

# In-Home Supportive Services Protective Supervision

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Protective supervision is an IHSS service for people who, due to a mental impairment or mental illness, need to be observed 24 hours per day to protect them from injuries, hazards or accidents. An IHSS provider may be paid to observe and monitor a disabled child or adult when the person can remain safely at home if 24 hour supervision is provided. MPP 30-757; MPP 30-757.173(a).

Protective supervision services can be difficult to obtain and will require clear documentation of the need for the service. This publication is meant to help you understand the eligibility criteria for obtaining protective supervision and help you challenge a denial of protective supervision services. This publication contains the attached material, which you will need in order to request protective supervision and prepare for a hearing.

- 1) Assessment of Need for Protective Supervision for In-Home Supportive Services Program (SOC 821 (3/06)). - This form should be completed by the IHSS recipient's doctor.
- 2) Protective Supervision Sample Doctor's Letter. – The IHSS recipient's doctor should provide a more detailed letter explaining the need. The recipient's doctor will also need a copy of the recipient's Hazard or Injury log in order to write this letter.
- 3) Protective Supervision 24-Hours-a-Day Coverage Plan (SOC 825 (6/06)). – You should complete this form.

## **Why is protective supervision important?**

The IHSS program is comprised of four programs which will be discussed later. People who qualify for protective supervision are eligible for the maximum number of monthly hours, either 195 or 283. However, the maximum number of hours needed depends on which of the four programs apply and whether a recipient is considered “severely impaired.” The total number of hours authorized (i.e. hours a recipient can get) may also be adjusted due to the receipt of alternative resources. IHSS recipients should refer to their Notice of Action to see which IHSS program they have been placed in and how their hours were determined by the county.

### **The four IHSS programs and the maximum amount of hours individuals may receive are:**

- The IHSS Residual Program (IHSS-R)

Non-severely impaired individuals can receive up to a maximum of 195 hours a month when receiving Protective Supervision. Severely impaired individuals receive 283 hours per month. (Welfare and Institutions Code § 12303.4.)

- The Personal Care Services Program (PCSP)

Consumers enrolled in PCSP are eligible to receive a maximum of 283 hours per month regardless of whether they are designated non-severely or severely impaired. (All County Letter 93-21 (March 16, 1993) at

<http://www.cdss.ca.gov/lettersnotices/entres/getinfo/acl93/93-21.PDF>

- The IHSS Plus Option (IPO)

Non-severely impaired individuals can receive up to a maximum of 195 hours a month when receiving Protective Supervision. Severely impaired individuals receive 283 hours per month. (Welfare and Institutions Code § 14132.952; All County Letter 11-19 (February 23, 2011) at

<http://www.cdss.ca.gov/lettersnotices/entres/getinfo/acl/2011/11-19.pdf>

and,

- The Community First Choice Option (CFCO)

Non-severely impaired individuals can receive 195 hours of protective supervision services, plus hours for other services, up to a maximum of 283 hours per month. (All County Letter 14-60, see (August 29, 2014) at

<http://www.cdss.ca.gov/lettersnotices/EntRes/getinfo/acl/2014/14-60.pdf>

## **How to qualify as Severely Impaired?**

To qualify as “severely impaired” an individual must need twenty or more hours per week in the area of non-medical personal services, meal preparation, meal clean up when preparation of meals and feeding are required, and paramedical services (MPP 30-701(s)(1)).

## **When is IHSS protective supervision available?**

Individuals eligible for protective supervision must have:

- 1) A “mental impairment” or “mental illness” that causes functional limitations in:
  - Memory (e.g. forgetting things, people, places, to start or finish a task, etc.)
  - Orientation (e.g. inability to recognize and adapt to time, people, places, environment, surroundings etc., needed to live and complete tasks.)
  - Judgment (e.g. making decisions which put the individual’s health and/or safety at risk),

And

- 2) The impairments must cause the recipient to experience confusion and an inability to self-direct his or her behaviors so as to keep himself or herself safe and free from harm or injury. MPP 30-757.171. For example, an IHSS recipient who does not understand what he can or cannot do and, without protective supervision, would be at risk of injury from trying to do things beyond his capabilities. Such severe impairments may occur with mental retardation, autism, Alzheimer’s, dementias, and psychiatric disabilities. **However, having one of**

**these disabilities alone does not automatically qualify an IHSS recipient for protective supervision.**

And

- 3) The county must also determine that the recipient needs to be observed twenty-four-hours-a-day in order for the recipient to safely remain at home. MPP 30-757.173. This does not mean that the provider has to be present and watching the individual at all times. It can include observing an individual in some alternative way while an individual is left alone for a brief, fixed period of time. MPP 30-172.(b)(3) and ACL 98-87.

County staff is also required to explain the availability and need for protective supervision services and whether or not out-of-home care would be an appropriate alternative to protective supervision. MPP 30-757.174.

### **When is Protective Supervision not available?**

Protective supervision will be denied if the need for protective supervision is for:

- Friendly visiting or social activities
- When the need is caused by a medical condition and the person needs medical supervision (e.g. watching a recipient and suctioning or turning the recipient to prevent affixation)
- In anticipation of a medical emergency (e.g. serious impairment to bodily functions or serious dysfunction of any body part or organ part. Examples include stroke, seizure or heart or asthma attack).
- To control and anti-social or aggressive recipient behavior (e.g. getting into fights or destroying property).
- To guard against deliberate (i.e. after careful consideration of the effect and consequences) self-destructive behavior, such as suicide, or when the individual knowingly intends to harm himself/herself. (MPP 30-757.172)

### **Is protective supervision available for children?**

Yes. A child can receive protective supervision. However, the child must need closer supervision than other children of the same age.

County staff must assess all children's mental functioning on an individualized basis and provide protective supervision based on individualized need. All children with a mental impairment must be assessed for protective supervision.

Children may not be denied protective supervision based on:

- Age alone,
- Because the child has not had a recent injury,
- Because the parent leaves the child alone for a fixed period of time, like five minutes.

The county must consider all facts in determining need for protective supervision including things like age, lack of injuries, parental absence.

The county must also talk with the child's parent or guardian about the availability and eligibility for protective supervision and not assume the parents or guardian can provide the services for free. (ACL 98-87)

## **Documenting behaviors due to mental impairment or illness to show eligibility for protective supervision**

To demonstrate eligibility for protective supervision you will need to provide documentation that shows that because of a mental impairment or mental illness, the IHSS recipient is at risk of injury if left unsupervised at any time during a twenty-four hour day. The documentation must provide examples of things the recipient will do things to hurt themselves or put them in harm's way when left alone.

If you cannot identify any dangerous behaviors the recipient has or things the recipient will do that will cause injury or make the recipient unsafe when left alone, it is likely your request for protective supervision will be denied.

You should make sure to keep a copy of all of the documentation you gather to show eligibility for protective supervision services.

### **1) Create a hazard/Injury Log**

The best way to show eligibility (i.e. a need for protective supervision) is by creating a list or log to document every accident/injury or, near accident/injury the recipient had, within the past six (6) months or longer if necessary.

The log or list you make should describe every action the recipient has taken that might cause injury, or has put the recipient at risk of injury or harm, and how often it happens.

Some examples of these types of behaviors include: leaving lit cigarettes throughout the home, using a SOS pad to bathe and clean himself or herself, wandering out of the house and getting lost, letting strangers in, turning the stove on and forgetting to turn it off, lighting small fires around the home, leaving water running, eating dangerous products or unhealthy foods, head banging, self-biting and scratching, using knives or other unsafe household objects, climbing onto a high place and jumping off because he or she is trying to fly, hiding in the refrigerator, sticking fingers in light bulb socket to see if electricity works, wandering into the street without regard for oncoming traffic, jumping into a swimming pool without knowing how to swim, trying to move furniture when the individual lacks needed balance and strength, trying to get out of bed when the individual lacks needed ability to use or control muscles, performing any task beyond the individual's mental or physical ability that would cause injury or harm to the recipient.

If the recipient has not had an accident or put himself/herself in a dangerous situation recently, explain why. For example, the individual is watched 24 hours a day by the IHSS caregiver and family members to prevent accidents. Explain the actions caregivers and family members have had to take to prevent injury or accidents.

You may also want to create a note section in the hazard/injury log that talks about how the recipient's home cannot be modified or made entirely safe and/or the alternative way in which the individual is watched when the IHSS recipient must be left alone for a brief, fixed period of time (if applicable). For example, the recipient may be left alone twice a month for the family member to go shopping for no longer than 2 hours and the recipient is watched by receiving a phone call at home every 20 minutes.

## **2) Obtain additional letters to document the need for protective supervision**

Obtain a letter from the regional center or any other resources such as a day program or school program. The letter should contain the following information:

Obtain a letter from the regional center or any other resources such as a day program or school program. The letter should contain the following information:

- The recipient's age,
- Information about the recipient's mental impairment(s) and/or mental illness,
- Information about the severity of the functional limitations caused by impairments in the area of memory, orientation, and judgment,
- A description of how limitations in the in area of memory, orientation and judgment cause confusion and non-self-directing behaviors (e.g. inability to identify places, time, people, etc.),
- Information about whether or not the individual needs to be observed and monitored to keep them safe and why (e.g. when the recipient does things which are unsafe, the individual is verbally redirected and the behavior is stopped),
- Provide examples about unsafe behaviors the individual has and how often they occur.

## **Obtaining medical documentation of the need for protective supervision**

### **1) Obtain an "Assessment of Need for Protective Supervision for In-Home Supportive Services Program" (SOC 821 (3/06)) form completed by the recipient's doctor**

You should obtain a current SOC 821 completed by the recipient's doctor when requesting protective supervision services. Keep a copy of the form for your records. The county will use this form to collect information and make a determination about the need for protective supervision. The SOC 821 form can be downloaded at:

<http://www.cdss.ca.gov/cdssweb/entres/forms/English/SOC821.PDF>

The form can only be signed by a medical professional with a medical specialty or scope of practice in the area of memory, orientation, and judgment. MPP 30-757.173(a)(1)(A).

The SOC 821 form will ask the recipient's doctor for information about the recipient's function in the areas of memory, orientation and judgment. The form will also ask for information about any injury or accident the recipient has had due to deficits in the area of memory, orientation and judgment

and whether or not the individual can physically put himself or herself in dangerous situations.

Many times, the county will grant protective supervision if a recipient's doctor marks the "yes" boxes in questions one and two of the SOC 821 form and marks the "severe" boxes in all areas of functioning, and will deny protective supervision to everyone else. However, the county is supposed to use the SOC 821 form in conjunction with other pertinent information to assess the need for protective supervision. The (SOC 821) form alone shall not be used to show eligibility for protective supervision. (Welfare and Institution Code § 12301.21 and MPP 30-757.173(a)(2) and (3)).

**Note:** If a recipient's doctor completed the SOC 821 (3/06) form in the past and indicated that the recipient did not need protective supervision and has indicated a need for protective supervision on the newly completed SOC 821, the doctor should explain why there has been a change in need. For example if the recipient's functional limitations have become more severe or if the doctor previously checked the wrong box or did not know how to complete the form, the doctor should explain this in the newly completed SOC 821 form.

## **2) Obtain an additional doctor's letter documenting the need for protective supervision (Attachment 1)**

Obtain a doctor's letter documenting the recipient's disability (mental illness or mental impairment), functioning level, age, and describing how the disability causes poor judgment, confusion, poor memory, or disorientation. You may use the form at the end of this publication to obtain the information described above from the recipient's doctor.

The doctor must have some knowledge of the individual's behaviors and physical and mental ability to put himself or herself in dangerous situations to be able to properly complete the form in this packet or to provide a letter with useful information about how a recipient's impairments prevent the individual from being left alone. You can provide the recipient's doctor with a copy of your hazard/injury log in order to share information with the doctor about dangerous behaviors a recipient has that prevents the person from being left alone at any time during a twenty-four hour day.



## **Other forms needed to obtain protective supervision**

### **1) A “PROTECTIVE SUPERVISION 24-HOURS-A-DAY COVERAGE PLAN” (SOC 825 (6/06)) form completed by you**

If you are requesting 24-hour protective supervision, you must also complete a SOC 825 form. This form requires you to provide information about how twenty-four hour protective supervision will be provided. MPP 30-757.173(a)(1)(A)(5). Although the form says, “Optional County Use Form” we advise completing this form.

This form is available at your local county welfare office. It can be found on the internet at

<http://www.cdss.ca.gov/cdssweb/entres/forms/English/soc825.pdf>

## The county says I don't need protective supervision. What do I do?

Counties have many common reasons for telling someone they are not eligible for protective supervision. Below is a list of common county justifications and some possible responses.

<b><u>Is there a severe mental impairment?</u></b>	
<b>County Justification</b>	<b>Some Responses</b>
Severe mental impairments not observed on home visit.	Your daily log, doctor's statement, regional center records; home visit too short, observed behavior and didn't answer guidelines questions; dementia patients show only "good days" to visitors; Form SOC 293, Line H shows 5 for one mental impairment.
Needs protective supervision because of physical impairment, not mental impairment.	Because of mental impairment does not understand physical impairments, does not understand or appreciate consequences of actions on physical impairments - i.e., tries to get up or walk without assistance when cannot do so without risk of injury, will eat sweets even though risks injury because of diabetes, will try to remove bandage, tubing or brace because it hurts or is irritating, etc.
Physical impairments cause dangerous behavior.	Mental impairments also cause unsafe behavior; not required to show mental is only cause.

**Is there dangerous behavior at home?**

<b>County Excuse</b>	<b>Some Responses</b>
Formal diagnosis of mental condition doesn't prove need.	Doctor's statement of typical behavior for person with that diagnosis.
No injuries in the recent past.	Recipient was well supervised.
No evidence of dangerous behavior during county worker's home visit.	Frequency not hourly; missed day before and after; can't generalize from one hour to 24 hours in a day.
"Complete" physical paralysis prevents recipient from doing anything.	Any purposeful action that is dangerous, e.g., pulling out catheter, G-tube, etc.

## **Other IHSS & protective supervision resources**

Disability Rights California has publications and other useful information on its website about IHSS, available at <https://www.disabilityrightsca.org/publications/in-home-supportive-services-ihss>.

Disability Rights California also provides free services to Californians with disability on issues related to disability. To get help you can contact Disability Rights California by calling 1-800-776-5746 to request an intake.

The California Department of Social Services publishes its regulations, called the “Manual of Policies and Procedures,” or “MPP,” on its website at <http://www.cdss.ca.gov/inforesources/Letters-Regulations/Legislation-and-Regulations/Adult-Services-Regulations>.

The California Department of Social Services publishes its All County Letters (ACLs) and All County Information Notices (ACINs) on its website at <http://www.cdss.ca.gov/inforesources/Letters-Regulations/Letters-and-Notices/All-County-Letters>.

# **Attachment 1**

## **Protective Supervision Overview**

In order to be eligible for protective supervision a person must have a mental illness or mental impairment that causes behaviors like: poor judgment (making bad decisions about health or safety), confusion/disorientation (wandering off, getting lost, mixing up people, days or times) or bad memory (forgetting to start or finish something). Such impairments may occur with mental retardation, autism, Alzheimer's and dementias, and psychiatric disabilities. Protective Supervision consists of watching someone in order to keep them safe.

Protective supervision is not available for:

- Friendly visiting or social activities.
- When the need is caused by a medical condition and the person needs medical supervision.
- In anticipation of a medical emergency.
- To control and anti-social or aggressive behavior.

## **Sample of what should be in a Doctor's Letter**

In order to show that an IHSS recipient is eligible for protective supervision the IHSS recipient must obtain proof (in the form of a doctor's letter) from their doctor about their need for the service. A doctor's letter should describe the individual's disability (mental illness or mental impairment), functioning level, functional impairments, his age, and describes how his or her disability causes poor judgment, confusion, poor memory, or disorientation and provide examples of the dangerous behaviors the individual has which he or she does not realize are dangerous.

The letter should also provide answers to the following questions on the next page or complete the form on the next page in addition to writing a letter about an individuals need for protective supervision.

Beneficiary Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Diagnosis: \_\_\_\_\_

Prognosis: \_\_\_\_\_

1. Does the individual have a mental impairment or cognitive impairment as a result of their disability?

Please check the appropriate answer:  Yes or  No

2. Does the mental impairment or cognitive impairment prevent the individual from being left alone?

Please check the appropriate answer:  Yes or  No

3. Are the behaviors described in individuals Hazard and Injury Log consistent with the individual's diagnosis?

Please check the appropriate answer:  Yes or  No

4. Can the individual's disability be expected to cause the kind of behaviors caused in the Hazard and Injury Log?

Please check the appropriate answer:  Yes or  No

5. Can the disability affect an individual's judgment regarding safety?

Please check the appropriate answer:  Yes or  No

6. Please provide a brief explanation of the above answer and a description of the beneficiary's functional limitations:

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I have provided the above information to the best of my knowledge.

Signed by: \_\_\_\_\_ Date: \_\_\_\_\_



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*Disability Rights California is funded by a variety of sources, for a complete list of funders, go to <http://www.disabilityrightsca.org/Documents/ListofGrantsAndContracts.html>.*