

**County of Orange Social Services Agency
Family Self-Sufficiency and Adult Services**

Program/Area: In-Home Supportive Services
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POLICY

If all eligibility criteria are met, IHSS can be authorized for children only to the extent that the care required is beyond the need of a non-disabled child of the same age and that the need is created by the child's disability.

Social workers will assess the child's eligibility by utilizing the minor child regulations and other IHSS guides ([Refer to Procedure Section below for tools](#)). Social workers will also assess the provider's eligibility (parent/non-parent).

This policy applies to minor IHSS recipients living with their parents in the IHSS Residual (IHSS-R), IHSS Plus Option (IPO), and Community First Choice Option (CFCO) programs.

Parents of minor IHSS recipients are not permitted to be paid IHSS providers for their child(ren) in the Personal Care Services Program (PCSP) per MPPs.

Minor Child IHSS requirements for a minor child are:

IHSS Eligibility

- Must meet Medi-Cal eligibility.
- Submit a completed [health care certification form](#).
- Residence requirements:
 - Must reside in their own home (If parents are divorced, child could live in two different households).
 - Must reside in California.

Minor Child Authorizing Domestic Services only and no other services are never allowed for **Assessment** minors who live with their provider parent.

Regulations do allow authorizing Domestic Services for minors who do not live with their parent(s), but must follow the [Age Appropriate Guidelines \(AAG\) \(Attachment A\)](#).

Note: Domestic Services may be authorized ONLY when the recipient child is living with his/her parent (s) and has a provider other than parent(s) as long as the parent(s) is unable to provide IHSS due to employment, educational or medical needs (See provider information below).

Minor Child & Protective Supervision Social workers will advise parents or guardians of the availability of, and the conditions for receiving, Protective Supervision and explore any possible need for 24-hours-a-day supervision.

All Protective Supervision rules apply to minor child cases. Protective Supervision does not replace routine childcare and supervision ([Refer to the Protective Supervision section below](#)).

Hiring a Non-Parent IHSS Provider A parent living with their minor child is considered unable or unavailable to provide the necessary care to their child under the following circumstances and would be able to hire a non-parent provider to provide needed IHSS for their minor child:

Employed Parent(s)

A parent is considered unavailable to perform IHSS duties when they are absent due to employment during the hours of employment whether it be full-time or part-time employment.

- Note: A parent receiving IHSS funds care for their own child is not considered full-time employment regardless of the number of hours worked.

During the time a parent is working, regardless of the worksite location, including working from home, a non-parent provider could be hired and paid to provide the needed IHSS services.

Situations related to when a parent **cannot** be an IHSS paid provider for their IHSS minor recipient due to being employed:

- The parent is employed full-time (40 or more hours a week).
- The parent is providing 40 or more hours a week of IHSS to another recipient who is not their own child (i.e. spouse, parent, unrelated recipient, etc.).
- The parent is working part-time as a condition of employment or seasonally due to reasons other than the need to provide IHSS care for their child.
 - Note: If the part-time work schedule is a result of the parent's responsibility to provide needed IHSS for the minor recipient, the parent would qualify to be a paid parent provider.
- The IHSS needs of the child do not prevent the parent from obtaining full-time employment.
- The parent only has occasional physical custody, such as weekends or one or two days a week, and that custody schedule would not prevent the parent from full-time employment.
- A parent who is employed full-time, but is on paid or unpaid leave, on State Disability Insurance, Family Medical Leave Act, sick/vacation leave, is still considered employed since the employer-employee relationship is not terminated and therefore cannot be a paid parent provider.
- A parent who was employed full-time but is laid off by the employer is not considered to have left full-time employment because of the need to care

for their child unless they were laid off due to their responsibility as a parent to meet the IHSS needs of the child.

- Note: If a parent is laid off for reasons other than circumstances surrounding the parental obligation to meet the IHSS needs of the child, the parent does not meet the requirements of being a paid parent provider.
- If the parent retires for reasons other than the need to provide IHSS care for a child, the parent does not qualify to be a paid parent provider.
 - Note: If after retirement, the parent is prevented to obtain another full-time job due to the IHSS need of the child, the parent may be considered to be eligible to be a paid parent provider.

Enrolled in Educational or Vocational Training

A parent is considered unavailable to perform IHSS duties when they are absent due to an educational or vocational training program. This unavailability is limited to the hours of instruction.

- A parent with full-time status is considered unavailable.
 - Full-time status is determined by the educational institution the parent attends, whether it be the number of courses or units.
- A parent with a part-time status is only considered unavailable only during hours of instruction.
 - Part-time status is anything less than what the educational institution defines as full-time status.
 - Instruction time does not include time spent completing homework.

Physically or Mentally Unable

A parent is considered unable to perform IHSS duties when they have physical or mental limitations which prevent them from adequately providing the needed IHSS.

- The limitation can be permanent or temporary.
- Counties can ask for a description of the parent's limitations and any documentation that may substantiate the parent's inability to provide care for their own child.
- The parent is not legally required to disclose Health Insurance Portability and Accountability Act (HIPAA) protected information, but the County can ask for information in regards to the limitation and how it affects the ability to perform needed IHSS tasks.
- However, if a social worker observes abilities or behaviors that are contrary to the reported limitations and the parent appears capable, this must be documented in the recipient's assessment narrative and/or the provider's person notes.

Ongoing Medical, Dental, or Other Health Related Treatment

A parent is unavailable when they are absent due to specialized ongoing medical, dental, or other health related treatment.

- This does not include routine medical or dental appointments.

Shopping, Errands, Search for Employment, and Care of other Minor Children

When the parent must go shopping and run errands essential to the family, search for employment, or for essential purposes related to the care of the recipient's minor siblings, the parent is considered unavailable.

- Up to eight hours per week may be purchased from a provider other than the parent to perform necessary IHSS tasks during the time of the parent's unavailability.
 - The eight hours are not IHSS hours in addition to existing authorized IHSS hours.
- Activities of unavailability may include:
 - Grocery shopping
 - Picking up prescriptions
 - School activities
 - Medical appointments
 - Dental appointments
- Parents must be actively seeking employment in order to be determined unavailable due to employment searches.

If a parent is unable or unavailable to provide IHSS services due to the reasons above and there is no parent in the home who is able and available to provide care to the minor child, IHSS services may be provided by a non-parent provider.

Other Reasons A Parent Cannot Be A Paid IHSS Provider For Their Child

- The parent is an undocumented immigrant.
- The parent has been convicted of a Tier 1 crime.
- There is another suitable provider available.

Note: This list is not exhaustive.

Paid Parent IHSS Providers A parent who lives with their minor child may become a paid parent IHSS provider when the 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 IHSS may result in inappropriate placement or inadequate care.

Two-Parent Households A parent who meets the requirements of being a paid IHSS provider can be paid regardless of the other parent in the home, including during non-work hours, weekends, and holidays. A non-parent provider cannot be paid to provide IHSS when one or both parents are able and available and present in the home.

[\(Exception – Institutionally Deemed Cases. More information is provided below under the Institutionally Deemed Cases section.\)](#)

If both parents work full-time but are currently present in the home during their non-working hours:

- Parents are considered available during non-working hours.
- Parents have to assume parental responsibility to care for the child.
- Parents cannot be paid parent providers because they are full-time employed and are not prevented from obtaining full-time employment.
- A non-parent provider can only provide IHSS services to the child when both parents are unavailable at the same time due to work.

If one parent is away from home at their workplace location and the other parent works from home:

- A non-parent provider can be hired to provide services to the minor recipient because one parent is away at work and the other parent is considered at work even though the location is at home.
- During non-working hours, parents are to assume parental responsibility to care of the minor.

If one parent is working full-time and the other had to leave full-time employment or is prevented from obtaining full-time employment due to the need of the minor:

- The parent working full-time is not eligible to be a paid parent provider; the parent who has left full-time employment due to the need of the child may be eligible to be a paid parent provider.
 - The paid parent provider will continue to be paid to perform services even when the other parent returns home from work.

If a parent has a physical limitation that prevents them to provide care to a minor and the other parent left full-time employment due to a suitable provider being unavailable:

- The parent with the physical limitation is considered unable to provide services.
- The other parent meets criteria and can be a paid parent provider.
- If a suitable non-parent provider was available and the other parent continued to work full-time, the non-parent provider could be paid to perform IHSS services during the parent's working hours.

Fair Labor Standards Act (FLSA) and Two Parent Households

It is now permitted that a second parent in the same household can be a paid parent provider when the first parent who is providing IHSS has reached the statutory work week limitation (66 hours) and both meet the requirements:

- The parent has left full-time employment or is prevented from obtaining full-time employment.
- No other suitable provider is available and the inability of the parent to perform supportive services may result in inappropriate placement or inadequate care.

If two parents are taking care of two minor recipient children and the combined IHSS hours are 320 hours per month (statutory limit for a provider serving two recipients is 264 hours):

- The parent provider is considered unavailable or unsuitable once the needed IHSS services go beyond the 264 hours allowed. The other parent can be a paid IHSS provider to fulfill the remaining authorized hours of the minor recipient as long as this parent meets all requirements of a parent provider (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 IHSS may result in inappropriate placement or inadequate care).

Extraordinary Circumstances Exemption (Exemption 2) A provider who serves two or more recipients may be granted an exemption from the standard workweek limitations and may work up to 360 per month under certain extra ordinary circumstances.

In order to qualify for Exemption 2, all recipients the provider works for must meet at least one of the following:

- Have complex medical and/or behavioral needs that must be met by a provider who lives in the same home as the recipient.
- Live in a rural or remote area where available providers are limited and as a result the recipient is unable to hire another provider.
- Be unable to hire a provider who speaks his/her same language in order to direct his/her own care.

In a two-parent household where circumstances qualify for Exemption 2, the IHSS parent provider has a statutory limit of working 360 hours per month and is no longer considered available or suitable when the needs go beyond the limit.

- The other parent can now be an IHSS paid provider and work the hours in excess of 360 as long as they meet all requirements to be a parent provider.

[Refer to Policy 1042 Extraordinary Circumstances Exemption for more information.](#)

Shared Parental Custody When parents are living separately and share custody of a minor recipient, the County must assess the child at the primary parent's home and contact the secondary parent to obtain all necessary information.

When parents live in different counties, the county with the active Medi-Cal is the primary county. The primary county is responsible for all case related activities including assessments and payroll.

If either parent wishes to be a paid parent provider, each parent is assessed individually to ensure each meets the requirements for a parent to be a provider. If both meet the requirements, hours would be assigned to each parent based on the child's need when the child is in each home.

Counties should request a copy of the custody arrangement or proof of the custody scheduled, however the parents are not required to provide this information.

- Services cannot be denied or case cannot be terminated due to parent's refusal to provide such information

Institutionally Deemed Cases (6V/6W) Institutionally deemed children who are approved for the Department of Developmental Services (DDS) waiver are those under 18, living at home, not currently eligible for zero share-of-cost Medi-Cal and who meet the target criteria set forth in the DDS waiver.

Children are evaluated as if they are institutionalized but they are allowed to live at home. If recipients meet the DDS waiver criteria, they are Medi-Cal eligible regardless of their parents' resources or income. ([See Policy 1006 DDS-HCBS Waiver and Institutional Deeming](#))

If a minor is an institutionally deemed child and the case is funded through the Personal Care Services Program (PCSP), a non-parent provider may provide PCSP services even if the parent is in the home and is able and available. PCSP requirements do not allow a parent to provide authorized services to minor recipients.

If a case is funded through the In-Home Supportive Services Plus Option (IPO) and the Community First Choice Option (CFCO), a non-parent provider cannot provide IHSS services to a minor recipient when the parent is present and is able and available. IPO and CFCO allow the parent to provide authorized services to a minor recipient.

Institutionally deemed cases are not included in the In-Home Supportive Services Residual (IHSS-R) program.

Foster Care Foster parents are not subject to the parent IHSS provider rules because they are not natural or legally adoptive parents, and therefore are treated as non-parent providers. Foster parents may choose to provide IHSS services to the minor recipient or hire another provider. They are not limited in the services they may provide to the minor child(ren).

Adoption Legally adoptive parents have a duty under the Family Code to provide care for the minor child.

An adoptive parent is subject to the parent provider rules and can only hire a non-parent provider when s/he is unavailable due to work, school or training, disability, on-going medical treatment or shopping and errands for the minor's siblings (up to 8 hours).

An adoptive parent must be prevented from full-time employment due to the need of the minor in order to become a parent provider.

IHSS services they can be paid for are limited to Related Services, Personal Care Services, Accompaniment to Medical Appointments, Protective Supervision, and Paramedical.

Adoptive parents have the responsibility to provide proof of adoption. Willful failure to provide could lead to termination of IHSS for non-compliance with the regulations.

Alternative Resources Alternative Resources are provided by another agency or program as a means to supplement the established care needs of the recipient receiving IHSS. Parents have a duty to care for their minor child even when the parents do not live together.

This parental duty to provide for their child's care is not considered an alternative resource.

Eligibility vs Parent Provider Rules The parents' ineligibility to become parent-providers and/or the parents' disallowance to hire a non-parent provider have no effect on the child's eligibility for IHSS services.

The minor should always be assessed for IHSS and authorized hours regardless of who the provider is.

A minor's eligibility should not be terminated because the parents are ineligible to become parent providers and they cannot hire a non-parent provider.