

Appendix D

Temporary Changes to the IHSS Program Due to the COVID-19 Public Health Emergency

Current as of May 20, 2020

On March 4, 2020, California Governor Gavin Newsom proclaimed a State of Emergency in the State of California in response to the global COVID-19 outbreak.⁷⁵⁷ Following this proclamation, Governor Newsom issued several Executive Orders that have resulted in temporary changes to the IHSS program.⁷⁵⁸ Consistent with the Governor's Executive Orders, the California Department of Health Care Services (DHCS) and the California Department of Social Services (CDSS) have issued policy guidance regarding temporary changes to IHSS.

Appendix D will summarize the Governor's Executive Orders and guidance issued by DHCS and CDSS to provide information about temporary changes to IHSS related to the COVID-19 public health emergency. It is important to confirm all information provided is still current when advising recipients about changes in the IHSS program, especially because the Department has indicated deadlines may be extended if needed on some items.

ELIGIBILITY and APPLYING FOR IHSS DURING COVID-19

Health Care Certification (SOC 873) Form

Basic Rule: A Health Care Certification (SOC 873) form must be completed by an IHSS recipient's doctor and returned to the IHSS program before IHSS services can begin. Typically, an applicant has 45 days to submit a completed SOC 873, but may request an additional 45 days to complete it if good cause exists. Absent an imminent risk of an out of home placement, IHSS services cannot begin until the form is completed and returned. ⁷⁵⁹

COVID-19 Revised Rule: Applicants have up to 90 days to submit a SOC 873 and services can begin while the county waits for the SOC 873 form to be completed and returned.⁷⁶⁰ This change was based on the authority conferred by Executive Order N-33-20. The Department now considers every IHSS applicant who is unable to obtain a SOC 873 from their health care provider due to the COVID-19 pandemic to be at imminent risk of an out of home placement, allowing services to begin before

completion and return of the SOC 873.⁷⁶¹ Further, the pandemic is considered to have created good cause for delay, allowing for the extra 45 days.⁷⁶²

Initial Assessments

Basic Rule: The IHSS application process includes an in-home assessment conducted by a county social worker. The social worker will interview the applicant in the home to help determine the applicant's eligibility for services, functional impairment, living arrangement, and any alternative resources that are available.

COVID-19 Revised Rule: During the COVID-19 public health emergency, the county has the option to conduct the initial IHSS assessments via video call (such as Skype or FaceTime).⁷⁶³ Initial IHSS assessments conducted by video call will be reviewed and approved by the social worker's supervisor prior to the authorization of services.⁷⁶⁴

If the county chooses to conduct a face-to-face assessment rather than using video call, the state has encouraged counties to collect information over the phone in order to reduce the amount of time spent in an IHSS applicant's home.⁷⁶⁵ The social worker visiting the home must take precautions recommended by public health agencies, such as maintaining a six-foot distance between the social worker and other people in the home and using Personal Protective Equipment (PPE) when in close contact with someone who is suspected of or has COVID-19.⁷⁶⁶ IHSS social workers who have COVID-19 symptoms or may have been exposed to COVID-19 may not conduct the in-home assessment.⁷⁶⁷

Annual Reassessments

Basic Rule: Once a consumer has been found eligible for IHSS, the counties must generally conduct a reassessment of a recipient's need "prior to the end of the twelfth calendar month from the last face-to-face assessment."⁷⁶⁸

COVID-19 Revised Rule: During the COVID-19 public health emergency, counties have the option to suspend IHSS annual re-assessments through June 30, 2020 and have been told to de-prioritize reassessments so they can focus on more immediate recipient needs.⁷⁶⁹ Counties also have the option to continue annual reassessments by phone or face-to-face. For counties that continue to conduct face-to-face assessments, social workers must minimize the amount of assessment time spent in the recipient's home by collecting relevant information over the phone before the home visit. As with initial assessments, the social worker visiting the home must take precautions recommended by public health agencies during the visit.⁷⁷⁰ Any adverse actions related to reassessments conducted during this time (i.e. reduced hours or termination of services) shall not take effect until June 30, 2020.⁷⁷¹

IHSS SERVICES DURING COVID-19

Halt to Negative or Adverse Actions

Basic Rule: Changes in a recipient's eligibility can result in termination from the IHSS program or from a reduction of hours.

COVID-19 Revised Rule: County social services may not take negative action to terminate IHSS or decrease IHSS services until after June 30, 2020 on account of the COVID-19 public health emergency.⁷⁷² The authority for this change is based on Executive Order N-29-20. This means that even if a recipient is no longer technically eligible for IHSS or for the current number of approved hours, the recipient can and should continue to use the services at the current level without fear of repercussions. Any negative action should be immediately appealed to the county and also brought to Justice in Aging and Disability Rights California's attention because it may indicate a larger systemic problem.

Instead of processing negative actions, counties have been instructed to focus on IHSS applications and authorizing services.⁷⁷³ This means that counties must prioritize initial assessments, requests for additional services or time allotted for existing services, and enrollment of IHSS providers. Additionally, county social services staff must also make sure they answer and return phone calls from IHSS recipients and providers as soon as possible.⁷⁷⁴ For more information on a change in circumstance that may result in additional services, see Chapter 7, Section 2.

Loss of Alternative Resources

Basic Rule: Alternative resources are IHSS-type services already being provided to a recipient through another source, including adult and child day care centers, community resource centers, senior centers, and respite centers.⁷⁷⁵ The county social worker collects information about alternative resources available to a recipient as part of the needs assessment.⁷⁷⁶ Receipt of alternative resources is documented by the social worker and reduces the number of hours authorized for each specific service provided through the alternative resource.⁷⁷⁷ For more information on alternative resources, see Chapter 2, Section 2.

Alternative resources may be identified on the IHSS Notice of Action located under the column entitled "SERVICES YOU REFUSED OR YOU GET FROM OTHERS." Although alternative resources should be identified in the IHSS Notice of Action, there are instances when the county fails to identify alternative resources on the Notice of Action but has nevertheless reduced IHSS hours.

COVID-19 Revised Rule: The COVID-19 public health emergency has prompted closures of schools, senior centers, Community-Based Adult Services (CBAS) centers, and other programs that may provide a recipient with IHSS-type services and be considered an alternative resource. If the recipient needs additional hours or services because the services usually provided through an alternative resource are no longer available, the recipient can request additional IHSS hours to replace the lost services.⁷⁷⁸ Remember, counties must prioritize requests for reassessment that may lead to additional services due to change in recipient condition or circumstances, including the loss of alternative resources due to COVID-19.⁷⁷⁹

PRACTICE TIP: If more IHSS services are needed because those services were previously provided through an alternative resource that is no longer available, then the recipient should contact the IHSS social worker about the loss in alternative resources and ask for the additional time needed because of the change due to COVID-19. If the recipient cannot reach the IHSS social worker, then the recipient should document the request and adjust their IHSS hours. The following should be documented:

- Identify the alternative resource (for example: day program, school, CBAS, regional center program/services, etc.) that is no longer available due to COVID-19; and
- Identify IHSS tasks in which time was reduced due to the alternative resource (for example: meal preparation, bowel and bladder, etc.); and
- Identify IHSS tasks you now need help with because of an elimination of an alternative resource.

IHSS PROVIDERS DURING COVID-19

An IHSS provider is someone who is paid to provide services to an IHSS recipient. IHSS recipients have the right to choose their provider. There are some restrictions on who a recipient can choose to be a paid IHSS provider, including: (1) the individual must be eligible to work in the United States; and (2) the individual must pass a criminal background check conducted by the Department of Justice.⁷⁸⁰ For more information on IHSS providers, see Chapter 6.

IHSS Provider Enrollment Requirements

Basic Rule: In order to be paid for providing IHSS, the individual must be enrolled to be an IHSS provider by completing the enrollment process.⁷⁸¹ For more information on the IHSS provider enrollment process, see Chapter 6, Section 1.

COVID-19 Revised Rule: During the COVID-19 public health emergency, CDSS is temporarily waiving the following IHSS provider enrollment requirements based on authority granted by Executive Order N-52-20:

- Effective from April 10, 2020 until June 30, 2020, copies of documents verifying identity may be mailed to the county IHSS office rather than photocopied in-person. Additionally, identification documents do not need to be received by the county prior to enrolling the individual as an IHSS provider.⁷⁸²
- Effective from April 10, 2020 until September 30, 2020, the IHSS provider orientation attendance and signing of the provider enrollment agreement may be conducted remotely through webinars and other online tools.⁷⁸³
- Effective from May 4, 2020 until June 15, 2020, providers who are unable to get fingerprinted at a Live Scan facility, because it is closed, may temporarily complete the background check requirement by requesting a Department of Justice name-based criminal background check.⁷⁸⁴ The form to make this request is available here:
<https://oag.ca.gov/sites/all/files/agweb/pdfs/fingerprints/forms/bcia-9010-covid-19.pdf>. Once the “Applicant Information” part of the form has been completed by the IHSS provider the county will complete the form and forward it to the DOJ. It is important to note that IHSS providers must still complete the fingerprinting background check by June 15, 2020. If an IHSS provider does not complete the fingerprinting background check by June 15, 2020 the provider will no longer be an eligible IHSS provider until they complete the DOJ fingerprinting background check.

Parent Providers in Two-Parent Households

Basic Rule: According to state regulations, a parent can be an IHSS provider of a child under the age of 18 years old if “[t]he parent has left full-time employment or is prevented from obtaining full-time employment because no other suitable provider is available and the inability of the parent to perform supportive services may result in inappropriate placement or inadequate care.”⁷⁸⁵ Full-time employment means 40 hours per week or more.⁷⁸⁶ Generally, in a two-parent household, a parent may be an IHSS provider if they meet this criteria and the second parent is considered unavailable because the second parent works, attends an education or vocational program, or is conducting employment searches.⁷⁸⁷

COVID-19 Revised Rule: During the COVID-19 public health emergency, effective from April 23, 2020 until June 30, 2020, an IHSS parent provider in a two-parent household can continue to be a paid IHSS provider if the second parent loses employment or is no longer attending an educational or vocational program.⁷⁸⁸ However, if the second parent is still available in the home after June 30, 2020, then the first parent will no longer be able to be paid as the IHSS parent provider for the child, effective July 1, 2020.

Emergency Back-Up Providers

Basic Rule: The state did not require every county to have a registry for emergency back-up providers, but some counties had programs which varied significantly.

COVID-19 Revised Rule: CDSS has instructed counties to create an emergency back-up IHSS provider system that is available through June 30, 2020.⁷⁸⁹ IHSS recipients can be assigned an emergency back-up IHSS provider when their regular IHSS provider can no longer work because of the COVID-19 public health emergency.⁷⁹⁰ IHSS providers referred by the county to provide emergency back-up services because of circumstances related to COVID-19 will be paid a differential of two dollars above the current county wage rate.⁷⁹¹ So, for example, if a county typically pays IHSS providers \$13 per hour, a provider who works as an emergency back-up provider will be paid \$15 per hour. For more information about the IHSS emergency back-up system, IHSS recipients may contact their local public authority, their IHSS social worker, or their county IHSS office. A directory of IHSS offices is available at: <https://www.cdss.ca.gov/inforesources/county-ihss-offices>.

PRACTICE TIP: If the recipient needs another IHSS provider, then contact the county IHSS office. If the recipient needs another Waiver Personal Care Services (WPCS) provider, then contact the Department of Health Care Services for assistance at 916-552-9105. More information on WPCS can be found at: <https://www.dhcs.ca.gov/services/ltc/Documents/WPCS-Frequently-Asked-Questions.pdf>

IHSS Provider Personal Protective Equipment (PPE)

Basic Rule: IHSS providers were not provided with PPE.

COVID-19 Revised Rule: Personal Protective Equipment (PPE) should be available to IHSS providers who care for individuals with suspect or confirmed COVID-19.⁷⁹² IHSS providers may contact the Public Authority (PA) offices in their county for distribution of PPE. A set of PPE consists of a face mask and a pair of gloves. IHSS recipients should inform their IHSS providers if they have tested positive for COVID-19, have been exposed to someone who has tested positive for COVID-19, or if they are experiencing

symptoms consistent with COVID-19 so the provider can request PPE from their county's PA office.⁷⁹³ The amount of PPE available is extremely limited, but because the current criteria for receiving sets of PPE are very narrow most counties have handed very little out to providers.

Electronic Visit Verification (EVV)

Basic Rule: By January 1, 2021, all IHSS recipients and providers are supposed to use the Electronic Visit Verification system which is available telephonically or through a web portal. Counties have been working to enroll recipients and providers in waves so not every county is coming online at the same time.

COVID-19 Revised Rule: The Department has not issued revised guidance about the EVV deadline, however, it has agreed that if a recipient or provider is unable at this moment to sign-up for a telephone or electronic timesheet they can continue to use paper timesheets in the near term.

Removal of IHSS & WPCS Overtime Violations

Basic Rule: Work violations occur if a provider submits a timesheet that reports hours above the workweek overtime limits or the travel time limits.⁷⁹⁴ The penalties escalate and repeated violations can eventually lead to suspension for the IHSS provider.⁷⁹⁵ For more information on the IHSS provider timesheets and overtime, see Chapter 6 of this guide, sections 4 and 5.

COVID-19 Revised Rule: During the COVID-19 public health emergency, counties are advised to allow recipients flexibility in assigning weekly service hours to their IHSS providers so that recipients may receive adequate and timely services.⁷⁹⁶ For situations in which IHSS providers have incurred work violations while performing services that were in critical need, action will be taken to remove these violations through June 30, 2020.⁷⁹⁷ Questions regarding overtime violations due to the COVID-19 public health emergency may be directed to CDSS, Adult Programs Division, Policy and Operations Bureau at (916) 651-5350.

IHSS & WPCS COVID-19 Sick Leave

Basic Rule: The IHSS program allows providers to earn paid sick leave at the current rate of 8 hours per year after working a certain number of hours as an IHSS provider.⁷⁹⁸

COVID-19 Revised Rule: IHSS and WPCS providers are entitled to paid COVID-19 related sick leave. Effective on April 2, 2020 until December 31, 2020, IHSS providers who work 40 or more hours per week are eligible for up to 80 hours of COVID-19

related sick leave.⁷⁹⁹ IHSS providers who work less than 40 hours per week are entitled to COVID-19 sick leave based on a calculation of the average number of hours the provider works in a two-week period.⁸⁰⁰ COVID-19 paid sick leave can only be claimed for certain COVID-19 related reasons, such as being advised to quarantine or isolate by a health care provider due to being in a high-risk group, possible exposure to COVID-19, or exhibiting symptoms of COVID-19. COVID-19 paid sick leave may also be claimed if the IHSS provider is told not to enter the recipient's home because the recipient has been quarantined due to COVID-19, or if the provider cannot provide care to the recipient due to the need to care for a child whose school or childcare facility has been closed due to COVID-19 precautions.⁸⁰¹

When an IHSS provider meets the applicable criteria and is eligible for COVID-19 sick leave, the provider should contact the recipient(s) they work for and inform them they will be out sick, and if the recipient needs to identify another provider, advise them to contact the county IHSS office or, for WPCS providers, to contact DHCS for assistance. At that time, the provider should complete and sign the COVID-19 ONLY – IHSS Provider Sick Leave Request Form (TEMP 3021).⁸⁰² This form is available at: <https://cdss.ca.gov/Portals/9/Additional-Resources/Forms-and-Brochures/2019/Q-T/TEMP3021.pdf>.

COVID-19 paid sick leave benefits do not affect the existing IHSS & WPCS paid sick leave benefits.⁸⁰³ For more information on general IHSS paid sick leave benefits pursuant to Labor Code (LC) 246(a), see ACL 18-01, which is available at <https://www.cdss.ca.gov/Portals/9/ACL/2018/18-01.pdf?ver=2018-01-12-112939-430>.

Appendix D Endnotes

⁷⁵⁷ Proclamation of State of Emergency (March 4, 2020) available at <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf>

⁷⁵⁸ See Office of Governor Gavin Newsom Executive Orders, available at <https://www.gov.ca.gov/category/executive-orders/>

⁷⁵⁹ MPP § 30-754.641.

⁷⁶⁰ ACIN I-28-20 (March 30, 2020) available at https://www.cdss.ca.gov/Portals/9/Additional-Resources/Letters-and-Notices/ACINs/2020/I-28_20.pdf.

⁷⁶¹ Id.

⁷⁶² Id.

⁷⁶³ ACL 20-42 (April 16, 2020) available at https://mcusercontent.com/73901133dd7ea1a5581344daf/files/72845eda-e21c-480f-b16e-34c2ac6b8562/20_42.pdf

⁷⁶⁴ Id.

⁷⁶⁵ Id.

⁷⁶⁶ Id.

⁷⁶⁷ ACL 20-26 (March 24, 2020), available at https://cdss.ca.gov/Portals/9/Additional-Resources/Letters-and-Notices/ACLs/2020/ACL_20-26.pdf

⁷⁶⁸ Cal. Welf. and Inst. Code § 12301.1(b)(1); MPP § 30-761.212.

⁷⁶⁹ ACL 20-26 (March 24, 2020), available at https://cdss.ca.gov/Portals/9/Additional-Resources/Letters-and-Notices/ACLs/2020/ACL_20-26.pdf

⁷⁷⁰ ACL 20-42 (April 16, 2020) available at https://mcusercontent.com/73901133dd7ea1a5581344daf/files/72845eda-e21c-480f-b16e-34c2ac6b8562/20_42.pdf

⁷⁷¹ ACL 20-26 (March 24, 2020), available at https://cdss.ca.gov/Portals/9/Additional-Resources/Letters-and-Notices/ACLs/2020/ACL_20-26.pdf

⁷⁷² Id.

⁷⁷³ Id.

⁷⁷⁴ Id.

⁷⁷⁵ MPP § 30-757.171(a)(2).

⁷⁷⁶ Cal. Welf. & Inst. Code § 12309(b)(2)(B).

⁷⁷⁷ MPP § 30-763.63.

⁷⁷⁸ ACL 20-32 (April 10, 2020) available at <https://www.cdss.ca.gov/Portals/9/Additional-Resources/Letters-and-Notices/ACLs/2020/20-32.pdf?ver=2020-04-13-075546-460>

⁷⁷⁹ ACL 20-26 (March 24, 2020), available at https://cdss.ca.gov/Portals/9/Additional-Resources/Letters-and-Notices/ACLs/2020/ACL_20-26.pdf

⁷⁸⁰ MPP § 30-776.4.

⁷⁸¹ MPP § 30-776.2. A complete copy of the four-step process is available online at <https://www.cdss.ca.gov/cdssweb/entres/forms/English/SOC847.pdf>

⁷⁸² ACL 20-32 (April 10, 2020) available at <https://www.cdss.ca.gov/Portals/9/Additional-Resources/Letters-and-Notices/ACLs/2020/20-32.pdf?ver=2020-04-13-075546-460>

⁷⁸³ Id.

⁷⁸⁴ ACL 20-50 (May 4, 2020) available at https://mcusercontent.com/73901133dd7ea1a5581344daf/files/36c9d31f-e404-4122-8c2f-d63cf7cbfde4/20_50.pdf

⁷⁸⁵ MPP § 30-763.451.

⁷⁸⁶ MPP § 30-763.451(a).

⁷⁸⁷ MPP § 30-763.45; ACL 20-49 (April 23, 2020) available at <https://www.cdss.ca.gov/Portals/9/Additional-Resources/Letters-and-Notices/ACLs/2020/20-49.pdf>

⁷⁸⁸ ACL 20-49 (April 23, 2020) available at <https://www.cdss.ca.gov/Portals/9/Additional-Resources/Letters-and-Notices/ACLs/2020/20-49.pdf>

⁷⁸⁹ ACL 20-29 (March 30, 2020) available at <https://www.cdss.ca.gov/Portals/9/Additional-Resources/Letters-and-Notices/ACLs/2020/20-29.pdf>

⁷⁹⁰ Id.

⁷⁹¹ Id.

⁷⁹² ACL 20-41 (April 17, 2020) available at <https://www.cdss.ca.gov/Portals/9/Additional-Resources/Letters-and-Notices/ACLs/2020/20-41.pdf>

⁷⁹³ Id.

⁷⁹⁴ Welf. & Inst. Code § 12300.4(b)(5); ACL 16-01; ACL 16-36 (April 21, 2016), available at: <http://www.cdss.ca.gov/lettersnotices/EntRes/getinfo/acl/2016/16-36.pdf>.

⁷⁹⁵ Id.

⁷⁹⁶ ACL 20-32 (April 10, 2020) available at <https://www.cdss.ca.gov/Portals/9/Additional-Resources/Letters-and-Notices/ACLs/2020/20-32.pdf?ver=2020-04-13-075546-460>; All County Program Managers Letter (March 19, 2020) available at https://www.cdss.ca.gov/Portals/13/Homepage/IHSSPML_GovEO_031920.pdf

⁷⁹⁷ Id.

⁷⁹⁸ ACL 18-01 (Jan. 9, 2018) available at <https://cdss.ca.gov/Portals/9/ACL/2018/18-01.pdf?ver=2018-01-12-112939-430>; ACL 18-83 (June 29, 2018) available at: <https://cdss.ca.gov/Portals/9/ACL/2018/18-83%20.pdf?ver=2018-07-10-160550-540>

⁷⁹⁹ ACL 20-40 (April 14, 2020) available at https://mcusercontent.com/73901133dd7ea1a5581344daf/files/247cd18d-a00e-4bce-822e-fe3cfba6cef7/20_40.pdf

⁸⁰⁰ Id. If the provider works less than 160 hours per month, the county must calculate an average of monthly paid hours for the previous six months, for all the recipients for whom the provider works, and divide the number of hours in half, which results in the average hours for a 2-week period. If a provider has less than six months of employment history, the county staff shall use the hours available in the payment history

in CMIPS for the calculation.

⁸⁰¹ Id.

⁸⁰² Id.

⁸⁰³ Id.