County of Orange Social Services Agency
Family Self-Sufficiency & Adult Services Division

Program/Area: Adult Services/In-Home Supportive Services
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PURPOSE

To provide information and guidelines for implementing the provisions of Senate Bill (SB) 855 and SB 873 relating to the In-Home Supportive Services (IHSS) and Waiver Personal Care Services (WPCS) programs.

POLICY

SB 855 and SB 873 established limits on the number of authorized hours providers in the IHSS and WPCS programs are permitted to work in a workweek. Providers will be paid overtime within certain limits and will receive compensation for travel time and wait time under certain circumstances. IHSS will implement the new provisions in accordance with the Welfare and Institutions Code (WIC) sections 12300.4, 12300.41 and 12301.1.

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BACKGROUND

On October 1, 2013, the United States Department of Labor (DOL) published the Final Rule on the Application of the Fair Labor Standards Act (FLSA) to Domestic Service (RIN 1235-AA05). The Final Rule extends the protections of the FLSA to IHSS/WPCS providers by effectively removing the ability of "third party" agencies to claim an exemption for personal care workers from the minimum wage and overtime pay as providers of "companionship services" or as live-in providers. Requirements under the FLSA are applicable to IHSS providers including compensation for providers traveling between multiple recipients and medical accompaniment that includes wait time as part of the service shall have that wait time compensated in certain situations. This was scheduled to go into effect January 1, 2015.

On December 22, 2014, and January 14, 2015, the United States District Court for the District of Columbia vacated the Final Rule. As a result of the decision, on January 15, 2015, the California Department of Social Services (CDSS) announced a halt to the implementation of the changes related to the workweek, overtime, and travel time requirements for all IHSS providers which had been initially scheduled to go into effect on January 1, 2015.

On August 21, 2015, the Appellate Court for the District of Columbia Circuit reversed the District Court's decisions. This effectively reinstated the Final Rule adopted by the DOL. As a result, CDSS is reinstating the implementation of the workweek, overtime, and travel time requirements for IHSS providers in California.

On November 6, 2015, the State announced that the payment of overtime, travel time, and wait time compensation to providers of IHSS and WPCS would be implemented as of February 1, 2016.

DEFINITIONS

Engaged to Wait / Wait Time-On Duty
A provider is not performing work duties but he/she is unable to use the time effectively for his/her own purposes. This is for routine medical appointments. These periods of time are generally unpredictable and usually of short duration (less than 30 minutes). The wait time is an integral part of the job and is controlled by the recipient (employer).

Exemption
A request by an IHSS recipient to a county to allow his/her IHSS provider to adjust his/her workweek schedule to accommodate for working additional hours during a particular workweek, which will cause the provider to work and be compensated for overtime hours.

Flexible Hours
The number of hours approved to exceed weekly overtime limits when a temporary need or a re-occurring need arises for a recipient. This type of hour allowance may or may not require county approval prior to the adjustment. This

terminology replaces the work “exception” to keep from mistaking it with “exemptions”.

Maximum Weekly Hours
The total number of IHSS services hours a recipient may have providers work per workweek. The recipient’s authorized hours divided by four equals the number of hours a recipient’s provider may work up to for that recipient.

Monthly Authorized Hours
The total number of IHSS service hours a recipient is authorized per month.

Overtime
Any hours worked over 40 hours in a workweek. Overtime is paid at a rate equal to one and one-half times the regular rate of hourly pay.

Travel Time
The time spent traveling directly from one location where an individual provides services for a recipient to another location where he/she provides services for a different recipient. A provider may be paid up to 7 hours of travel time per workweek.

Wait Time
Refers to compensation for wait times at medical appointments/Alternative Resources sites when the provider is required to wait “on duty” for a recipient.

Waiting to be Engaged / Wait Time – Off Duty
A provider is completely relieved from performing work duties and he/she has enough time to enable him/her to use the time effectively for his/her own purposes. The provider must be informed in advance that he/she may leave the job and that he/she will not have to resume work until a specified time.

Workweek
The period beginning at 12:00am on Sunday and including the next consecutive 168 hours, terminating at 11:59pm the following Saturday.

Violations
Consequences providers incur when workweek and travel time limits are not followed. Under State rules, violations are progressive in nature proceeding through levels 1-4.

PROCEDURE

<u>Overtime Compensation and Overtime Limits</u>
The maximum hours an IHSS provider can claim on his/her timesheet depends on the number of recipients for whom the provider works. In no case can the provider exceed the recipient’s number of monthly authorized hours.

Scenarios of maximum workweek hours:

1. *Single provider working for a single recipient:* The provider may work all of the recipient's monthly authorized hours (up to 283 hours) as they are the sole provider. The weekly maximum number of hours will never exceed 70 hours and 45 minutes (283 divided by four). A work week agreement is not required for this scenario.

2. *Multiple providers working for a single recipient:* The maximum weekly hours may be divided among all the providers servicing the recipient, in any manner the recipient decides as long as the recipient does not exceed his/her total monthly authorized hours. This requires a SOC 2256 – IHSS Recipient and Provider Workweek Agreement form to be completed in order for the recipient to ensure scheduling the providers appropriately during the workweek and have the providers sign off on the schedule so that providers are clear when they are to report to work.

   If the recipient does not anticipate any adjustment in the schedule they create, the recipient may choose to "assign" hours to each provider using the SOC 838 – IHSS Recipient request for Assignment of Authorized Hours to Providers form.

   If the recipient thinks that an adjustment will be necessary, they may choose not to assign hours but will need to ensure the provider does not work hours that exceed the recipient's maximum weekly hours and authorized monthly hours.

3. *Single provider working for multiple recipients:* the provider may not exceed 66 hours per workweek when the provider adds up the time that has been worked for all his/her recipients. *Note the 66-hour limit does not include the amount claimed for trave; travel time is separate.

IHSS Social Workers (SWs) should help ensure recipients understand their monthly authorized hours and maximum weekly hours. The SOC 2271 – IHSS Provider Notification of Recipient Authorized Hours and Services, and Maximum Weekly Hours form provides a guideline of their maximum weekly hours. SWs should remind the recipient/authorized representative of their responsibility to ensure that they have provided care throughout the month with the hours they are authorized.

Flexible Hours

On occasion, it may be necessary for a recipient to authorize their provider to work more than the recipient's maximum weekly hours as identified on the SOC 2271 – IHSS Provider Notification of Recipient Authorized Hours and Services, and Maximum Weekly Hours form. In a situation in which the recipient has more than one provider and one of the providers becomes ill or is unable to

work, the recipient can assign some or all of their weekly hours to the other provider even if this causes the provider to work overtime.

No County approval is necessary when the adjustment will:

- ✓ Not result in the provider working more than 40 hours in workweek when the recipient has 40 hours or less per workweek.

- ✓ Not result in the provider working more overtime hours than they normally work in a month.

- ✓ Not result in a provider working more than 66 hours per workweek if they have multiple recipients.

If the recipient is not able to make the adjustment and meet the criteria, where no approval is necessary, the recipient must ask the County for approval and may do so via telephone, in writing, or in person. Per Welfare Institutions Code, the County, "shall not unreasonably withhold approval" of a flexible hour request.

County approval is needed if the criteria above is not met. The County must utilize the following to determine whether to approve a flexible hour adjustment:

1. The additional hours must be necessary to meet an unanticipated need;

2. The additional hours must be related to an immediate need that cannot be postponed until the arrival of a back-up provider as designated on the SOC 827 – IHSS Program Individual Emergency Back-Up Plan form; and

3. The additional hours must be related to a need that would have a direct impact on the IHSS recipient and would be needed to ensure their health and/or safety.

If the flexible hour request meets all the criteria, the County must approve the request, otherwise, the County must deny the request.

The County must make entries into the Case Management, Information and Payrolling System (CMIPS II) for an approval and denial. For an approval the system will generate notices SOC 2266 – IHSS Program Notice Recipient Approval of Exception to Exceed Weekly Hours and the SOC 2266A – IHSS Program Notice to Provider Approval of Exception to Exceed Weekly Hours. For denials the system will generate notices SOC 2267 – IHSS Program Notice to Recipient Denial of Exception to Exceed Weekly Hours and SOC 2267A – IHSS Program Notice to Provider Denial of Exception to Exceed Weekly Hours.

The County may adjust the weekly hours of a recipient for any particular week for known recurring or periodic needs of the recipient and issue the SOC 2268 - IHSS Program Notice to Recipient Approval for Provider to Work Alternate Schedule Due to Recurring Event notice and the SOC 2268A - IHSS Program

Notice to Provider Approval to Work Alternate Schedule Due to Recurring Event.

The County will set forth a date as to when an evaluation may be necessary to determine if the recipient's needs have changed and the exception is no longer warranted. A SOC 2269 - IHSS Program Notice to Recipient Cancellation of Alternate Schedule Due to Recurring Event and the SOC 2269A – IHSS Program Notice To Provider Cancellation Of Alternate Schedule Due To Recurring Event can be generated once the flexible hours are no longer needed and cancelled.

Flexible hours do not allow the recipient to exceed authorization of IHSS hour and do not let the provider exceed their weekly hourly limit of 66 hours if they work for more than one recipient.

Medical Accompaniment and Wait Time

Wait time is authorized as part of Medical Accompaniment in the IHSS home assessment. Medical Accompaniment is authorized for health-related appointments and alternative resource sites. It is not authorized to simply fill the recipient's need for transportation.

Medical Accompaniment is only authorized when the recipient needs assistance with specific IHSS tasks during transportation to and from or at the destination. It is also available only if Medi-Cal funding transportation (with required recipient support) is not available.

Special Circumstance:

There is one unique circumstance in which medical accompaniment may be authorized for a recipient when no other IHSS task(s) are needed during transportation to/from the destination.

When a recipient has a documented mental health disability that prevents them from being out in public or entering public spaces alone, and as a result, he/she cannot accomplish travel to a health care appointment or alternative resource site alone, medical accompaniment may be appropriate.

In this situation, the County may authorize medical accompaniment even if a specific IHSS service is not being performed if the mere presence of an IHSS provider would allow the recipient to accomplish the travel, and no task(s) are required of the provider which fall outside the IHSS program.

SWs will need to document this specific circumstance if there is need for medical accompaniment for recipients with these conditions.

SWs must obtain the required information on IHSS recipient's medical appointments, including the type of appointment and the frequency and duration, in order to authorize Medical Accompaniment. Recipients must have this as an authorized service in order to receive wait time.

Wait Time has been defined into two types by the California Department of Social Services (CDSS):

1. *Engaged to Wait or On-Duty*: The provider is not actively performing work duties but they are unable to use the time effectively for their own purposes. These periods of time are generally unpredictable and usually of short duration.

2. *Waiting to be Engaged or Off-Duty:* The provider is completely relieved from performing work duties and they have enough time to enable them to use the time effectively for their own purposes.

In order to assist the SW in collecting needed information for the authorization of medical accompaniment and wait times, counties may make telephone contact with the IHSS recipient directly or utilize the SOC 2274 – IHSS Program Accompaniment to Medical Appointment form to obtain the required information from the LHCP by phone, fax or mail.

The SOC 2274 – IHSS Program Accompaniment to Medical Appointment form includes instructions for the LHCP on what information the Social Worker needs in order to authorize wait time. The LHCP is requested to provide appointment information which includes the purpose, typical length/duration and frequency per year of medical appointments. Completion of the SOC 2274 – IHSS Program Accompaniment to Medical Appointment form by the LHCP may assist the Social Worker in determining if the wait time is compensable

Clarifications: Although the regulations use the term "transportation," accompaniment services should not be authorized simply to fill the recipient's need for transportation. For accompaniment to be authorized, assistance by a provider must be necessary for the recipient to accomplish the travel.

Accompaniment will only be authorized when the recipient needs assistance with another specific authorized IHSS task(s) during transportation to/from and/or at the destination.

When a recipient does not have a specific IHSS task that must be performed during transport and/or at the destination, but instead has a documented disability that prevents them from entering public spaces alone, accompaniment may be appropriate. In order for this exception to apply, the recipient must not be able to accomplish travel to a health care appointment or alternative resource site alone due to a documented disability; however, the mere presence of the IHSS provider would allow the recipient to accomplish the travel. In this situation, the county may authorize accompaniment even though a

specific IHSS service is not being performed if the mere presence of an IHSS provider “assists” the recipient in accomplishing the travel and the provider is not required to perform any tasks outside of the IHSS program.

Travel Time

Travel time may be claimed by the provider regardless of the mode of transportation they use. In evaluating time, it is important to understand how the provider is traveling between recipients on the same day.

Providers are eligible for travel time if:

- The provider works for multiple recipients;
- The provider must travel directly from one location where services are provided to another location where services are provided on the same day; and
- The provider must have submitted a timesheet for service hours with corresponding dates.

Travel time is limited to seven hours per week total and will not be deducted from the recipient’s monthly authorized hours.

Travel time is not included in the overtime limit of 66 hours/week.

A provider will receive a violation if they claim an excess of seven hours per week.

The SOC 2255 – IHSS Program Provider Workweek & Travel Time Agreement form is used when providers are caring for more than one IHSS recipient.

- This form asks the provider if they intend to travel between two or more recipients on the same day. This will trigger the system to being generating the Travel Claim form to the provider.

In order for Travel Claim Forms to be paid, timesheets will need to be processed first. Providers should be submitting Travel Claim Forms at the same time as the corresponding timesheet for the same pay period or shortly after that pay period.

Providers traveling to provide care in different/neighboring counties on the same day will claim travel time on the timesheet for the recipient to whom they are traveling. Travel time will be paid at the wage rate for the county to which the provider is traveling to provide care.

Violations

An IHSS provider will receive a violation when one or more of the following occurs:

1. The provider works more than 40 hours in a workweek for a recipient whose maximum weekly hours are 40 or less without receiving County approval;

2. The provider works more than a recipient's weekly maximum hours, causing the provider to work more overtime than the recipient is authorized in a month without receiving County approval;

3. The provider works more than the maximum weekly limit of 66 hours when working for multiple recipients;

4. The provider claims more than seven hours of travel time in a workweek.

There are four levels of progression for violations. They are:

1. Notice of violation with information on how to request a county dispute.

2. Notice of violation with information on how to request a county dispute and inclusion of voluntary instructional material.
    - Optional: The provider has the option to complete a one-time training to remove this 2nd violation.

3. Notice of violation with information on how to request a county dispute. The provider is suspended for three months or 90 days.
    - Optional: The provider has a right to a State Administrative Review if the violation is upheld.

4. Notice of violation with information on how to request a county dispute. The IHSS provider is terminated for 365 days.
    - Optional: The provider has a right to a State Administrative Review if the violation is upheld.

CMIPS II will trigger a notification to the County work queue informing the SW that a violation has occurred. Multiple violations that occur in a single month will only count as one.

Each time a provider incurs a violation, both the provider and each recipient for whom they work for 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, the provider will receive the SOC 2257 – IHSS Program Notice to Provider of First/Second Violation for Exceeding Workweek and/or Travel Time Limits and the recipient(s) will receive the SOC 2257A – IHSS Program Notice to Recipient of Provider's Violation for Exceeding Workweek and/or Travel Time Limits.

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

For fourth violations with a 365-day or one-year period of ineligibility, the provider will receive the SOC 2259 – IHSS Program Notice to Provider of Fourth Violation (One-Year Period of Ineligibility) For Exceeding Workweek and/or Travel Time Limits and the recipient(s) will receive the SOC 2259A - IHSS Program Notice to Recipient of Provider's Fourth Violation (One-Year Period of Ineligibility) For Exceeding Workweek and/or Travel Time Limits.

The County will document in CMIPS II when these notices are sent to the provider and recipient.

County Responsibilities

Within three business days, the County will review the circumstances of the violation and determine whether to uphold the violation or override the violation. CMIPS II allows the County an additional five business days to enter the County Dispute date into the system. This does not extend the dispute deadline (the provider has 10 calendar days to request a dispute).

- In the event the County does not take action in the time frame provided (three business days), CMIPS II will automatically uphold the violation and continue the violations process.

The County will verify if there is documentation in CMIPS II to indicate that the recipient has or has not requested a flexible hours adjustment to their maximum weekly hours limit. If so, the County may determine it is appropriate to override the violation.

Overriding a Violation

Should the County find there is reason to override the violation, the County will select override within the first three days of the violation being generated.

- CMIPS II will send the override request to the FLSA supervisor who will have two additional days to review/approve or reject the override request

- This constitutes the five-day initial County Business Review.

In the event the FLSA supervisor does not take action to approve the override request, CMIPS II will automatically uphold the override and violation process will end. CMIPS II will set the date to look for the next violation.

Violations – Dispute Process

From the date of the violation notice, the provider has 10 calendar days to request a dispute. The provider should complete and submit for a county review of a violation using the SOC 2272 – IHSS Program Notice to Provider of Right to Dispute Violation for Exceeding Workweek and/or Travel Time Limits.

From the date of the violation notice, the County has 20 business days to complete the entire provider dispute process, which includes entering the provider's dispute, conducting any research needed, and rendering a decision.

If a dispute form is received incomplete or late, it should still be entered into CMIPS II but noted that the dispute was received incomplete/late. The County will manually generate the SOC 2292 - IHSS Program Notice to Provider of Failure to Timely or Completely Submit the Right to Dispute Violation for Exceeding Workweek and/or Travel Time Limits Form (SOC 2272) for the provider and an SOC 2293 - IHSS Program Notice to Recipient of Provider's Failure to Timely or Completely Submit the Right to Dispute Violation for Exceeding Workweek and/or Travel Time Limits Form (SOC 2272) to be sent to the recipient.

Provider who file timely will remain eligible to provide services until a final resolution is made on their dispute.

The dispute will be evaluated using the following criteria to determine whether the violation should be overridden during the dispute process:

- All must be met:
    - Was it an unanticipated need?
    - Was there an immediate need that could not wait for a back-up provider?
    - Did it impact the recipient's health and safety?

- Timesheet error?
    - Was it a scanning error?
    - An error that was beyond the provider's control?

- Travel violation?
    - Circumstances beyond the control of the provider?
        - Unexpected travel delays?
        - Poor road conditions?
        - Road closures or construction that was unavoidable?

It is critical that the County document complete detailed information into CMIPS II on the Recipient Case Notes focusing on the reason the provider is submitting the dispute and specific rational for the County's decision. The County must retain copies of all dispute forms.

The County should reach out the recipient when a third violation occurs due to the serious consequences. SWs should ask the recipient to ensure the

recipient has a back-up plan (SOC 864 - IHSS Program Individualized Back-up Plan and Risk Assessment) such as another provider if the current provider is suspended or terminated. The SW must document in CMIPS II the conversation with the recipient to ensure the safety of the recipient. CDSS does look for these efforts when evaluating State Administrative Review Requests (SARs).

Violations Upheld
If the first or second violation is upheld, the County will send the SOC 2280 – IHSS Program Notice to Provider Upholding First or Second Violation for Exceeding Workweek and/or Travel Time Limits to the provider and the SOC 2281 – IHSS Program Notice to Recipient Upholding Provider's First or Second Violation for Exceeding Workweek and/or Travel Time Limits to the recipient.

For third and fourth violations that are upheld, the County will send the SOC 2282 - IHSS Program Notice to Provider Upholding Third or Fourth Violation for Exceeding Workweek and/or Travel Time Limits to the provider and the SOC 2283 – IHSS Program Notice to Recipient Upholding Provider's Third or Fourth Violation for Exceeding Workweek and/or Travel Time Limits to the recipient. The County will also send the provider the SOC 2273 – IHSS Program Request for State Administrative Review of Third or Fourth Violation for Exceeding Workweek and/or Travel Time Limits.

State Administrative Review (SAR) for Only Third and Fourth Violations
For third and fourth violations the provider can request a right to dispute a violation by completing the SOC 2273 – IHSS Program Request for State Administrative Review of Third or Fourth Violation for Exceeding Workweek and/or Travel Time Limits form.

The State must receive this request within 10 calendar days from the date that the SOC 2282 - IHSS Program Notice to Provider Upholding Third or Fourth Violation for Exceeding Workweek and/or Travel Time Limits or the SOC 2283 – IHSS Program Notice to Recipient Upholding Provider's Third or Fourth Violation for Exceeding Workweek and/or Travel Time Limits
was mailed to the provider.

The provider can continue to provide services and be paid until a final decision is made on the SAR. The State will send a letter based on their decision to the provider.

Exemptions

As required under state statutes, the maximum number of hours an IHSS provider may work in a workweek for all the time he/she works for two or more recipients combined is 66 hours. To ensure continuity of care and to allow IHSS recipients to remain safely in their homes, CDSS has established two

exemptions for limited, specific circumstances that allow the maximum weekly hours to be exceeded.

- *Exemption 1: Live-In Family Care Providers*
  IHSS providers who meet the following requirements may, if granted the exemption, provider services to two or more live-in family member recipients and work up to 360 hours per month.
  1. The IHSS provider must work for two or more IHSS recipients; and

  2. The IHSS provider lives in the same home as all the IHSS recipients for whom they provide services; and

  3. The IHSS provider is related to all the IHSS recipients for whom they provide services, as their parent, adoptive parent, step-parent, grandparent, or legal guardian.

  The County must verify that the provider meets the residence and relation criteria to qualify for Exemption 1 by checking MEDS or contacting the Medi-Cal program.
  - Without verification, the SW must ask the recipient at the next reassessment to provide specific documents to verify the address and the relationship of the provider. Acceptable documentation is indicated on the SOC 2308 – IHSS Program Exemption from Workweek Limits for Extraordinary Circumstances Approved Exemption Provider Agreement.

    - If it is not immediately available, the SW must follow-up within 10 days of the reassessment.

    - If the relationship and residence still cannot be verified after 10 days, it will be determined that the IHSS provider and recipient do not meet all of the Exemption 1 requirements and will no longer qualify for the exemption. The provider will be subject to the existing workweek limitations of 66 hours per week.

  The State reviews these exemptions and will send approval and/or denial notices.

- *Exemption 2: Extraordinary Circumstances*
  The determination of eligibility of this exemption falls under the responsibility of the County. In order to qualify for this exemption, ALL recipients for whom the provider works, must meet at least one of the following conditions:
  - The recipient has complex medical and/or behavioral needs that must be met by a provider who lives in the same home as the recipient.

- The recipient lives in a rural or remote area where available providers are in limited supply and as such, the recipient is unable to hire another provider.

- The recipient is unable to hire a provider who speaks the recipient's language and this presents difficulty for the recipient to direct his/her care.

The financial impact that hiring another provider could have on the current provider is not a factor for consideration when determining whether an extraordinary circumstance exists.

Note: Recipients who have been granted an extraordinary circumstance exemption and have excess hours beyond 360 hours will be required to hire another provider to work the remaining hours allotted to the recipient.

The County will advise recipients with high hour authorizations to identify potential back up providers to be listed on the SOC 864 - IHSS Program Individualized Back-up Plan and Risk Assessment. The providers identified as back-up providers for the recipient should be listed on the SOC 2256 – IHSS Program Recipient and Provider Workweek Agreement. The recipient needs to explore and exhaust all options for hiring additional providers.

Secondary Review
Exemption determinations will be validated by a secondary reviewer to ensure that the referral justification is consistent with policy guidance and whether an exemption is appropriate for the IHSS provider. Given the varying operational structures among the counties, the County will decide which level of staff will conduct the secondary review.

The assigned secondary reviewer will analyze the referral justification entered into the provider's CMIPS II person notes and use the SOC 2307- IHSS Program Extraordinary Circumstances Secondary Evaluation Worksheet as a template to document the secondary review and eligibility determination in the provider's CMIPS II person notes.

Note: The County may complete the secondary review on the template and then cut and paste the information into the provider's CMIPS II person notes.

Exemption 2 Approvals
If it is determined that the provider is eligible for Exemption 2, the County will complete and send the provider and recipient the SOC 2309 - IHSS Program Notice to Provider of Approval of Exemption from The In-Home Supportive Services Program Workweek Limits for Extraordinary Circumstances and the SOC 2309A - IHSS Program Notice to Recipient of Approval of Exemption from The In-Home Supportive Services Program Workweek Limits for Extraordinary Circumstances, respectively.

The provider must sign and return to the County the enclosed SOC 2308 – IHSS Program Exemption from Workweek Limits for Extraordinary Circumstances Approved Exemption Provider Agreement that the County will send with the approval.

Exemption 2 Ineligibility
If the County determines that the provider is ineligible for Exemption 2, the County will send the provider the SOC 2310 - IHSS Program Notice to Provider of Ineligibility for Exemption from Workweek Limits for Extraordinary Circumstances (Exemption 2) and the recipient the SOC 2310A - IHSS Program Notice to Provider of Ineligibility for Exemption from Workweek Limits for Extraordinary Circumstances (Exemption 2).

If the provider or recipient disagree with this determination, they can request a State Administrative Review via mail. (*See State Administrative Review for Only Exemption 2*).

Exemption Renewals
All approved exemptions must be renewed on an annual basis. The exemption renewal process should be initiated 30 calendar days in advance of the exemption expiration date. CMIPS II has been programmed to automatically alert the County (assign a task) 60 calendar days in advance of the expiration.

Note: Due to CMIPS II system restrictions, the renewal exemption segment may not be entered into the system until 30 days prior to the expiration of the initial exemption.

The County will review the case's previous exemption documentation and complete a renewal exemption referral justification SOC 2306 – IHSS Program Exemption from Workweek Limits for Extraordinary Circumstances Referral Justification and enter it in the provider's CMIPS II person notes. The secondary reviewer will complete a secondary review worksheet SOC 2307- IHSS Program Extraordinary Circumstances Secondary Evaluation Worksheet documenting their review and eligibility determination into the provider's CMIPS II person notes.

Once the determination has been completed, the County will submit a notice of eligibility determination to the provider and recipients.

If during the renewal process it is discovered that there has been a change affecting the eligibility of the exemption, the assigned IHSS county staff will process a "Change in Exemption Eligibility" as the circumstances of the exemption approval no longer exist. The County will determine whether the circumstances of the case warrant the initiation of a new exemption request for the new circumstances of the case.

Change in Exemption Eligibility
The County should initiate a "Change in Exemption Eligibility" action if, at any point in time, the SW determines that there has been a change in a recipient's

case resulting in the exemption no longer being needed (e.g. the recipients' combined hours have been reduced to less than 264 hours a month) and/or the conditions upon which the exemption was granted no longer exist, (e.g., a recipient has been terminated from IHSS, the provider no longer lives in the same home with the recipients, the provider is activated under a new recipient's case, the provider has been terminated from an active recipient's case, etc.)

Within 15 calendar days of the date the County learns of changes in exemption eligibility, the County must end the exemption in CMIPS II and submit notices to the provider and the recipients notifying them that the exemption is no longer valid. The Notice of Change in Extraordinary Circumstances Exemption Eligibility SOC 2312 - IHSS Program Notice to Provider of Termination of Exemption from Workweek Limits for Extraordinary Circumstances (Exemption 2) Due to A Change in Eligibility and the SOC 2312A - IHSS Program Notice to Recipient of Termination of Exemption from Workweek Limits for Extraordinary Circumstances (Exemption 2) Due to A Change in Eligibility will be used to notify the provider and recipients of the County's action.

State Administrative Review for Only Exemption 2
If a provider or recipient disagrees with the County's ineligibility determination of an Exemption 2, they may request an administrative review by the State by completing the SOC 2313 - IHSS Program Exemption From Workweek Limits For Extraordinary Circumstances (Exemption 2) State Administrative Review Request Form.

It must be mailed and postmarked within 45 calendar days of the SOC 2310 - IHSS Program Notice to Provider of Ineligibility for Exemption from Workweek Limits for Extraordinary Circumstances (Exemption 2) or the SOC 2310A - IHSS Program Notice to Provider of Ineligibility for Exemption from Workweek Limits for Extraordinary Circumstances (Exemption 2).

The State will make the final determination and notify the provider, recipient, and the County in 20 calendar days of the administrative review conference.

Exemptions and Inter County Transfers (ICT)
Pursuant to the Manual of Policy and Procedures (MPP), "there shall be no interruption or overlapping of services as the result of a recipient moving from one county to another;" therefore, if an exemption existed in the previous county, the receiving county must honor the exemption as a part of services carrying over from the transferring county.

Due to CMIPS II system restrictions, the exemption is automatically ended when the provider is terminated by the previous county. When the County begins setting up the new provider profile, the County must re-enter the exemption into CMIPS II.

As part of the ICT process, the County is responsible for conducting a face to face assessment with the recipients within the 30-day transfer period pursuant to the MPP. During the assessment, the SW will conduct an evaluation of the

recipient's care needs and determine whether the circumstances under which the exemption was issued still exist.

If the circumstances of the exemption still exist, the exemption will be approved and continue for the span of one year. If the circumstances of the exemption no longer exist, the County will process a "Change in Exemption Eligibility" and end the exemption in CMIPS II.

Impact of the Exemptions to IHSS Minor Recipient(s) Living with Parent(s) Regulations

If one parent in a household is providing IHSS to a minor recipient(s), the second parent in the household is typically not permitted to provide IHSS services to the minor recipient(s). However, due to the statutory workweek limitations, the State now permits a second parent in the same household to provide IHSS services when the first parent who is providing IHSS has reached the workweek limitation because the first parent would no longer be considered able and available to provide services beyond the statutory workweek maximum.

The second parent may provide services to fulfill the remaining authorized hours of the recipient(s) in the home, once the first parent has reached the statutory workweek maximum, as long as they meet the requirements set forth in the MPP.

If a parent provider in a two-parent household who serves two or more minor recipients has qualified for an exemption, and has reached the 360 hours a month maximum permitted by the exemption, the parent providing IHSS services would no longer be considered able and available to provide the remaining authorized hours to the minor recipients in the home.

As a result, the second parent may provide the remaining authorized hours of the minor recipients as long as they meet the requirements of the MPPs.

However, because a second parent may qualify as an IHSS provider once the first parent provider reaches the statutory workweek maximum, it is possible that the authorized hours of the recipients can be captured without an exemption. SWs should evaluate the case and determine whether the recipients' authorized hours can be worked within the standard workweek limitations if the second parent meets the requirements to be an IHSS paid provider once the first parent reaches the standard workweek maximum.

REFERENCES

ACL 16-01 – Reinstatement of Implementation of Provisions of Senate Bill 855 and 873 Relating to the IHSS and Waiver Personal Care Services Programs.

ACL 16-07 – Exemption to Provisions of senate Bills 855 and 873 Relating to the IHSS and WPCS Programs for Family Live-In Care Providers.

ACL 16-22 - Exemption from The In-Home Supportive Services Program Workweek Limitations Due to Extraordinary Circumstances and Clarification On the Policies for The Live-In Family Care Provider Exemption.

ACL 16-27 - Change in Policy Regarding Submission of Provider Enrollment Agreement (SOC 846) Form for Currently-Enrolled In-Home Supportive Services (IHSS) Providers.

ACL 16-36 - Violations For Exceeding Workweek and/or Travel Time Limits For The In-Home Supportive Services (IHSS) And Waiver Personal Care Services Programs (WPCS).

ACL 16-44 Modifications to In-Home Supportive Services and Waiver Personal Care Services In Case Management, Information And Payrolling System To Manage Overtime And Travel Time Violations, Exemption Processing, And Flexible Hours.

ACL 16-46 - Modifications to The Case Management, Information and Payrolling System (CMIPS) To Implement and Manage Workweek Limitations and Travel Time Violation Disputes and The State Administrative Review Process for In-Home Supportive Services (IHSS) And Waiver Personal Care Services (WPCS).

ACL 16-86 - Reinstatement of Deadline for Submission of Provider Enrollment Agreement (SOC 846 [REV. 11/15]) Form for In-Home Supportive Services Providers Enrolled Prior To February 1, 2016.

ACL 16-89 - Modifications to the Case Management, Information and Payrolling System To Manage In-Home Supportive Services And Waiver Personal Care Services Overtime And Travel Time Violations And Forms, Forms For Blind And Visually Impaired Recipients, Advance Pay Reconciliation, And Authorized Hours Exceeded Letters.

ACL 17-13 - In-Home Supportive Services Program Exemptions From Workweek Limits For Extraordinary Circumstances (Exemption 2) – Renewal Of Approved Exemptions And Clarification On Submitting Referrals.

ACL 17-43 - Rescission Of Disciplinary Action Against Providers Enrolled Prior To February 1, 2016, For Failure To Submit Provider Enrollment Agreement (SOC 846 [Rev. 11/15])

ACL 18-31 – Implementation of Senate Bill (SB) 89 Human Services / Overtime Exemptions

ACL 20-35 Additional Clarification Regarding the Authorization of Medical Accompaniment and Wait Time in the In-Home Supportive Service Program

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ATTACHMENTS

SOC 2256 – IHSS Recipient and Provider Workweek Agreement

SOC 838 – IHSS Recipient request for Assignment of Authorized Hours to Providers

SOC 2271 – IHSS Provider Notification of Recipient Authorized Hours and Services, and Maximum Weekly Hours

SOC 827 – IHSS Program Individual Emergency Back-up Plan

SOC 2266 – IHSS Program Notice Recipient Approval of Exception to Exceed Weekly Hours

SOC 2266A – IHSS Program Notice to Provider Approval of Exception to Exceed Weekly Hours

SOC 2267 – IHSS Program Notice to Recipient Denial of Exception to Exceed Weekly Hours

SOC 2267A – IHSS Program Notice to Provider Denial of Exception to Exceed Weekly Hours

SOC 2268 - IHSS Program Notice to Recipient Approval for Provider to Work Alternate Schedule Due to Recurring Event

SOC 2268A - IHSS Program Notice to Provider Approval to Work Alternate Schedule Due to Recurring Event

SOC 2269 - IHSS Program Notice to Recipient Cancellation of Alternate Schedule Due to Recurring Event

SOC 2269A – IHSS Program Notice To Provider Cancellation Of Alternate Schedule Due To Recurring Event

SOC 2274 – IHSS Program Accompaniment to Medical Appointment

SOC 2255 – IHSS Program Provider Workweek & Travel Time Agreement

SOC 2257 – IHSS Program Notice to Provider of First/Second Violation for Exceeding Workweek and/or Travel Time Limits

SOC 2257A – IHSS Program Notice to Recipient of Provider's Violation for Exceeding Workweek and/or Travel Time Limits

SOC 2258 - IHSS Notice to Provider of Third Violation (90-Day Suspension of Eligibility) For Exceeding Workweek and/or Travel Time Limits

SOC 2258A – IHSS Program Notice to Recipient of Provider's Third Violation (90-Day Suspension of Eligibility) For Exceeding Workweek and/or Travel Time Limits

SOC 2259 – IHSS Program Notice to Provider of Fourth Violation (One-Year Period of Ineligibility) For Exceeding Workweek and/or Travel Time Limits

SOC 2259A - IHSS Program Notice to Recipient of Provider’s Fourth Violation (One-Year Period of Ineligibility) For Exceeding Workweek and/or Travel Time Limits

SOC 2292 - IHSS Program Notice to Provider of Failure to Timely or Completely Submit the Right to Dispute Violation for Exceeding Workweek and/or Travel Time Limits Form (SOC 2272)

SOC 2293 - IHSS Program Notice to Recipient of Provider's Failure to Timely or Completely Submit the Right to Dispute Violation for Exceeding Workweek and/or Travel Time Limits Form (SOC 2272)

SOC 864 - IHSS Program Individualized Back-up Plan and Risk Assessment

SOC 2280 – IHSS Program Notice to Provider Upholding First or Second Violation for Exceeding Workweek and/or Travel Time Limits

SOC 2281 – IHSS Program Notice to Recipient Upholding Provider’s First or Second Violation for Exceeding Workweek and/or Travel Time Limits

SOC 2282 - IHSS Program Notice to Provider Upholding Third or Fourth Violation for Exceeding Workweek and/or Travel Time Limits

SOC 2283 – IHSS Program Notice to Recipient Upholding Provider’s Third or Fourth Violation for Exceeding Workweek and/or Travel Time Limits

SOC 2273 – IHSS Program Request for State Administrative Review of Third or Fourth Violation for Exceeding Workweek and/or Travel Time Limits

SOC 2308 – IHSS Program Exemption from Workweek Limits for Extraordinary Circumstances Approved Exemption Provider Agreement

SOC 2307- IHSS Program Extraordinary Circumstances Secondary Evaluation Worksheet

SOC 2309 - IHSS Program Notice to Provider of Approval of Exemption from The In-Home Supportive Services Program Workweek Limits for Extraordinary Circumstances

SOC 2309A - IHSS Program Notice to Recipient of Approval of Exemption from The In-Home Supportive Services Program Workweek Limits for Extraordinary Circumstances

SOC 2310 - IHSS Program Notice to Provider of Ineligibility for Exemption from Workweek Limits for Extraordinary Circumstances (Exemption 2)

SOC 2310A - IHSS Program Notice to Provider of Ineligibility for Exemption from Workweek Limits for Extraordinary Circumstances (Exemption 2)

SOC 2313 - IHSS Program Exemption From Workweek Limits For Extraordinary Circumstances (Exemption 2) State Administrative Review Request Form