



CDSS

WILL LIGHTBOURNE
DIRECTOR

STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF SOCIAL SERVICES
744 P Street • Sacramento, CA 95814 • www.cdss.ca.gov



EDMUND G. BROWN JR.
GOVERNOR

DRAFT 6/7/2011

ALL COUNTY LETTER NO. XX-XX

TO: ALL COUNTY WELFARE DIRECTORS
IN-HOME SUPPORTIVE SERVICES (IHSS) PROGRAM
MANAGERS

SUBJECT: GUIDELINES AND PROCEDURES FOR GENERAL EXCEPTIONS
FOR EXCLUSIONARY CRIMES FOR IN-HOME SUPPORTIVE
SERVICES PROGRAM PROVIDERS

REFERENCES: ACL NO. 09-70, DATED OCTOBER 31, 2009
ACL NO. 11-12, DATED JANUARY 28, 2011

This All County Letter (ACL) provides counties with information regarding the implementation of sections of Assembly Bill (AB) 1612 (Chapter 725, Statutes of 2010) relating to the establishment of guidelines and procedures for the submission and review of general exceptions for exclusionary crimes.

BACKGROUND

AB (X4) 19 (Chapter 17, Statutes of 2009), amended or added sections 12301.6 and 12305.86 to the Welfare and Institutions Code (W&IC) establishing new requirements for prospective IHSS providers. The expanded requirements included a provision that each applicant provider must submit fingerprints and undergo and pass a criminal background check conducted by the California Department of Justice (DOJ).

Prior to the passage of AB 1612, the only crimes for which a provider could be disqualified from providing services to an IHSS recipient were those specified in W&IC Section 12305.81, also known as Tier 1 crimes, namely:

- Child abuse (as specified under Penal Code Section 273a(a));
- Elder or Dependent Adult abuse (as specified under Penal Code Section 368);
- Fraud against a government health care or supportive services program.

AB 1612 added new provisions to California law which require that an individual, in order to pass the criminal background check, must not have been convicted of, or incarcerated following a conviction for, certain felony crimes as specified in W&IC Section 12305.87. These crimes, also known as Tier 2 crimes, fall into six broad categories

- Sex crimes for which a person is required to register as a sex offender pursuant to Penal Code Section 290(c);
- Physical crimes against a person;
- Crimes against property;
- Fraud and money crimes;
- Non-physical crimes against a person;
- Serious felonies not against a person or property.

An individual who, within the last ten years, has been convicted of, or incarcerated following a conviction for, one of the above crimes is ineligible to be enrolled as an IHSS provider without the granting of an individual waiver or general exception.

Upon determining that an applicant provider is ineligible to serve as an IHSS provider based on a Tier 2 criminal conviction, the county/Public Authority (PA)/Non-Profit Consortium (NPC) shall inform the applicant provider of this determination and the reason for his or her ineligibility. The applicant provider will also be informed of his or her ability to file an appeal of this determination of ineligibility.

The applicant provider's chosen recipient will also receive a notice from the county/PA/NPC informing him or her of the applicant provider's ineligibility due to conviction for a Tier 2 crime. The recipient will also be informed of his or her ability to file an individual waiver on behalf of the applicant provider to allow that individual to work as an IHSS provider for him or her only, regardless of the Tier 2 criminal conviction.

However, if an applicant provider wishes to provide services for multiple recipients or wishes to be placed on a provider registry and has been determined ineligible due to a Tier 2 criminal conviction, he or she is also informed that he or she may file for a general exception of the exclusion. This ACL will provide a breakdown of the steps necessary for an applicant provider to apply for a general exception.

GENERAL EXCEPTION PROCESS

If an ineligible applicant provider chooses to request a general exception, he or she must complete the SOC 863 form and mail it to the California Department of Social Services (CDSS), Caregiver Background Check Bureau (CBCB), General Exception Unit (GEU). Since the general exception process requires the compilation and evaluation of all relevant information that would support the approval or denial of the

request, the applicant provider is required to submit the following documentation with the SOC 863 to the CBCB, GEU:

- A copy of the denial notice (SOC 852A) stating the reason the applicant provider was found ineligible to serve as an IHSS provider;
- A copy of the applicant's SOC 426, "IHSS Program Provider Enrollment Form," which was completed and submitted to the county upon the applicant provider's initial application;
- Documentation (such as Minute Order, Court-Issued Judgment of Conviction, or letter from the Probation Department) showing that the applicant provider completed his or her last probation period and indicating whether the current or last probation period was formal or informal;
- Description of, and verification (if available) of, any completed training, classes, treatment, counseling, or community services activities that would indicate rehabilitation or changed behavior. Such verification can include certificates, diplomas, letters from counselors, etc.;
- Evidence of an official pardon by the Governor, if applicable;
- Employment history of the applicant provider for the last ten (10) years;
- Copies of all police reports involving the disqualifying crime(s) for which the applicant provider was convicted or a letter from a law enforcement agency stating that the police report no longer exists;
- Three (3) signed character reference statements written on behalf of the applicant provider that include the following information:
 - a) How long this person has known the applicant provider;
 - b) How this person knows the applicant provider;
 - c) A statement by this person indicating his or her opinion of the character of the applicant provider;
 - d) A description of any interaction witnessed or known by this person between the applicant provider and an individual who is elderly, blind, or disabled that the applicant provider assisted in some manner;
 - e) Any other comments that would describe the applicant provider's desire to work as an IHSS provider.

These reference statements must be completed on the SOC 865, "IHSS Request for Applicant Provider Reference" form and must be dated after the date of the denial notice (SOC 852A). The statements may be obtained from current or former employers or by any other persons of the applicant provider's choice; however, the applicant provider is restricted to only one reference from a family member;

- A personal signed statement from the applicant provider detailing the events surrounding the disqualifying crime(s) for which he or she has been convicted, including what happened, why it happened, how it happened, to whom it happened (description of victim, including, if known, gender, approximate age,

physical characteristics, relationship to applicant provider, etc.) and any other relevant information about the disqualifying crime(s) or any other conviction(s).

W&IC Section 12305.87(e)(3) requires the CBCB, GEU, to consider the following factors when determining whether to grant a general exception:

- The number of convictions and the time elapsed since the convictions.
- The nature and seriousness of the crime of which the individual was convicted, and how closely the crime relates to the duties and responsibilities of an IHSS provider;
- The circumstances surrounding the commission of the crime that would demonstrate unlikelihood of repetition;
- The extent to which the individual has complied with the terms of parole, probation, restitution, and any other conditions or sanctions;
- The individual's activities since conviction or release from incarceration that would demonstrate a change in behavior, such as participation in therapy, community service, education, etc.;
- Further evidence of rehabilitation, such as character references;
- The individual's employment history and recommendations of current and/or former employers, especially those from persons for whom the individual has provided supportive services or who wish to have the individual provide supportive services;
- The granting of a full and unconditional pardon by the Governor.

To assist in making the determination of whether to grant a general exception, the CBCB, GEU, is authorized by W&IC Section 12305.87(e)(2) to request from the county a copy of the applicant provider's Criminal Offender Record Information (CORI) that the county received from the DOJ. The county is required to provide the CBCB, GEU, with the unaltered CORI in a manner which safeguards the confidentiality and privacy of the information.

If the form and all of the required documentation is included with the packet, an analyst with the CBCB, GEU, will evaluate the information to determine if the applicant provider qualifies for a general exception.

If the general exception is approved, the CBCB, GEU, will send a notification of the approval to the applicant provider as well as to the appropriate county/PA/NPC using the IHSS general exception approval letter (GE-1).

If the general exception is denied, the CBCB, GEU, will send the applicant provider the IHSS general exception denial letter (GE-2) via standard mail (or in-person if appropriate). The denial letter will state the reason(s) for denial. The letter will also explain the appeals process. The CBCB, GEU, will also send a copy of the applicant

provider's CORI even if the applicant provider has previously received a copy after his or her initial denial of eligibility as an IHSS provider.

GENERAL EXCEPTION APPEALS PROCESS

Following the written notification of the general exception denial, the applicant provider may appeal the denial by requesting an administrative hearing. The applicant provider must submit the appeal request within fifteen (15) business days of the receipt of the IHSS general exception denial letter. The applicant provider will send the appeal request to the CBCB, GEU, which will acknowledge the receipt of the appeal request within five (5) business days by sending a notification of acknowledgement of the appeal request (GE-3) to the applicant provider.

An administrative hearing will be conducted by an administrative law judge from the Department of General Services' Office of Administrative Hearings. The CBCB, GEU, will be responsible for preparing the Statement of Facts forms (SOC 871 and SOC 872), which provide information for the hearing that supports the general exception denial. Following the hearing, the decision will be sent to the applicant provider via certified mail. A copy of the decision will also be sent to the county/PA/NPC.

SUBSEQUENT CONVICTION

The DOJ shall send the county/PA/NPC any subsequent conviction information for any IHSS providers in its jurisdiction, unless notified otherwise.

A subsequent conviction for a disqualifying crime under W&IC Section 12305.81 (Tier 1 crime) or 12305.87 (Tier 2 crime), following the approval of a general exception, will result in the termination of enrollment as an IHSS provider and termination of the provider's inclusion on the IHSS provider registry. Form SOC 858A, "Notice to Provider of Provider Ineligibility—Tier 1 Crimes Ineligibility—Subsequent Conviction" or form SOC 858B, "Notice to Provider of Provider Ineligibility—Tier 2 Crimes Ineligibility—Subsequent Conviction" will be sent to the provider to notify him or her that, effective twenty (20) days from the date of that notice, the provider will no longer be eligible for payment by the IHSS program. Form SOC 859A, "Notice to Recipient of Provider Ineligibility—Tier 1 Crimes Ineligibility—Subsequent Conviction" or form SOC 859B, "Notice to Recipient of Provider Ineligibility—Tier 2 Crimes Ineligibility—Subsequent Conviction" will be sent to the recipient to notify him or her that, effective twenty (20) days from the date of that notice, his or her IHSS provider will be ineligible to receive payment from the IHSS program.

If the subsequent conviction is for a Tier 1 crime, the provider will be informed that an individual waiver request and/or general exception request cannot be granted for this type of crime.

If the subsequent conviction is for a Tier 2 crime, the provider will be notified of his or her right to appeal the ineligibility determination, via the Department's written appeal process, and also that the provider has the ability to file another general exception request addressing the subsequent convictions or, alternatively, the provider may be allowed to continue to work for a specific recipient if that recipient files form SOC 862, "IHSS Recipient Request for Provider Waiver" with the county/PA/NPC to request an individual waiver.

CORI RETENTION

The CBCB, GEU, shall retain a copy of the CORI of each individual who has been approved for a general exception until the date that the convictions that are the subject of the general exception are no longer within the 10-year period as specified in W&IC Section 12305.87(f)(2)(B).

EFFECTIVE DATE

Pursuant to W&IC Section 12305.87, the policies being implemented through this ACL became effective February 1, 2011, and apply to all applicant providers who were denied enrollment as an IHSS provider due to a conviction for a disqualifying felony crime (Tier 2 crime), as defined under W&IC Section 12305.87(b).

Should you have any questions regarding the general exception process, please contact the Adult Programs Policy, Legislation & Litigation Unit at (916) 651-5350.

Sincerely,

EILEEN CARROLL
Deputy Director
Adult Programs Division

Attachments