

IHSS Advocate Alert Hours Reduction Starts February 2011



Reduction in IHSS Hours Slated

Most recipients of In-Home Supportive Services (IHSS) (“IHSS consumers”) will face a 3.6% reduction in IHSS hours starting February 1, 2011. This cutback is a result of a legislative change that took place in 2010, AB 1612, which added WIC Section 12301.06. This alert explains how the reduction will work and how advocates can help.

How will the reduction be applied?

The reduction will apply to total “paid” IHSS hours, for those who are receiving under the maximum number of hours. (The maximum number of hours is currently 195 for most consumers; it is 283 for those who are severely impaired or who need protective supervision and are eligible under the PCSP option.¹) IHSS consumers can choose what approved services are not paid for, and have the responsibility to communicate with their care providers (“providers”) about the cuts and what services are to be curtailed. The consumer can change which services are not covered at will, and does not need to tell the county worker.

What about cuts for those who are receiving maximum hours?

Some people receiving the IHSS maximum hours need more hours that the county acknowledges, but that are not provided for through IHSS or other programs (such as Regional Center services). This is called “unmet need.” For this group, the 3.6% cut in hours will come first from unmet need. For example, if a client’s need has been

¹ A consumer is considered “severely impaired” if the time assessed for essential services categories (marked with an asterisk on the Notice of Action) totals 20 hours or more per week. In addition, those who need protective supervision may receive 283 hours per month if they are eligible for the Personal Care Service Program. Those who receive services under the IHSS Plus Waiver (IPW) program, which allows for spouse or parent providers, advance pay and restaurant meal allowance, or the IHSS residual program, are limited to 195 hours per month total.

demonstrated for 200 hours, and the maximum allowed is 195, the 3.6% cut will be 7.2 hours (3.6% of 200), and the client will get 192.8 hours after 2/1/11.

Note that for almost 2,000 consumers with documented unmet need, the notices sent in late December about the 3.6% cut contained an inaccurate calculation of total authorized need. DSS says that this was caused by a “programming error” and that corrected Notices of Action were sent to affected consumers on January 7, 2011. The correction will restore an average of 0.03 hours.

What can be done?

- Make sure that your clients’ assessment of hours needed is current and that the 3.6% cut was accurately applied. If there has been any change in circumstance since the last assessment, or if your client believes that they did not get a correct or accurate assessment previously, the client should request a reassessment.
- Medical evidence of need can be very important, and should be obtained and provided wherever possible. In particular, the client should get the last IHSS evaluation filled out by the medical provider(s). The client (or you, as the Authorized Representative) may want to explain the purpose of the evaluation, and any concerns about the last completed evaluation and/or thoughts about the responses for a new evaluation. *For more information, see:* <http://www.disabilityrightsca.org/pubs/501301.htm>.
- A limited English proficient (LEP) client has the right to ask for language assistance. An interpreter or bilingual worker should be provided, including for in-home assessments; the worker should not determine whether an interpreter is needed.

Why Ask for a Hearing?

Ask for a hearing if there is a math error in the reduction of hours, if a new assessment is warranted and cannot be obtained in a timely way, if you wish to appeal an assessment that is too low, or if there are other problems (e.g., defective notice, such as a notice was not sent at least 30 days prior to February 1 or meet other notice requirements).

- An appeal of an assessment must be filed within 90 calendar days of the date of the notice (or within ten days to receive aid paid pending) or must show good cause for late filing. For more info on appeals see: <http://www.disabilityrightsca.org/pubs/547001-Ch-08.htm>.
- A limited English proficient (LEP) client has the right to ask for language assistance an interpreter. A brochure explaining state hearings in several languages is available at: http://www.dss.cahwnet.gov/cdssweb/entres/forms/Multi/PUB412_letter.pdf
- A home hearing may be requested where, for medical, physical, transportation limitations or other reasons, the client cannot personally attend the designated county location. See <http://www.disabilityrightsca.org/pubs/548501.pdf> for more information.

Note: An appeal based solely on the 3.6% cut, with no other issues, will be dismissed.

Late Filing

As with other DSS hearings, a late appeal (more than 90 days from the date of the notice) will be heard only if there is good cause; or if a judge finds that doing so is needed under principles of equity. See W&I 10951 and DSS ACIN I-66-08 at <http://www.dss.cahwnet.gov/lettersnotices/PG1516.htm>.

Notices and Language Access

Notices of Actions (NA 690) were sent to clients in late December. In addition, a message insert (NOA-303A) was sent with each mailing. Although the NA 690 is available from DSS in three other languages (Spanish, Chinese, Vietnamese), it is not clear if counties are using it; NOA-303A also being translated. Another message, NOA-303B will be sent after February 1 with all Notices of Action. The text of the inserts is available at: <http://www.dss.cahwnet.gov/lettersnotices/entres/getinfo/acl/2010/10-61.pdf> (appendices). For other languages, counties should be using the general notice of

language services, available at
<http://www.dss.cahwnet.gov/cdssweb/entres/forms/Multi/GEN1365MUL.pdf>.

Note: A list of translated DSS/IHSS forms is at:
http://www.dss.cahwnet.gov/cdssweb/FormsandPu_274.htm.

For More Information

This handout was prepared by the National Senior Citizens Law Center (NSCLC) and is intended for use by advocates. NSCLC does not give out individual legal advice or directly assist IHSS consumers and providers. Individuals should contact their local legal aid office, or Disability Rights California.

A consumer handout on this topic is available at www.lsn.net (search on “IHSS”). Translations of the consumer handout are being produced in Spanish, Chinese, Armenian, Vietnamese and Russian and will be posted as they are completed.

For more detailed information on language access issues and IHSS, or to view a copy of our forthcoming report, “Improving Language Access to Keep California’s Older Adults at Home: An Examination of the In-Home Supportive Services Program,” contact NSCLC at Oakland@nsclc.org.

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