



CDSS

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April 21, 2016

ALL COUNTY LETTER 16-36

REASON FOR THIS TRANSMITTAL

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

TO: ALL COUNTY WELFARE DIRECTORS
IHSS PROGRAM MANAGERS

SUBJECT: VIOLATIONS FOR EXCEEDING WORKWEEK AND/OR TRAVEL TIME LIMITS FOR THE IN-HOME SUPPORTIVE SERVICES (IHSS) AND WAIVER PERSONAL CARE SERVICES PROGRAMS (WPCS)

REFERENCE: [ACL 14-76 \(October 8, 2014\)](#); [ACL 16-01 \(January 7, 2016\)](#); SENATE BILLS [855](#) AND [873](#) (CHAPTERS 29 AND 685, STATUTES OF 2014).

This All County Letter (ACL) provides counties with specific information and instructions related to the implementation of violations of the workweek and travel time limitations described in ACL 16-01. This ACL also transmits new and revised forms and notices to be used by counties in the implementation of workweek and travel time violation policy. The policies for violations provided in this ACL supersede any related information contained in ACL 14-76 (October 8, 2014).

BACKGROUND

ACL 16-01 issued on January 7, 2016, provided instructions for implementing policies requiring that IHSS and WPCS providers receive compensation for overtime, travel time and wait time beginning February 1, 2016. The ACL specified the following workweek limitations: 1) when a single provider works for a single recipient, the maximum hours that the provider may work in a workweek are the recipient's maximum weekly hours; 2) when multiple providers work for a single recipient, the maximum weekly hours shall be divided among the providers so the total hours of all providers combined in a week do not exceed the recipient's maximum weekly hours; and 3) when a single provider works

for multiple recipients, the maximum number of hours that the provider may claim in a workweek for all of the time he/she works for his/her recipients combined is 66 hours. Additionally, the statutes allow for recipients to adjust their hours under specific circumstances without requesting approval from the county. In situations where approval is necessary to adjust the workweek limits, and the request is not made to the county or the exception is not granted, the IHSS provider shall incur a violation if the provider exceeds the workweek limitations. The ACL also specified the travel time limitation of seven hours of claimed travel time per workweek and set forth violation processes for providers who exceed these limits.

While the workweek requirements and restrictions were effective on February 1, 2016, no formal action is required on violations for workweek and travel time limitations until May 1, 2016. In the interim, county staffs were instructed to contact any providers who unintentionally committed errors on timecards and to provide guidance to assist the providers in making adjustments to workweek schedules to prevent any further occurrences.

VIOLATIONS

A violation will be incurred whenever an IHSS provider exceeds the workweek or travel time limitations as provided in ACL 16-01. An IHSS provider will receive a violation if his/her action constitutes one of the following:

1. When a provider works more than 40 hours in a workweek for a recipient without receiving county approval when the recipient's maximum weekly hours are 40 or less;
2. When a provider works more hours in a workweek for a recipient than the recipient's maximum weekly hours causing the provider to work more overtime hours in a month than he/she normally works without receiving county approval;
3. When a provider works more than the maximum weekly limit of 66 hours when working for multiple recipients;
4. When a provider claims more than seven (7) hours of travel time in a workweek.

Effective May 1, 2016, each time a provider incurs a violation he/she will be paid the overtime and/or travel time that exceeded the workweek and/or travel time limitations but will also receive a violation notice. In order to ensure every opportunity is made to address these situations prior to issuing a violation notice, a task will be generated in the County Overtime Violation Work Queue for a three business day review process. During the time of this task, county staff will have the ability to conduct a prior review of all violations before issuance and can rescind or uphold the violation at that time, based

on the outcome of the review. If no action is taken within three business days, the Case Management, Information, and Payrolling System II (CMIPS II) will automatically issue the violation. If the violation is rescinded by the county staff, a task will be triggered to the Supervisor Overtime Violation Work Queue to review the county staff's action to rescind the violation. When the Supervisor receives a task through the Supervisor Overtime Violation Work Queue, the Supervisor must take action to review the determination to rescind the violation by the county user within two business days. If the Supervisor does not take action within two business days, CMIPS II will automatically approve the rescinding of the violation. If a Supervisor does take action within the two business days and rejects the decision to rescind the violation, the violation will be issued.

After this county five business day preliminary review process, if it is determined that the violation should be issued, CMIPS II will generate violation notices which will be printed at the county offices. The county staff will then send these notices which include information on how a provider may request a county review of the violation to the provider and the recipient(s). Whenever a provider incurs multiple violations within the same month, the provider will only receive a single violation regardless of the number of times the provider violates the workweek or travel time limitations within the same month.

LEVELS OF VIOLATION

Based on Welfare and Institutions Code (WIC) section 12300.4(b)(5), the California Department of Social Services (CDSS) created a gradual and progressive educational process that allows providers the opportunity to correct any behaviors causing excessive overtime or travel time claims before such behaviors rise to the level of provider ineligibility. The process also grants providers the ability to receive support through counseling and voluntary instructional review materials in an effort to ensure that providers understand the program requirements, as described below. This process involves four levels of violation which range from a written warning to one-year of ineligibility as a provider in the IHSS program.

After a provider incurs a violation, the county will issue a notice confirming the violation along with the "IHSS Program Notice to Provider of Right to Dispute Violation for Exceeding Workweek and/or Travel Time Limits" (SOC 2272). When a provider receives a violation notice, he/she has ten calendar days from the date of the notice to request a county review of the violation. If the provider does not submit an SOC 2272 within the ten calendar days, the violation remains in effect. Once the county receives the request for review, the county staff will send two notices, the "IHSS Program Notice to Provider Acknowledgement of Receipt of County Violation Review for Exceeding Workweek and/or Travel Time Limits" ([SOC 2272A](#)) to the provider and the "IHSS Program Notice to Recipient Acknowledgement of Provider's Request for County

Violation Review for Exceeding Workweek and/or Travel Time Limits” ([SOC 2272B](#)) to the recipient. Both notices must be obtained from the CDSS forms website and mailed to the provider and recipient. The county then has ten business days to review and investigate the circumstances that led to the violation and send the provider a notice stating the outcome of the county review and detailing the instructions for requesting a State administrative review if applicable.

Initial (first) Violation: After a provider violates the limitations for the first time, he/she will receive a written warning notification from the county. County staff shall be available to assist the providers to understand the workweek, overtime, and travel requirements.

Second Violation: If the provider incurs a second violation, he/she will be offered a one-time opportunity to complete the voluntary instructional materials review related to the workweek and travel time limitations and sign a certification form stating that he/she understands and agrees to the requirements and return it to the county. These voluntary instructional review materials will be included with the second violation notice.

If he/she takes advantage of this opportunity within 14 calendar days after receiving the violation, the second violation will be rescinded once the county receives a signed copy of the certification form. The provider will be given an additional seven calendar days in order to ensure proper timing for mailing of the certification form to the county. The county staff will then have an additional five calendar days beyond the provider submission deadline of 21 days to enter the certification form completion date into CMIPS II.

If the provider chooses not to review the voluntary instructional review materials and therefore does not submit the completed certification form to the county IHSS office, the county will issue a notice confirming the second violation. If, after having the violation rescinded by reviewing the voluntary instructional review materials, the provider violates the workweek and/or travel time limitations again, he/she will receive a second violation with no opportunity to review the voluntary instructional review materials again. The only time this option will be offered in the future is when the provider’s IHSS eligibility has been suspended for one year based on a fourth violation and the provider completes the provider enrollment process following the one year suspension.

After the second violation has been incurred and is included in the provider’s record, county staff are required to contact the providers to discuss the violation consequences and advise them on methods to correct the behavior that led to the violation. County staff should stress the importance of the provider modifying his/her workweek schedule and/or travel time if necessary to avoid further violations. Additionally, it may be necessary to include recipients in these discussions, so they understand when requests

for adjustments to workweek schedules can be requested and granted. Given that another violation occurrence would result in suspension of the provider's eligibility for 90 calendar days, county staff shall make every effort to communicate with the provider by telephone or in writing, if the receipt of the written communication can be documented.

Third Violation: If the provider incurs a third violation, there will be a temporary suspension of the IHSS provider's eligibility to work and be paid through the IHSS program for providing authorized services for a period of 90 calendar days. The provider has the option to request a county review of this violation.

Fourth Violation: If, after the 90 calendar days' suspension (due to a third violation) is completed, the provider incurs a fourth violation, he/she will have suspended eligibility to work and be paid through the IHSS program for a period of one year. The provider has the option to request a county review of this violation.

If the fourth violation has been assessed, after the one-year ineligibility has ended, he/she may work and be paid by the IHSS program as an IHSS provider if he/she completes the provider enrollment process again as a new applicant provider, including the criminal background check, provider orientation, and completion of all required forms.

For the third and fourth violations, if the county does not choose to rescind the violation after the county review process, the notice explaining the outcome of the county review will explain how the provider can request an administrative written review of the violation by the CDSS Adult Program Division's Provider Appeals Unit (PAU) within ten calendar days of the date of the county's notice. If the provider has requested a county and/or State level review of the violation, he/she will be permitted to continue to provide IHSS services and be paid as a provider in the IHSS program until the county and/or PAU makes a determination regarding the provider's third/fourth violation.

The CDSS will issue a subsequent ACL providing information and guidance regarding the County Dispute process and the State Administrative Review process for the third and fourth violations.

Reduction of Violations: The violations will add up over the course of the provider's employment as an IHSS provider. However, if after receiving a violation, the provider does not receive another violation for one year, the number of violations he/she has received will be reduced by one. As long as the provider does not receive any additional violations, for each year after the last violation, the number of violations he/she has received will be reduced by one.

However, if the provider has received a fourth violation and has become ineligible to work and be paid as an IHSS provider for one year, when the year has expired and the individual has undergone the provider enrollment requirements to be re-enrolled as a provider, his/her violations count will be reset to zero.

NOTIFICATION PROCESS

Each time a provider incurs a violation, both the provider and each recipient for whom he/she works will receive an auto-generated notice informing the provider and the recipient(s) of the violation and, if applicable, the consequences resulting from the violation. For the first and second violations, except as described below, the provider will receive "IHSS Program Notice to Provider of First/Second Violation for Exceeding Workweek and/or Travel Time Limits" (SOC 2257), and the recipient(s) will receive "IHSS Program Notice to Recipient of Provider's First/Second Violation for Exceeding Workweek and/or Travel Time Limits" (SOC 2257A).

CDSS developed the Second Violation Self-Certification Training which is designed to reinforce the workweek and travel time requirements to ensure providers understand the limitations, so they do not have recurring violations and are able to maintain their eligibility as IHSS providers. This training packet, including the certification form, will be included with the notice of the second violation.

For the provider who chooses not to take advantage of the one-time instructional material review in order to reverse his/her first occurrence of a second violation, he/she will receive "IHSS Program Notice to Provider of Second Violation No Record of Completion of Instructional Material Review" (SOC 2257B), and if the provider is not eligible for the instructional material review because he/she had been offered the opportunity previously, he/she will receive "IHSS Program Notice to Provider of Second Violation for Exceeding Workweek and/or Travel Time Limits" (SOC 2257C). These notices are expected to be generated from CMIPS II and the date of the release will be communicated to county staff in a subsequent ACIN once that date has been established. In the interim, a single notice (SOC 2257B) will be generated from CMIPS II.

For the third violation, the provider will receive "IHSS Program Notice to Provider of Third Violation (90-Day Suspension of Eligibility) for Exceeding Workweek and/or Travel Time Limits" (SOC 2258), and the recipient(s) will receive "IHSS Program Notice to Recipient of Provider's Third Violation (90-Day Suspension of Eligibility) for Exceeding Workweek and/or Travel Time Limits" (SOC 2258A).

For the fourth violation, the provider will receive "IHSS Program Notice to Provider of Fourth Violation (One-Year Period of Ineligibility) for Exceeding Workweek and/or Travel

Time Limits” (SOC 2259), and the recipient(s) will receive “IHSS Program Notice to Recipient of Provider’s Fourth Violation (One-Year Period of Ineligibility) for Exceeding Workweek and/or Travel Time Limits” (SOC 2259A).

Additional notices have been developed for the WPCS program to be used when these providers provide services to only WPCS recipients or to recipients of both WPCS and IHSS. The notices that pertain to the WPCS program will be sent to WPCS providers and recipients by the Department of Health Care Services (DHCS), In-Home Operations (IHO) Branch.

CAMERA-READY COPIES AND TRANSLATIONS OF FORMS

Counties may access camera-ready versions of the English forms referenced in this ACL on CDSS’ Forms/Brochures web page at:
<http://www.dss.cahwnet.gov/cdssweb/PG183.htm>.

Counties may access camera-ready versions of the Spanish, Armenian, and Chinese forms referenced in this ACL on CDSS’ Forms/Brochures web page at:
http://www.dss.cahwnet.gov/cdssweb/FormsandPu_274.htm.

Your county forms coordinator should distribute translated forms to each program and location. Each county shall provide bilingual/interpretive services and written translations to non-English or limited English proficient populations as required by the Dymally Alatorre Bilingual Services Act (Government Code section 7290 et seq.) and by state regulation (Manual of Policies and Procedures, Division 21, Civil Rights Non-discrimination, section 115).

FORTHCOMING ACLs

The CDSS will issue two additional ACLs to address the modifications to CMIPS II to address all system changes related to violations and the county dispute process and CDSS administrative review process.

All County Letter 16-36
Page Eight

Questions or requests for clarification regarding the information in this letter should be directed to the Policy and Operations Bureau, Adult Programs Division at (916) 651-5350.

Sincerely,

Original Document Signed By:

EILEEN CARROLL
Deputy Director
Adult Programs Division

Attachments