



IHSS Coalition

QUALITY CARE BEGINS AT HOME

October 17, 2011

Charissa Miguelino, Chief
Adult Programs Policy and Operations Bureau
California Department of Social Services
Marshall Browne at Marshall.Browne@dss.ca.gov

RE: Draft ACIN For Revised Health Certification Form & Notices

Dear Charissa:

On behalf of the undersigned organizations, the IHSS coalition offers these comments on the draft ACIN and Notices on the health certification form, procedures and notices.

45-day Deadline and Good Cause Extensions. We are very concerned that ACL 11-55 and this ACIN do not adequately address the authority of counties to grant consumers an extension of the 45-day deadline to submit the health certificate. There are consumers who are having a very hard time getting a licensed health care professional (LHCP) to complete the form in the 45-day window before services are terminated. This is a major problem in medically underserved areas and with small medical practices where the doctor lacks support staff. It is a chronic problem in Lake County, for example, where doctors have a backlog of health certificate forms to complete and are advising IHSS consumers they will not be able to meet the deadline. The fear of losing services is particularly acute in Lake County because the county is instructing consumers they have a 30-day deadline to submit the health certificate.

Welfare & Institutions Code 12309.1 (e)(1) clearly establishes a 45-day period for the recipient to submit the health certificate. State law does not contain any deadline for counties to extend the 45-day period for good cause. By contrast, ACL 11-55 state,

- *“Recipients must notify the county of the need for a good cause extension no later than 35 calendar days from the in-home assessment. After the 35th day, a good cause extension can no longer be granted.”* -- and
- *“Timeframe extensions granted for good cause should not be extended for more than 45 calendar days beyond the mandated 45-day timeframe for a maximum total of 90 days.”*

We request that CDSS provide instructions to give the counties flexibility to extend the 45-day deadline beyond 90 days when consumers have good cause to need the extension. While we appreciate that ACL 11-55 and the notices allow the consumer/applicant to reapply for

IHSS, that process is time consuming, stressful and potentially threatens the ability of consumers to remain safely in their homes. It would be less burdensome on consumers to simply extend the timeframe beyond the 90 days specified in ACL 11-55 when there is good reason to do so.

Page 2 – Out of state LHCPs. We appreciate that CDSS recognizes the need to allow out-of-state LHCPs to complete the health certificate. This is very helpful, particularly for consumers living near the state borders. However, we have serious concerns about the requirement that out-of-state LHCPs must be a Medi-Cal provider. Statute doesn't require that the in-state LHCP be a Medi-Cal provider, so it is baffling that CDSS would require this of out-of-state providers. This could seriously disadvantage military veterans who are being treated at an out-of-state Veterans Hospital, or anyone who pays privately or uses private insurance to pay for health care or who uses a LHCP who accepts Medicare but not Medi-Cal.

Page 3 – Section C of the Health Certificate. The draft ACIN states, *“If the LHCP has answered “Yes” to Items #5 and #6 on the SOC 873, but he/she has failed to complete Item #7, the county must contact the LHCP to obtain the information about the individual’s physical and/or mental condition or functional limitation that has resulted in or contributed to his/her need for IHSS. The county should notate the outcome of the contact on the SOC 873, initial any such notation and document the case file accordingly. If the county cannot obtain the necessary information in the course of the contact, or if Items #5 or #6 are unanswered, it should send the SOC 873 back to the LHCP to be completed.”*

We think the following questions need to be addressed in the ACIN:

- If the county sends the health certificate back to the LHCP for more information, does this stop the clock on the 45-day deadline for the consumer to submit the form?
- Does the consumer get Aid Paid Pending during the time period that the county is waiting for the LHCP to resubmit the form?

Another piece of information is needed on the SOC 873 – Exemption from 7-visit soft cap on Medi-Cal physician and clinic visits. As you know, the legislature adopted a soft cap of seven physician visits annually for Medi-Cal beneficiaries. Welfare & Institutions Code 14131.07 (b)(1)(E) contains an exception, as follows: *“The services are for the purpose of assessment and form completion for Medi-Cal recipients seeking or receiving in-home supportive services.”* We request CDSS add information to the SOC 873 health certificate form so doctors and clinics know they will be paid by Medi-Cal for the physician or clinic visit.

Page 4 – Revision to Applicant Notice (SOC 874). We believe the legislature did not intend to exclude applicants from receiving an extension of the 45-day deadline to submit the health certificate. We outlined our concerns about this issue in our letter submitted on September 27, 2011 responding to the draft ACL on exceptions to the health certificate requirement and continue to believe that the notice to applicants should inform them that the county has authority to extend the 45-day deadline on a case-by-case basis for good cause.

The applicant notice should include the exemption from 7-visit soft cap on Medi-Cal physician and clinic visits pursuant to Welfare & Institutions Code 14131.07 (b)(1)(E).

Page 4 – Revisions to Recipient Notice (SOC 873). We are very concerned about the instruction for counties to send the termination Notice of Action (NOA) on the 45th day following the in-home assessment. While the language in the current notice to consumer is flawed, at least they were being informed in advance that IHSS would stop if they fail to submit the form. Consumers must have information in advance of the NOA terminating services so that they know it's coming and can prepare – so that consumers are aware of the severe consequences, potentially losing services, if they're unable to obtain a certification within 45 days. We recognize that counties are underfunded and overworked. But this short-cut is simply unacceptable.

The notice also must be revised to inform consumers that counties have authority, on a case-by-case basis, to grant extensions to the 45-day period. The draft ACIN states, "This language was deleted to reflect a change in policy regarding the time frame for mailing Notices of Action (NOAs) to recipients who fail to provide the SOC 873 (or alternate document) within 45 days, and for which good cause does not exist." How can the county know if good cause exists if the consumer doesn't explain their circumstances? How can the consumer know the county has the authority to extend the 45-day deadline if they aren't informed on the notice? This is a serious flaw in the consumer notice and we request that CDSS add language that mirrors Welfare & Institutions Code 12309.1 (e)(2), as follows, "A county may extend the 45-day period for a recipient to submit the medical certification on a case-by-case basis, if the county determines that good cause for the delay exists."

We also believe the consumer notice should advise them of the exemption from 7-visit cap on Medi-Cal physician and clinic visits pursuant to Welfare & Institutions Code 14131.07 (b)(1)(E).

Page 5 – Clarification on Inter-County Transfers. The ACIN is helpful in clarifying that the consumer does not need to provide the receiving county with a copy of the health certificate if he/she already submitted one to another county. The draft ACIN states, "However, if the SOC 873 or alternate document has not already been provided by the recipient in the sending county, the receiving county shall request one at or before the face-to-face assessment with the recipient which the receiving county is required to complete during the transfer period, pursuant to MPP 30-759.94." This raises a few questions:

- What is the "transfer period" and how does that time period relate to the 45-day deadline to submit the health certificate?
- Does the 45-day period begin when the consumer has the face-to-face assessment with the social worker in the new county?

One final question: What is being done to comply with Welfare & Institutions Code 12309.1 (g), which provides, "The State Department of Health Care Services shall provide notice to all Medi-Cal managed care plans, directing the plans to assess all Medi-Cal recipients applying for or receiving in-home supportive services, in order to make the certifications required by this section."?

Thank you for the opportunity to comment on this ACL.

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