

10/28/09 Joint Budget Hearing Committee Comments with CDSS Response

Provider Enrollment:

- Process distinctions, as dictated in statute, for current and new providers need to be addressed throughout the final ACL (e.g. for completion of the provider enrollment form, criminal background check, and receipt of the orientation materials and signing of statement).

CDSS believes that the language in the final All County Letter (ACL) is clear and that counties understand the conveyed policy. However, any necessary clarification will be provided in a subsequent ACL and/or regulations if needed.

- The final ACL indicates in several areas where further instruction will be provided in a “subsequent ACL” including information about the appeals process, interaction with Medi-Cal Suspended and Ineligible Provider List, and the actual list of misdemeanor crimes and licensure conditions that would bar an individual as a provider.

Yes, the first ACL (ACL 09-52) discussed the provider enrollment process and transmitted the revised Provider Enrollment Form as well as other supporting documents for the enrollment process. Subsequent ACLs provided detailed instructions on the other requirements, such as the criminal background check process and the list of misdemeanor crimes that would disqualify an individual from being an IHSS provider.

- The ACL includes additional bars for individuals found liable for fraud or abuse of a government program, but without clarity as to what constitutes fraud/abuse and which government programs would disqualify an individual.

Clarification has been provided to county staff at several meetings, and to other stakeholders and legislative staff on other occasions, that Welfare and Institutions Code (WIC) Section 12305.81 provides that any person who in the past 10 years has been convicted of fraud against a government health care or supportive services program including Medicare, Medicaid (Medi-Cal), or services provided under Title V (Maternal and Child Health Services Block Grant), Title XX (Block Grant to States for Social Services), or Title XXI (State Children’s Health Insurance Program) of the federal Social Security Act is ineligible to be enrolled as a provider or to receive payment for providing supportive services in the IHSS program. It is important to note that WIC Section 14123 also governs the enrollment of IHSS providers.

As stated above, if any clarification is necessary beyond what has already been provided, it will be done in a subsequent ACL and/or regulations.

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- The provider enrollment form includes language disqualifying providers who have certain licensing and certification histories. Statutory authority and direction to request this information is unclear.

This language is required by federal law as part of the enrollment process for all Medi-Cal providers, including IHSS providers. Counties are aware that IHSS providers are not required to be licensed nor do they require certification; therefore, the questions related to disqualifying providers on the basis of a suspended license/certification are less likely to be applicable. Moreover, counties have been instructed via a recent ACL to review the Department of Health Care Services' (DHCS) Medi-Cal Suspended and Ineligible Provider list in the event the existing/prospective provider had previously been certified or licensed and the license/certificate had been revoked or suspended, (e.g. a former nurse who is listed on the Medi-Cal S&I List.). However, as stated before, if further clarification is necessary, it will be provided in a subsequent ACL and/or regulations.

- The ACL asks that all current providers (more than 360,000 individuals) complete the new Provider Enrollment Form and return it in person to the county or public authority by July 1, 2010. This is a point of significant dispute given the agreement between the Administration and the Legislature at the culmination of budget decision-making in July – that the completion of the form only applies to new applicants.

W&I Code Section 12301.81(a) (SB 1104, Statutes of 2004) established this requirement for all IHSS providers. The SOC 426 Provider Enrollment Form represents the implementation of the requirement established in SB 1104. All Providers (current and prospective) are required to complete the new SOC 426 Provider Enrollment Form.

The revised form was created in conjunction with DHCS to comply with WIC Section 12305.81(a) requirements and comply with Medi-Cal rules. This includes disclosure requirements and the declaration regarding prior convictions for felonies or serious misdemeanors. To be in compliance with Medi-Cal, all providers must complete this new form.

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- Related to the above bullet and agreement, current providers serving a new consumer after November 1 should not be subject to the new provider enrollment process. The CMIPS draft instruction requires the entire process to be completed before payment is made to a provider, jeopardizing the new consumer and the provider, who is existing already in the system. The provider's status in CMIPS is made vulnerable in this scenario and does not align with the intent of the law.

The intent of the law is to ensure a uniform provider enrollment process. CMIPS has been modified to allow any provider known to the CMIPS database since January 1, 2001 to be considered an existing provider. This issue has been clarified and reiterated for the counties in Electronic Bulletin Board (EBB) 0915. Additional discussions will occur with counties both individually and through the California Welfare Directors Association (CWDA) Long-Term Care Operations Committee meeting scheduled 11/4/2009. Current providers will be allowed to work for another recipient and will only be required to meet the existing provider timeframe of July 1, 2010 for completion of the provider enrollment process.

- Related to the above, the CMIPS draft instruction to counties asks that providers in process of completing requirements not be paid until they are all met, jeopardizing payment for new providers in November in an unprecedented fashion (usually paid via aid paid pending) and current providers come July 1.

Prospective providers cannot be paid in pending status until they complete the enrollment process. However, recipients may continue to receive services and a retroactive payment can be made to the provider once the provider completes all the enrollment requirements successfully.

- The ACL asks that provider documentation be filed in either a provider file or the recipient's case file, when the statute specifically references filing of materials (criminal background check, appeal information, fingerprint information, P.O. Box use request) in the provider's file. This is important given that some providers serve more than one consumer.

If a county has already created provider files, they should then begin retaining the documents in that manner. In prior discussions with the counties, it had been expressed by county staff that they had not yet established these provider files; allowing county staff to utilize the current recipient file during this transition period provides these counties the time to establish the required provider files. The ACL provides flexibility to counties to give them an opportunity to establish appropriate processes, including file maintenance.

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- The final provider enrollment form doesn't include a full list of felonies and misdemeanor crimes that would prohibit an individual from enrolling as a provider. There remains dispute over the broad interpretation from DHCS Legal on disqualifying crimes.

Any felony prohibits an individual from enrolling as a provider. The list of misdemeanor crimes is specified in the Final ACL released on Saturday, October 31, 2009 that addresses criminal background checks.

- Understandability, definitions, and language access issues (the information notice was only released in English) have also been raised for the provider enrollment process.

As indicated in ACL 09-52, the provider enrollment form (SOC 426) will be translated in Spanish, Chinese, and Armenian. Counties are required to provide bilingual/interpretive services and written translations to non-English or limited English proficient populations as required by state law.

CDSS also developed a Frequently Asked Questions (FAQs) document (SOC 426B) to be provided to each person completing the SOC 426 in order to assist the individual in completing the form. This document was also translated in Spanish, and Chinese. Armenian translation should be completed no later November 10, 2009.

CDSS is in the process of expediting the translations of all materials, including the written materials consistent with the Provider Orientation CD-ROM. These translations should be completed and to the counties by no later than November 10, 2009.

- Where it lacks specificity or conclusion, the ACL allows and encourages county "flexibility" to create various standards in implementation, which creates additional confusion and raises serious issues for program integrity, reporting, and issues of statewideness for purposes of federal waiver compliance.

CDSS allows for some flexibility in specific circumstances, such as file maintenance and timeframes, to administer the requirements for all existing providers by July 1, 2010. Counties had requested some flexibility, and we do allow certain flexibility, as we can appreciate the differences in county processes, especially given the various IHSS provider populations.

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Provider Orientation Requirement:

- DSS has developed orientation materials and stated that it would send materials equal to 10% of a county's IHSS provider population. Questions arise about whether the county is expected to recreate the balance of materials for their population on their own. Counties should receive instruction about how to use the materials received and how to comply with copyright law if this applies.

The final ACL which was released 10/28/09 provides the details that many of the stakeholders requested, including the materials and quantities that counties will require. CDSS has provided the counties a clearinghouse to support this effort. This should no longer be an issue.

- Lack of disclosure to current providers that they are not required to attend a provider orientation as statute provides only that they receive the orientation materials. If current providers are asked to attend the orientation training in-person, there are certain federal requirements that counties have to meet that are not addressed or outlined.

The final ACL makes a clear distinction between current and prospective providers. Current providers have the opportunity to receive the orientation materials in written or CD-ROM format and review them before July 1, 2010.

- Counties are attempting to create new spaces and meet staffing demands for the orientation process, as well as acquire the equipment to provide the orientation for prospective providers and the thousands of current providers who will need to satisfy the requirements before June 30, 2010.

Currently counties and PAs have space for training and orientations. The demand to have lots of space available November 1 is not likely to materialize, as the vast bulk of providers are current providers and thus have until the end of the fiscal year to complete the orientation and have alternative formats available, as discussed above.

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- Content and tone of the orientation material has raised questions.

CDSS conducted two meetings with stakeholders (County representatives, CAPA, CWDA, IHSS Coalition, SEIU, UDW, public representatives) who attended one or both meetings. During the meetings, outlines and proposed content for the provider orientation curriculum were presented and a fraud prevention video developed by Fresno County was previewed. None of the major stakeholder groups raised issues with the content and tone or inclusion of the Fresno Fraud Prevention video during the meetings or in the letters received prior to this past Monday.

There was much effort made to ensure the orientation was appropriate given the information the orientation was required to contain. CDSS is planning to update this video next year as the changes to the IHSS program are stabilized. It is this video for which stakeholders will be able to provide additional input on a less time constrained basis.

Criminal Background Check and Appeal:

- Counties state that they must apply for and receive a Criminal Offender Record Information (CORI) number from the Department of Justice (DOJ) and have been told that this process will take 4-6 weeks beyond the time needed to take the required local steps necessary to submit their county application.

Although, we are currently discussing the 4-6 weeks timeline with DOJ, it is our understanding that at least 42 counties already have relationships with the DOJ and/or Livescan and will not encounter these potential delays. Therefore, any delays will only be for those counties that don't have a current relationship and the 4-6 week delay would only occur up front (until the approval process is completed) and not an ongoing issue.

If there is a delay, as stated in a prior response, although prospective providers cannot be paid until they complete the enrollment process, recipients may continue to receive services, and a retroactive payment can be made to the provider once the provider completes all the enrollment requirements successfully.

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- The ACL requires that all providers wait to receive instructions from the county before beginning the criminal background check process. Payment for their work is dependent on their ability to complete a host of new and complicated requirements. Their success in completing this depends on guidance from the counties when there is confusion over implementation details.

The ACL regarding criminal background checks provides guidance on this issue. The county or PA must provide certain information to the applicant provider in order for DOJ to return the records to the county or PA.

- There is no statutory authority for counties to share criminal history information received for a provider with the state for purposes of appeal. This additionally raises confidentiality concerns for providers.

We are currently working with the Office of the Attorney General to ensure access to information that will provide a secure and meaningful appeals process. Criminal convictions are considered public information which can be obtained directly from the courts and counties are not restricted from extracting this information from the criminal history and providing it to CDSS in another document. Providers would benefit from additional statutory clarification on the general issue of criminal history records and how they may be obtained and shared.

- Clarity is needed on the 60-day time period for providers to file their appeal and at what point this period begins. Provider eligibility for back-pay upon prevailing needs to be further clarified.

The 60-day time period for providers to submit their appeal was clarified in the Appeals ACL. Specifically, prospective or current providers have 60 days from the date of the county's denial letter to submit an appeal. The ACL also explains that providers are eligible for back pay if they become successfully enrolled as an IHSS provider.

- The ACL doesn't make it clear that providers have rights to review and correct their DOJ records as specifically permitted in statute.

The right of a provider to review and correct their DOJ records was included in the Appeals ACL. As mentioned above, providers would benefit from additional statutory clarification on the general issue of criminal history records and how they may be obtained and shared.