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November 8, 2011

Eileen Carroll
Deputy Director, Adult Programs Division
California Department of Social Services
744 P Street
Sacramento, CA 95814

Re: Draft ACL - Implementation of Twenty-Percent Reduction in In-Home Supportive Services Recipients' Authorized Hours

Dear Director Carroll,

UDW strongly urges the Department of Social Services to delay implementation of the potential 20% across the board reduction in IHSS services. As evidenced in our comments below and in the responses submitted by other stakeholders in the IHSS community, there are grave procedural and legal concerns that must first be rectified before this reduction occurs. The brief amount of time allowed between the State's determination to pull the budget "trigger" and the January 1, 2012 implementation date makes it virtually impossible to implement these reductions in a manner that is appropriate, well planned, and consistent with statute.

Please accept our comments below in response to the draft All-County Letter referenced above. Our comments are organized according to the relevant sections in the ACL.

Requests for Reassessment (page five)

- The draft ACL states, "...if a request for a reassessment is received during the 90 days following issuance of a NOA related to the 20-percent reduction, the county should evaluate whether the request is disputing the 20-percent reduction, or whether there has been a change in the recipient's circumstances that impacts his/her functional abilities."

This statement is problematic because it does not include a third possibility, which is

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that the recipient is requesting a reassessment because they believe they are improperly assessed. There may be no change in circumstances, however the recipient has the statutory right to request reassessment based on the outcome of their last assessment.

This is particularly important if a recipient is trying to document unmet need. It is essential that recipients have their unmet need properly documented in light of the possible 20% reduction. Your direction to the counties to deny a request for a reassessment if there is no change in circumstance, as outlined in the draft ACL, violates the recipient's right to contest the current authorization of hours. The language in the ACL must be changed to account for this possibility.

IHSS Supplemental Care Application (page six)

- Welfare and Institutions Code does not contain any deadline by which an individual may request IHSS Supplemental Care. The draft ACL imposes an artificial deadline of February 1, 2012. This denies recipients' rights under the law to apply **at any time** for Supplemental Care if they believe they are at serious risk of out of home placement as a result of the 20% reduction. This deadline must be eliminated as it is unlawful.
- In addition, the draft ACL states, "if the recipient submits an IHSS Supplemental Care application to the county within 15 days of receiving the NOA, or postmarked by January 3, 2012, the county shall reinstate the reduced hours pending its determination of whether the recipient would be at serious risk of out of home placement as a result of the reduction."

This appears to violate the concept of "aid paid pending" as stipulated in statute. If an application is postmarked by January 3, 2012 but the 20% reduction is implemented on January 1, 2011 then the recipient will lose these hours during the time it takes for the IHSS county office to receive and process their application for Supplemental Care. In light of the fact that this is will be Holiday time period, with several days in which US post offices will be closed as well as IHSS county offices, there is a high likelihood that many recipients will experience a lengthy lapse before their hours are reinstated.

Statute expressly states that a recipient should have the ability to continue their current level of services until the county decides on their application:

When a recipient submits an IHSS Care Supplement application within 15 days of receiving the reduction notice or prior to the implementation of the reduction, **the recipient's in-home supportive services shall continue at the level authorized by the most recent assessment, prior to any reduction, until the county finds that the recipient does or does not require restoration of any hours** through the IHSS Care Supplement. [WIC Section 12301.7(f) - emphasis added]

- The draft ACL also lists four progressive actions the county IHSS worker should take to alleviate the serious risk of out of home placement once that risk has been established. The first action is to assist recipients to “prioritize the hours available so that the most essential tasks are completed.” The second action is to “arrange for the recipient to receive services from a formal or informal alternative resource.”

These actions are problematic for several reasons:

First, they are entirely subjective and rely solely on the opinion of the IHSS worker as to what is sufficient to alleviate risk. Second, it implies that the worker has the time and resources available to locate and arrange for services and ensure that these services are provided as needed. Third, it provides the county with a means in which to not restore hours even when serious risk has been established. In light of financial incentive on the part of the county to not restore hours, prioritizing existing hours or finding alternative services may be used in cases where it is not appropriate.

We have additional concerns: what happens if the IHSS worker takes either of these actions, issues a revised NOA, and yet the serious risk of out of home placement is not alleviated? What if it turns out the prioritizing of hours is not sufficient to alleviate risk or if the alternative services are cancelled or are not adequate? Would it be the responsibility of the recipient to contact the worker to let them know that the serious risk still exists? Or would the worker be responsible for following up with the recipient to ensure successful outcomes of the action? Would the recipient then have to submit an appeal against the Supplement Care decision and, if so, would they be subject to appeal timelines? Either way, the recipient would remain at serious risk of out of home placement until such time that their appeal is heard at a state hearing.

These questions illustrate the grave procedural concerns we have with the Supplemental Care application steps proscribed by the Department in the draft ACL.

In addition, statute makes very clear that the purpose of the Supplemental Care application is to restore hours as necessary to mitigate serious risk of out of home placement:

When a recipient submits an IHSS Care Supplement application within 15 days of receiving the reduction notice or prior to the implementation of the reduction, the recipient’s in-home supportive services shall continue at the level authorized by the most recent assessment, prior to any reduction, until the county finds that the recipient **does or does not require restoration of any hours** through the IHSS Care Supplement. [WIC Section 12301.7(f) - emphasis added]

NOA Messages Related to the 20-Percent Reduction (page 9)

- We recommend the Department include the following sentence in the messages for Reduction – No Unmet Need (306A-Temp) and Reduction – No Unmet Need (306):

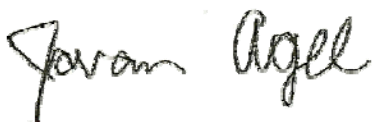
“According to your most recent assessment, you do not have unmet need hours.”

We recommend including this sentence because the vast majority of IHSS recipients do not know about unmet need or if they have or have not been assessed for unmet need. We are aware that in many counties, **as a practice**, IHSS workers do not document unmet need during assessments. The majority of recipients who have unmet need do not have it properly documented either because they do not know it exists or they have been informed by their IHSS worker that their county does not engage in this practice.

In light of the fact that there is no statewide uniform process to document unmet need as well as the fact that the possible 20% reduction will be applied first to unmet need, the Department has an obligation to inform recipients if they do or do not have unmet need. Ideally this should occur prior to the receipt of the Notice of Action (NOA) so that the recipient has the opportunity to request proper documentation if they believe they have unmet need hours.

Thank you for the opportunity to provide comments regarding this most crucial matter. We must reiterate our strong recommendation that the Department delay implementation of the potential 20% across the board reduction until such time that procedural and legal concerns have been resolved.

Sincerely,



Jovan Agee
Director of Political & Legislative Affairs

CC: Will Lightbourne, Department of Social Services
Jennifer Troia, Senate Budget & Fiscal Review
Nicole Vazquez, Assembly Budget