



IHSS Coalition

QUALITY CARE BEGINS AT HOME

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By e-mail to: Brad.Elftmann@dss.ca.gov, Marc.Engstrom@dss.ca.gov.

RE: Draft ACL and notices on 20% reduction to IHSS

Dear Charissa,

On behalf of the undersigned organizations the IHSS coalition offers these comments.

First, given the number and seriousness of problems inherent in making this cut effective January 1, 2012, we urgently request that CDSS delay implementation of these reductions. In light of the apparent conflicts between SB 73 and the proposed implementation procedures and notices, and the seeming logistical impossibility of resolving those conflicts within the extremely compressed timeline being considered, we request that CDSS agree not to issue notices of action and agree to make no changes to CMIPS until these legal and procedural problems are resolved.

Also, the state has eliminated Adult Day Health Care (ADHC) services effective December 1, 2011. The state mandated transition plan for ADHC participants includes increasing IHSS hours to avoid institutionalization for those who lose ADHC services. However, a 20% reduction in IHSS hours compounds the loss of ADHC, putting individuals at risk of institutionalization. The 20% IHSS cut should not be implemented a month after the loss of ADHC benefits. Individuals who are already at-risk of institutionalization need more than one month to find alternative resources which allow them to stay in their home.

Our comments on the notices are offered in that context, and in the interest of a timely request for that reconsideration, address only some of the larger issues.

No care supplement applications after February 1, 2012

The draft ACL states that the care supplement must be requested prior to February 1, 2012. (Top of Page 6.) This is contrary to the statute. Welfare and Institutions Code section 12301.07(f) provides in relevant part:

Any aged, blind, or disabled individual who is eligible for

services under this chapter who receives a notice of action indicating that his or her services will be reduced under subdivision (a) but who believes he or she is at serious risk of out-of-home placement unless all or part of the reduction is restored may submit an IHSS Care Supplement application.

Welfare and Institutions Code section 12301.07(c) provides in relevant part:

The notice [of action] ... shall include, but not be limited to, all of the following information:

... ..

(3) How all or part of the reduction may be restored, as set forth in subdivision (f), if the recipient believes he or she will be at serious risk of out-of-home placement as a consequence of the reduction.

There is nothing in either subsection (f) or subsection (c) that specifies that the care supplement must be applied for at a particular time. The subsections speak only in terms of the need for the care supplement in light of the serious risk of out-of-home placement. The serious risk of out-of-home placement can develop at any time during which the 20% reduction is in effect. Therefore, the care supplement can be requested at any time during which the 20% reduction is in effect so long as there is a serious risk of out-of-home placement at that time.

County assistance in prioritizing hours

The draft ACL acknowledges that the recipient chooses how to allocate hours within particular service categories in order to conform to the reduction in total hours. (Page 1.) Under the statute, this is solely the prerogative of the recipient. The providers and the county have no part in it.

However, on Page 6 of the draft ACL the counties are told that they may assist the recipient in reallocating hours so that the serious risk is eliminated. In other words, the counties can assist the recipient in “prioritizing” hours so that “the most essential tasks are completed.”

This is contrary to the statute, which provides that the recipient chooses how to reallocate hours.

Only the recipient can determine what is “most essential” and what is “least essential.” The consumer has no responsibility to mitigate the cut. If the 20% reduction creates a risk of out-of-home placement, then the reduction has to be reduced or eliminated in order to eliminate the risk. The county has to determine this based on factors other than reallocation of hours. Otherwise, the county is doing an underground needs assessment.

Also, it is doubtful, at best, that county social workers, with caseloads in the hundreds, will have the time and ability to “arrange for the recipient to receive services from formal or

informal alternative resource' much less to ensure that those services are actually delivered.

Preapproval of IHSS Supplemental Care requests

The draft ACL provides for preapproval of Supplemental Care requests for recipients with functional index ranks of 5 for mobility inside; bowel, bladder or menstrual care; transfer; or eating. It is not clear from the draft ACL whether a recipient must have a rank of 5 in one of these categories, or in all of these categories.

The draft ACL also provides for preapproval if an individual is assessed for 283 hours or protective supervision.

It is not clear from the draft ACL whether a recipient with preapproval has to apply for Supplemental Care to receive it. The draft ACL suggests that this is not necessary. The statute also suggests that this is not necessary. Welfare and Institutions Code section 12301.07(b)(3) and (4) provide as follows:

(3) With respect to existing recipients as of the effective date of this section, all efforts shall be made to ensure that counties complete the process on or before a specific date, as determined by the department, in consultation with counties in order to allow for the production, printing, and mailing of notices to be issued to remaining recipients who are not granted preapproval and who thereby are subject to the reduction pursuant to this section.

(4) The department shall work with counties to determine how to apply a preapproval process with respect to new applicants to the IHSS program who apply after the effective date of this section.

The statute provides that recipients who meet preapproval requirements are not subject to the 20% reduction at all and therefore do not need to be provided with a notice of action. These recipients are to be treated as if the 20% reduction did not take place.

The standards for preapproval are surprisingly strict. People who meet the strict standards in the supplemental care worksheet should also meet the preapproval requirements.

The time for processing Supplemental Care applications is excessive

The draft ACL (bottom of Page 6) states that the NOA with the final determination for Supplemental Care must be sent out no later than 90 days from the date of the application. This could be harmful for many consumers, especially those who do not get the application submitted within the 15 day period to get aid paid pending. The deadline should be moved up to 30 days at the most.

The 20% reduction cannot go into effect January 1, if aid paid pending is to be paid

The notices of action provide that aid paid pending (APP) can be received if a Care Supplement application is mailed by January 3, 2012. This means that the 20% reduction

cannot go into effect by January 1, 2012, because this is before the date that APP can be requested. While aid can be restored retroactively, this is not APP.

The application for Supplemental Care is inadequate

The application says that supplemental care can be requested “until February 1, 2012.” This does not comport with statutory requirements, as discussed above. The words: “until February 1, 2012” should be deleted and replaced with “**at any time if you believe you are at serious risk of out-of-home placement.**”

In addition, the “recipient information” portion of the form should come at the very end of the form and below the recipient explanation lines. This would make the form less confusing and would reduce the chances of the explanation section being left blank.

Because of the possible high volume of applications for Supplemental Care and fair hearings, we suggest that CDSS establish a fax number, in addition to the 800 phone number, and have sufficient staff to respond, so consumers don't have to keep calling for days because of a perpetual busy signal.

The notice to recipient of reduction in authorized hours is inadequate

The notice is confusing because the APP provision comes after the general application provision. These two paragraphs should be reversed, as they are on the Supplemental Care application. The two paragraphs should be amended to read as follows:

If you believe that the 20-percent reduction in your authorized service hours puts you at serious risk of out-of-home placement, you can ask for IHSS Supplemental Care. You must complete the enclosed IHSS Application for Supplemental Care (SOC xxx) and return it to the county. If you ask for IHSS Supplemental Care within 15 days of receiving this notice, or mail the application to the county postmarked no later than **January 3, 2011**, the reduction in your service hours will not go into effect. You will continue to get the same number of service hours you have been getting until the county determines if you are at serious risk of out-of-home placement. If the county determines that you are at serious risk of out-of-home placement your service hours may not be reduced at all or they may be reduced less than 20-percent in order to eliminate the risk.

If you do not ask for IHSS Supplemental Care within 15 days of receiving notice of the reduction, or mail it to the county with a postmarked date of January 4, 2012 or later, the reduction in your service hours will go into effect but you can still request IHSS Supplemental Care **at any time if you believe you are at serious risk of out-of-home placement.** If the county determines that you are at serious risk of out-of-home placement, your service hours may be partially or fully restored.

The NOA messages related to unmet need are inadequate

There are several problems with the unmet need reduction notice messages. (Draft ACL Page 9.) To begin with, the first sentence in the messages refers to “authorized” hours. This

is not correct. Authorized hours are hours which can be paid for by IHSS. The word “authorized” should be removed. In addition, the last sentence of the unmet need reduction notices reads as follows: “Your unmet need hours will be reduced first when the reduction in authorized hours takes effect.” This is difficult to understand. It should be changed to “The 20-percent reduction in hours will be applied first to your unmet need hours, then to the hours paid for by IHSS.”

The Supplemental Care worksheet does not comport with statutory requirements

The form suggests that recipients are at serious risk of out-of-home placement only if the criteria on the form are met. It does not provide for an assessment of serious risk of out-of-home placement based on eligibility for nonmedical out-of-home care (NMOHC) or long-term care (LTC) as required by the statute.

The criteria established by the department are troubling. First, we question the assumed connection between risk of out-of-home placement and functional index ranks. Second, according to the draft ACL, for someone to be considered at serious risk of out-of-home placement they must meet at least three of the eight conditions listed in part A. However, common sense would indicate that meeting just one of the conditions could put the consumer at risk of placement. For example, bullet 5 states that the consumer must have a functional ranking of 3, 4, or 5 for Bowel, Bladder or Menstrual care, or must be authorized for catheter or colostomy care. Without the assistance of an IHSS worker with any of these tasks, the person could face serious difficulties maintaining their health and their ability to remain in the community.

Again, we strongly urge CDSS to delay implementation of the 20% reduction. Thank you for your consideration of our requests and comments.

AARP-California
Access to Independence
ACLU of Southern California
California Alliance for Retired Americans (CARA)
California Association of Public Authorities (CAPA)
California Church IMPACT
California Council of the Blind
Californians for Disability Rights, Inc. (CDR)
California Foundation for Independent Living (CFILC)
California IHSS Consumer Alliance (CICA)
California Senior Legislature
California Disability Community Action network (CDCAN)
California United Homecare Workers (CUHW)
Congress of California Seniors
Dayle McIntosh Center for the Disabled
Disability Rights California (DRC)
East Bay Community Law Center
Friends Committee on Legislation
Gray Panthers

Independent Living Resource Center Inc.
Independent Living Services of Northern California (ILSNC)
Marin IHSS Public Authority
National Senior Citizen's Law Center
Nevada-Sierra-Plumas Public Authority
Northern California ADAPT
Older Women's League
Personal Assistance Services Council of Los Angeles
Resources for Independent Living
The San Diego IHSS Coalition
San Francisco Public Authority
Service Employees International Union – State Council
SEIU United Long Term Care Workers
SEIU United Healthcare Workers West
SEIU Local 521
Silicon Valley Independent Living Center (SVILC)
Southeast Asia Resource Action Center | California Office
The Arc and United Cerebral Palsy in California
Tri-County Independent Living Center, Inc.
UDW /AFSCME Local 3930