

**DISABILITY RIGHTS CALIFORNIA
CALIFORNIA DEPARTMENT OF SOCIAL SERVICES
CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES
SETTLEMENT AGREEMENT**

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I. PARTIES

The parties to this Settlement Agreement (“Agreement”) are:

- a. The California Department of Social Services (“CDSS”) and the California Department of Health Care Services (“DHCS”); and
- b. Disability Rights California (“DRC”).

II. PURPOSE

The purpose of this Agreement is to settle disputes and controversies regarding CDSS and DHCS regulations, policies, practices, and procedures which required proration of In-Home Supportive Services (IHSS) protective supervision (PS) services in shared living arrangements.

III. RECITALS

WHEREAS, in a letter dated November 4, 2019, DRC alleged that CDSS and DHCS regulations, policies, practices, and procedures which required proration of IHSS PS services in shared living arrangements violated IHSS statutes, the Americans with Disabilities Act (ADA) and other anti-discrimination laws, the Medicaid Act, including its Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) requirements, and the equal protection requirements of the state and federal Constitutions.

WHEREAS, the parties entered a Structured Negotiation Agreement (SNA), attached as Exhibit 1, for the purpose of protecting the interests of all Parties during the pendency of negotiations concerning DRC’s claims related to CDSS and DHCS regulations, policies, practices, and procedures which required proration of IHSS PS services in shared living arrangements.

WHEREAS, the SNA provides that negotiations between the parties includes the enforcement of, and consideration of revisions to, CDSS and DHCS regulations, policies, practices, and procedures which required the automatic proration of IHSS PS services in shared living arrangements

and/or the deduction of alternative resources and other IHSS services from prorated IHSS PS services in shared living arrangements, among other topics.

WHEREAS, CDSS reinstated the IHSS PS services without proration for DRC clients listed in Exhibit B of the SNA, retroactive to the date of the Notice of Action (NOA) at issue in the hearing decision identified in Exhibit B of the SNA, and payment of retroactive hours has been made in accordance with Exhibit B of the SNA.

WHEREAS, proration of IHSS PS has been removed from the DRC clients listed in Exhibit G of the SNA as specified in ACL 20-111, and the DRC clients listed in Exhibit G have agreed to withdraw their pending hearing requests related to IHSS PS Proration.

WHEREAS, in accordance with the negotiations between the parties, the California Governor eliminated the proration of IHSS PS services in shared living arrangements in the budget for fiscal year 2020-2021, effective July 1, 2020.

WHEREAS, CDSS released All County Letter (ACL) 20-111 on October 13, 2020 which informed counties of the elimination of proration of IHSS PS services in shared living arrangements effective July 1, 2020; instructed counties to no longer enforce CDSS Manual of Policies and Procedures (MPP) section 30-763.331 while CDSS pursues its repeal; and directed counties to adjust the authorized hours for impacted recipients retroactive to July 1, 2020, as soon as administratively feasible, but no later than each recipient's next scheduled reassessment, or immediately upon request from a recipient.

WHEREAS, CDSS' standard business practice is to provide its State Hearings Division with all ACLs and policy directives, and the State Hearings Division has been provided ACL 20-111.

WHEREAS, on October 28, 2020, CDSS provided each county with a list of IHSS recipients in their county whose authorization for protective supervision was prorated due to a shared living arrangement in order to expedite the implementation of the elimination of proration of IHSS PS services in shared living arrangements.

WHEREAS, the SNA further provided interim resolutions for specified DRC clients whose IHSS PS services had been prorated due to a shared living arrangement, including the resolution of seven individual petitions for writs of administrative mandate filed in the Superior Court of California, County of Sacramento.

WHEREAS, the parties enter into this Agreement in order to avoid additional expense, uncertainty, and diversion of resources caused by protracted litigation.

AGREEMENT

Now, therefore, in consideration of the foregoing recitals, and the following terms and conditions, and for good and valuable consideration, the receipt and adequacy of which is hereby expressly acknowledged by each of the parties, the parties covenant and agree as follows:

IV. DEFINITIONS

As used in this Agreement, the following terms are defined as shown below:

- A. “Alternative resources” means services available from other agencies or programs to help meet the needs of an IHSS recipient, such as an adult or child day care center, senior center, or community resource center, as set forth in MPP §§ 30-763.6 and 30-757.171(a)(2).

- B. “Authorized representative” means a person, including but not limited to an attorney, relative, or friend, authorized by an IHSS applicant or recipient to act on their behalf, as set forth in MPP § 30-002(r)(3).
- C. “Case Management, Information and Payrolling System” (CMIPS) means the information technology system provided for under California Welfare and Institutions Code § 12317 that processes IHSS provider payroll and is used to maintain and manage IHSS recipient case files, which may be referred to as CMIPS, CMIPS II, and/or any other updates to the name for this system.
- D. “Individual need” means the personal needs and circumstances of an IHSS recipient, as determined through an individualized needs assessment, for services necessary to remain living safely at home, as required by California Welfare & Institutions Code § 12301(a) and 12301.1(a).
- E. “In-Home Supportive Services” means California’s home-based service program that provides supportive services that allow eligible aged, blind and disabled individuals to live independently in the community, as set forth at California Welfare & Institutions Code sections 12300-12330, 14132.95, and 14132.96.
- F. “Prorated” or “proration” means the treatment of IHSS protective supervision as a need met in common between two or more recipients living in the same home, resulting in the authorized hours of protective supervision being divided among the recipients.
- G. “Protective supervision” means services for IHSS recipients who are nonself-directing and, due to a mental impairment or mental illness, need to be observed 24 hours per day to protect them from injuries,

hazards or accidents, as set forth in California Welfare & Institutions Code § 12300(b) and MPP §§ 30-757.171 – 30-757.174.

V. ELIMINATION OF IHSS PS PRORATION

CDSS and DHCS shall take the following actions to eliminate the proration of IHSS PS services:

- A. Ensure all counties have ceased or will cease enforcement of MPP Section 30-763.331, retroactive to July 1, 2020, and that benefits are issued to impacted recipients retroactive to July 1, 2020.
- B. If CDSS or DHCS become aware that any guidance, policies, practices, and procedures issued requiring proration of IHSS PS remain, they shall be rescinded, updated, or revised to be consistent with the elimination of IHSS PS proration.
- C. CDSS will update its Social Worker Training Academy materials to reflect the elimination of PS proration prior to September 1, 2021.
- D. CDSS will submit a regulations package to the Office of Administrative law proposing the repeal of MPP Section 30-763.331 within 300 calendar days of the execution of this Agreement. CDSS will endeavor to meet this timeline in good faith, however, if there is a delay due to unforeseen circumstances, CDSS will provide DRC with advance notice, an explanation, and a new timeline for completing its commitment to submit the regulations package.
- E. Within 60 days of the repeal of MPP Section 30-763.331, CDSS and DHCS shall:
 1. Ensure that CMIPS and/or any other applicable program is programed to deduct alternative resources and other IHSS hours from the total need for IHSS PS of 168 hours weekly, in accordance with state law.

2. Issue a new ACL informing counties when MPP Section 30-763.331 is repealed.
 - i. CDSS shall provide DRC a draft of the ACL for review and comment one week in advance of the regular IHSS stakeholder review process. CDSS shall give DRC's comments due consideration, revising the ACL accordingly.
 3. Inform State Hearings Division Administrative Law Judges that MPP Section 30-763.331 has been repealed and that the authorization of IHSS PS services without proration must still be retroactive to July 1, 2020.
- F. CDSS shall eliminate the PS proration field in CMIPS upon the completion of other urgent system changes and at such time that other changes are made within the full assessment automation functionality, anticipated to occur within two years, unless unforeseen circumstances result in necessary CMIPS system changes take precedence. If there is a delay due to unforeseen circumstances, CDSS will provide DRC with advance notice, an explanation, and a new timeline for completing its commitment to complete these system changes.

VI. DRC CLIENTS

- A. CDSS and DHCS shall not rescind the resolutions for DRC clients provided in the SNA. Notwithstanding, all DRC clients remain subject to annual IHSS reassessments at which time their authorized IHSS hours may be changed consistent with IHSS program rules, regulations, and/or policies.
- B. The CDSS State Hearings Division shall accept rehearing requests from DRC for individuals whose IHSS PS was prorated following a hearing decision that failed to individually assess their need for IHSS PS, so long

as the hearing decision is within the applicable statute of limitations to be challenged by the individual filing a writ of mandate pursuant to Code of Civil Procedure § 1094.5. These rehearing requests shall be considered timely and CDSS shall either grant or deny the rehearing request within 45 working days of its submission. Thereafter, the case will be scheduled for the rehearing consistent with all applicable statutory and regulatory timeframes.

VII. CONFIRMATION OF COMPLIANCE

CDSS shall provide DRC with information regarding the implementation of the elimination of IHSS PS proration as follows:

- A. CDSS shall run a data search in March 2021 and October 2021, to determine if all counties have complied. CDSS shall provide DRC with a report of the number of recipients subject to IHSS PS proration, if any, as a result of these data searches.
- B. If the data searches set forth in Paragraph VII.A. indicate that any IHSS recipients remain subject to IHSS PS proration, CDSS shall contact all applicable counties and ensure that IHSS PS proration is removed from such cases retroactive to July 1, 2020, and provide DRC with confirmation when CDSS determines that the removal of IHSS PS proration is complete.

VIII. ATTORNEYS' FEES AND COSTS

DHCS and CDSS agree to pay Disability Rights California the amount of \$286,966.27 in full and final settlement for any attorneys' fees and costs incurred in resolving DRC's claims related to IHSS PS proration and its representation in the seven Petitions for Writ of Mandate filed for DRC clients in accordance with the SNA. DHCS shall pay forty percent (40%) of the total amount of attorneys' fees and costs and CDSS shall pay the remaining sixty percent (60%). DRC has

requested that DHCS and CDSS shall make payment by check payable to “Disability Rights California.” DRC will complete and return to DHCS and CDSS the form entitled “Payee Data Record” (standard form 204), that provides the name, address, and tax identification number of Disability Rights California for tax-reporting purposes.

A. DHCS agrees to seek an appropriation and budget authority for the agreed-upon amount during the next available budget cycle, within the Governor’s Proposed Budget Process for the applicable State Fiscal Year. After DHCS obtains an appropriation or budget authority, as applicable, and once the funds are available to be processed, DHCS agrees to submit payment in the amount of \$114,786.51 to DRC. If payment is not made within 90 days of the effective date of the appropriation or budget authority obtained, whichever is sooner, DHCS shall be responsible to pay interest on the payment, pursuant to Civil Code section 3287, subdivision (c), from the 91st day after the effective date of the appropriation or budget authority obtained, as applicable, until the date payment is rendered in full. DRC agrees that any payment pursuant to this paragraph is contingent upon DHCS obtaining the necessary appropriation and budget authority. DRC agrees that the payment of the sum of \$114,786.51 under this paragraph shall constitute full and complete satisfaction of all claims for attorneys' fees and costs against DHCS arising out of this DRC’s claims related to IHSS PS proration addressed herein through the date of execution of this Agreement and its representation in the seven Petitions for Writ of Mandate filed for DRC clients in accordance with the SNA, and upon receipt of this payment, DRC releases DHCS from any further liability for DRC’s attorneys' fees and costs through the date of execution of this Agreement.

B. CDSS agrees to submit payment in the amount of \$172,179.76 to DRC.

If payment is not made within 90 days of CDSS' receipt of this Agreement executed by all parties, CDSS shall be responsible to pay interest on the payment, pursuant to Civil Code section 3287, subdivision (c), from the 91st day after CDSS' receipt of this Agreement executed by all parties, until the date payment in the amount of \$172,179.76 is rendered in full. DRC agrees that the payment of the sum of \$172,179.76 under this paragraph shall constitute full and complete satisfaction of all claims for attorneys' fees and costs against CDSS arising out of this DRC's claims related to IHSS PS proration addressed herein through the date of execution of this Agreement and its representation in the seven Petitions for Writ of Mandate filed for DRC clients in accordance with the SNA, and upon receipt of this payment, DRC releases CDSS from any further liability for DRC's attorneys' fees and costs through the date of execution of this Agreement.

IX. DISPUTE RESOLUTION PROCESS

The parties hereby agree to employ the following Dispute Resolution Mechanism (DRM) to initiate the process of addressing any concern, by any of the parties. Any claim, dispute, or other matter in controversy related to this Agreement, or the breach, implementation, or performance thereof ("dispute") shall be settled or otherwise resolved according to the procedures set forth below.

A. Informal DRM: The parties will initially raise their respective concerns informally via informal communication with the other parties, with the understanding that a vast majority of disputes arising out of or related to this agreement will involve issues that can be resolved informally through the exchange of e-mail, letters, and/or telephone calls.

B. Formal DRM: If a dispute cannot be resolved by the parties using the informal means described above, the parties will use the following formal DRM procedures:

1. The affected party shall send a letter to the other parties, notifying them that, for the particular dispute, the formal DRM is invoked, and explaining the concern that evaded resolution using informal DRM.
2. Upon the receipt of such a letter, the parties will agree to meet and confer at a mutually agreed-upon time and date, no later than 30 days from receipt of the letter. If an in-person meeting is not feasible, or if the parties mutually agree, the meet and confer may occur by telephone.
3. Following the initial meet and confer, the parties will have 30 days to resolve the issue, unless the parties agree otherwise. If the dispute remains unresolved after the meet-and-confer period, then the parties shall engage the services of a mutually agreed-upon mediator.
4. The DRM mediation period shall begin immediately after the conclusion of the meet-and-confer period and continue for 45 days, including the time to engage the mediator, unless the parties mutually agree to extend or shorten such time.
5. After the 45-day mediation period concludes, the parties may resort to state and/or federal legal action as they deem necessary and appropriate.

X. NOTICES TO PARTIES

A. Representations and Warranties

1. The parties represent and warrant that they are voluntarily entering into this Agreement as a result of arm's-length negotiations.
2. Each individual executing this Agreement on behalf of any other person or entity does hereby represent and warrant to the other parties that he or she has the authority to do so.

B. Construction: All parties to this Agreement have participated in its drafting and, consequently, any ambiguity shall not be construed for or against any party.

C. Notices: Any notice or communication provided under this Agreement shall be made in writing and shall be delivered or sent by email and/or by registered mail or Federal Express to the addresses below or to such other addresses as may be specified in writing by any party.

To DRC:

Nicholas Levenhagen
Disability Rights California
530 B St., Suite. 400
San Diego, CA 92101
Telephone: (619) 239-7861
Fax: (619) 239-7906
Email: Nicholas.Levenhagen@disabilityrightsca.org

To CDSS:


Jocelyn Colbert
California Department of Social Services
744 P Street
Sacramento, CA 95814
Telephone: (916) 654-0859
Email: Jocelyn.Colbert@dss.ca.gov

To DHCS:
Jennifer A. Chmura
California Department of Health Care Services
Office of Legal Services
P.O. Box 997413
Sacramento, CA 95899-7413
Telephone: (916) 345-8362
Email: Jennifer.Chmura@dhcs.ca.gov

- D. Severability: The provisions of this Agreement are severable. If any court holds any provisions of this Agreement invalid, that invalidity shall not affect the other provisions of this Agreement.
- E. Amendment: This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by all parties.
- F. Binding Effect: This Agreement binds and inures to the benefit of the parties hereto, their assigns, heirs, administrators, executors, and successors-in-interest.
- G. Counterparts: This Agreement may be executed in counterparts, each of which will be deemed to be an original and all of which taken together shall constitute a single instrument. This Agreement may be executed by signature via facsimile transmission or electronic mail which shall be deemed the same as an original signature.

XI. SIGNATURES

For California Department of Social Services:

Dated: 04/21/2021 By: 
DEBRA THOMSON, Deputy Director

For California Department of Health Care Services:

Dated: April 20, 2021

By: Will Lightborne

Will Lightborne

For Disability Rights California

Dated: April 20, 2021

By: Nicholas Levenhagen

Nicholas Levenhagen