) 229-4000
- Provider Orientation, or Inter-County TransfersOperations & Quality Assurance Bureau, at (916) 229-3494
- CMIPS IssuesFiscal, Administrative & Systems Bureau, at (916) 229-4002
- Provider Appeals.....Litigation & Appeals Bureau, at (916) 229-4003

Sincerely,

Original Document Signed By:

EILEEN CARROLL
Deputy Director
Adult Programs Division