

IN-HOME SUPPORTIVE SERVICES (IHSS)

Source:

“What About IHSS”

Adult and Supported Living Services,
California Department of Developmental Services)

&

PAI’s IHSS Booklet

CONTENTS

DEFINITIONS

OVERVIEW

- WHO runs it?
- WHAT kinds of services?
- WHEN is it used?
- WHY use it?

NUTS’N BOLTS

ELIGIBILITY -

- * Before the application.
- * When to apply.
- * Information required.

ASSESSMENT

- It happens after the move.
- Preparing the assessment.
- How need is ranked.
- Time per task.
- Determining the need.
- Maximum hours.
- Shared living arrangements.
- Meal allowance.
- Protective supervision.

- Notice of action.
- Contract agency counties.
- Alternative resources.

STAFFING & PAYMENTS

- Staffing and consumer choices.
- PCSP provider enrollment.
- Rate of pay.
- Provider benefits.
- Payment.
- Back payment for services.

REASSESSMENT/REVIEW . APPEAL/STATE HEARING -

- Additional terms.
- Notice of action.
- What can be appealed?
- Should I appeal?
- Timelines for appeal.
- Who files the appeal?
- Authorized representative.
- Where to file an appeal.
- Filing the appeal.
- Aid paid pending.
- What happens next.
- Subpoena.
- Witness fees and mileage.
- Examination of records.
- County position statement.
- Conditional withdrawal.
- Who can attend the hearing.
- Interpreters.
- The hearing.
- Evidence.
- Postponements.
- Continuances.
- Disqualification of an ALJ.
- Communications after the hearing.
- Disposition of state hearings.

- The decision.
- Rehearing.
- Compliance with the decision.
- Preliminary hearing.

WHO CAN HELP?

I.H.S.S. FAIR HEARING

FACTORS AND REASONS INDICATING WHY MORE IHSS TIME IS NEEDED

ANSWERS TO MOST COMMONLY ASKED QUESTIONS

ABBREVIATIONS

- ◆ **CCR** California Code of Regulations
- ◆ **CDSS** California Dept. of Social Services
- ◆ **CFR** Code of Federal Regulations
- ◆ **DDS** California Dept. Of Developmental Services
- ◆ **IHSS**..... In-Home Supportive Services
- ◆ **et seq.** and the following
- ◆ **IP** Individual Provider
- ◆ **MPP** Manual of Policies and Procedures
- ◆ **PCSP** Personal Care Services Program
- ◆ **U.S.C.**..... United States Code
- ◆ **WIC** Welfare and Institutions Code

DEFINITIONS

- ◆ **Advance Payment** (direct advance payment) is a payment to be used for the purchase of authorized IHSS services which is sent directly to the consumer in advance of the service actually being provided. [*WIC 12304 (A); MPP 30-753 (d) (3)*]

- ◆ **Assessment** is the gathering of information relevant to the consumer's case and to appraise the services needed based on that information. *[MPP 30-002(a), 30-002(s)(6)]*
- ◆ **Consumer** is an individual who meets the criteria for regional center services and for whom the regional center has accepted responsibility. The CDSS uses the term "recipient" for applicants and those receiving social services. *[MPP 30-002 (R) (2)]*
- ◆ **Eligible** means entitled to receive necessary services. *[MPP 30-002 (e)]*
 - Income eligible** means entitled on the basis of having gross annual family income which does not exceed 80% of the median income for California for a family of four, adjusted for consideration of family size.
 - Status eligible** means entitled on the basis of being a Supplemental Security Income/State Supplementary Program (SSI/SSP) or Aid to Families with Dependent Children (AFDC) program recipient.
- ◆ **In-Home Supportive Services (IHSS)** provides assistance to those eligible aged, blind and disabled individuals who are unable to remain safely in their own homes without this assistance. IHSS is an alternative to out-of-home care. *[MPP 30-700.1]*
- ◆ **Generic Agency** means any agency which has a legal responsibility to serve all members of the general public and which is receiving public funds for providing such services. *[WIC 4644(b)]*.
- ◆ **Live-In Provider** is a provider who is not related to the consumer and who lives in the consumer's home expressly for the purpose of providing IHSS-funded services. *[MPP 30-753(1)(3)]*.
- ◆ **Own Home** means the place in which an individual chooses to reside. Own home does NOT include: acute care hospital, skilled nursing facility, intermediate care facility, community care facility, or board and care facility. *[MPP 30-753 (0)(2)]*.

- ◆ **Payment Period** is the time period for which IHSS wages are paid. There are two payment periods each month, 1) covering the first to the fifteenth of the month, and 2) covering the sixteenth to the end of the month. [MPP 30-753(0)(2)].

- ◆ **Personal Attendant** means a provider who is employed by the consumer and who spends at least 80% of his/her time in the consumer's employ performing the following services: [MPP 30-753 (p)(4)].
 1. Preparation of meals.
 2. Meal clean-up.
 3. Planning of menus.
 4. Consumption of food.
 5. Routine bed baths.
 6. Bathing, oral hygiene and grooming.
 7. Dressing.
 8. Protective supervision.

- ◆ **Personal Care Services Program (PCSP)** provides personal care services to eligible Medi-Cal beneficiaries. [MPP 30-700.2].

- ◆ **Protective Supervision** is a service available for persons who are non-self directing. Need is established by a mental function evaluation of memory, orientation and judgment. Protective supervision is not used if the need is solely for paramedical services or because of a potential medical emergency. [MPP 30-756.37; 30-757.17].

- ◆ **Reassessment** is a review of all past assessments and examination of the current condition of the consumer. [MPP 30-002 (r)(1); 30-002 9(s)(6)(H)].

- ◆ **Residual** is IHSS services that are not part of the PCSP (aka Non-PCSP).

- ◆ **Severely Impaired** means a consumer who requires in-home supportive services of at least 20 hours per week to carry out any or all of the following: [WIC 12304 (d); MPP 30-753 (s) (1)].

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1. Routine bodily functions, such as bowel and bladder care and respiration assistance.
 2. Dressing, oral hygiene, and grooming.
 3. Preparation and consumption of food and meal cleanup for individuals who require assistance with the preparation and consumption of food.
 4. Moving into and out of bed, other assistance in transferring, turning in bed, and other repositioning.
 5. Bathing, routine bed baths, and washing.
 6. Ambulation and care and assistance with prosthesis.
 7. Rubbing of skin to promote circulation.
 8. Paramedical services.
 9. Any other function of daily living as determined by the Director.

- ◆ **Supportive Services** include domestic services and services related to domestic services, heavy cleaning, personal care services, accompaniment by a provider when needed during necessary travel to health-related appointments or to alternative resource sites, yard hazard abatement, protective supervision, teaching and demonstration directed at reducing the need for other supportive services, and paramedical services which make it possible for the recipient to establish and maintain an independent living arrangement. (Note: Protective supervision is not included in the IHSS (PCSP). [WIC 12300.1].

OVERVIEW

WHO runs it?

AGENT

The Personal Care Services Program (PCSP) part IHSS is part of the federal Medicaid social services program. Medi-Cal, the California equivalent of Medicaid, has additional laws and regulations that supplement Medicaid laws and regulations.

CALIFORNIA GOVERNMENT

Department of Health Services (DHS)

The DHS is the fiscal intermediary for Medi-Cal funds received from the federal government for IHSS (PCSP).

Department of Social Services (CDSS)

The CDSS has an administrative and supervisory responsibility to assure compliance with state and federal rules, passes through funding to the county level and operates the Case Management Information and Payrolling System (CMIPS).

While counties directly apply IHSS Program regulations, they often rely, for certain case situations, on CDSS staff to clarify regulations and interpret IHSS regulations so that they may properly apply them to the cases they administer.

COUNTY GOVERNMENT

Each county is responsible for receiving applications for IHSS services, determining income and resource eligibility, assessing the type and level of services needed, processing provider timesheets, and, in some counties, coordinating the hiring of care providers. Services are to be provided in a uniform manner in every county and be consistent with the state law.
[WIC 12300(a); 12309; MPP 30-000.1]

The IHSS program is usually located in the local county social services office, adult services section.

LEGAL AUTHORITIES

IHSS (PCSP)

Federal

42 U.S.C. Section 1936a et seq.

42 CFR 430 et seq.

California

WIC Section 12300 et seq.

WIC Section 14132.95 et seq.

CCR Title 22, Section 5000 et seq.

CDSS MPP Chapter 30-700 et seq.

IHSS (Non-PCSP)

California

WIC Section 12300 et seq.

CCR Title 22, Section 5000 et seq.

WHAT ABOUT IHSS

CDSS MPP Chapter 30-700 et seq.

WHAT Kind of services?

the following services:

PERSONAL CARE

Ambulation. Includes assistance with walking or moving the consumer from place to place inside the home, changing location in a room, moving from room to room to gain access for the purpose of engaging in other activities. It does not include movement solely for the purpose of exercise {MPP 30-757.14(k); 30-780.1(a)(1), PCSP}.

Bathing includes cleaning the body using a tub, shower or sponge bath, including getting a basin of water, managing faucets, getting in and out of the tub or shower, reaching head and body parts for soaping, rinsing, and drying. {MPP 30-757.14(a)(d); 30.757.14(e), 30.780.1(a)(2), PCSP}.

Bowel and bladder care including assistance with enemas, emptying of catheter or ostomy bags, assistance with bed pans, application of diapers, changing rubber sheets and assistance with getting on and off commode or toilet. Also includes emptying the commode, managing the clothing and wiping and cleaning the body after toileting, application of diapers and disposable barrier pads. [MPP 30.757.14(a), 30.780.1(a)(4) PCSP].

Dressing includes putting in and taking off, fastening and unfastening garments and undergarments, and special devices such as back or leg braces, corsets, elastic stocking/garments. {MPP 30-757.14(F); 30-780.1(a)(3), PCSP}.

Range of motion and other exercises. Includes general supervision of exercises which have been taught to the consumer by a licensed therapist or other health care professional. [MPP 30-757.14(g); 30-780.1(a)(5) and 30-780-2(h)(2), PCSP].

Feeding and assurance of adequate fluid intake. This includes related assistance to consumers who cannot feed themselves or who require assistance with special devices in order to feed themselves or to drink adequate liquids. This includes reaching for, picking up, grasping utensil, cup to mouth, manipulating food on plate and cleaning face and hands as

necessary following the meal. [MPP 30-757.14(c);30-780.1(a)(6), PCSP].

Grooming includes hair combing and brushing, shampooing, oral hygiene, shaving and fingernail, and toenail care (excluding cutting with scissors or clipping toenails).[MPP 30-780.1(a)(2), PCSP; 30-780.(f),PCSP].

Assistance with self-administration of medications. Includes reminding the consumer to take prescribed and/or over-the-counter medications when they are to be taken and setting up Medi-sets. [MPP 30-757.14(i); 30-780.1(a)(7), PCSP].

Menstrual care limited to application of sanitary napkins and external cleaning.[MPP 30-757.14(j); 30-780.2(g), PCSP].

Prosthesis care and assistance [MPP 30-757.14(i); 30-780.1(a)(3), PCSP].

Repositioning and skin care. Includes moving from one sitting or lying position to another sitting or lying position, e.g. from bed to or from wheelchair, chair, or sofa, and the like, to a standing position. Also rubbing of skin to promote circulation, turning in bed and other types of repositioning. If decubiti have developed, the need for skin and wound care is a paramedical service. [MPP 30-757.14(i); 30-780.1(a)(5) and 30-780.2(h), PCSP].

Respiration care is limited to nonmedical services such as assistance with self-administration of oxygen, clearing IPPB machines, assistance in the use of a nebulizer, and cleaning oxygen equipment. [MPP 30-757.14(b); 30-780.1(a)(8), PCSP].

Transfers. Includes moving into and out of bed, on and off seats and wheelchairs, and into or out of vehicles. [MPP 30757.14(h); 30-780.1(a)(5), PCSP].

DOMESTIC SERVICES

Cleaning. This includes sweeping, vacuuming, washing and waxing of floor surfaces, washing kitchen counters and sinks, cleaning bathroom, taking out garbage, dusting and picking up, cleaning oven and stove, cleaning and defrosting refrigerator, and changing bed linen. [MPP 30-757.11; 30-780.1(b)(a), PCSP].

Bringing in fuel for heating or cooking from a fuel bin in the yard. [MPP 30-757.11; 30-780.1(b)(1), PCSP].

Miscellaneous chores, such as changing light bulbs, when it would be a hazard to the consumer if not done. This also includes wheelchair cleaning, changing and recharging wheelchair batteries when the service is identified and documented by the case worker as necessary for the beneficiary to remain safely in his/her home. {MPP 30-757.11(k); 30-780.(b)(1). PCSP}.

Shopping for food and other necessities. This includes making a list, travel to/from the store, shopping, loading, unloading, and storing supplies purchased. Shopping and errands are limited to the nearest available stores or other facilities consistent with the consumer's economy and needs, and phoning in and picking up prescriptions. It may include delivering a delinquent payment to avert an imminent utility shut-off. It does not include additional time for the consumer to accompany the service provider. [MPP 30-757.136; 3078.1(b)(3), PCSP].

RELATED SERVICES

Preparation of food. This includes tasks such as washing vegetables, trimming meat, cooking, setting the table, serving the meal and cutting the food into bite-size pieces. [MPP 30-757.131; 30-780.1(b)(4), PCSP].

Routine laundry. This includes washing and drying, mending, ironing, folding, and storing clothes on shelves or drawers. Also, manipulating soap containers, reaching into machines, handling wet laundry, operating machine controls, hanging laundry to dry if dryer is not routinely used. [MPP 30-757.135; 30-780.1(b)(2),] PCSP].

Meal cleanup. This includes washing and drying dishes, pots, utensils and culinary appliances, and putting them away. [MPP 30-757.132; 30-780 1.(B)(4), PCSP].

Menu planning. [MPP 30-757.133; 30-780.1(b)(4), PCSP].

Restaurant meal allowance. A consumer who has adequate cooking facilities at home but whose disabilities prevent their use has an option to receive a restaurant meal allowance in lieu of menu planning, meal preparation and meal cleanup. [WIC 12303.7; MPP 30-757.135; 30-765.13(3)].

OTHER SERVICES

Heavy cleaning includes thorough cleaning of the home to remove hazardous debris or dirt. (**Note:** *This may be authorized under very restricted conditions and should not apply to most consumers.*) (MPP 30-757.12; 30-780.1(b)(6), PCSP].

Protective Supervision consisting of observing consumer behavior in order to safeguard the consumer against injury, hazard, or accident. (**Note:** *see additional information in the Assessment section. Not available as part of the PCSP.*) {MPP 30-757.17].

Respite Care to relieve persons who are providing care without compensation. [WIC 12300(e)].

Teaching and Demonstration services provided by IHSS providers to enable consumers to perform for themselves services which they currently receive from IHSS. This is limited to tasks of domestic services, meal planning, preparation and cleanup, shopping and errands, personal care, and yard hazard abatement. This is authorized for no more than three months and only when there is a reasonable expectation that there will be a reduction in the need for an IHSS funded service. [MPP 30-757.18]

Transportation when consumer's presence is required at the destination and assistance is needed to accomplish the travel. This is limited to appointments with doctors, dentists and other health practitioners and for fittings for health related appliances/devices and special clothing where Medi-Cal will not provide transportation. It also includes transportation to sites where the consumer receives in-home supportive services from alternative resources in lieu of IHSS. [MPP 30-757.15; 30-780.1(5)(b), PCSP].

Yard hazard abatement is light work for conditions that are a hazard to the consumer remaining in the home. This may include removal of high grass/weeds or rubbish when this constitutes a fire hazard or removal of snow when access to the home is hazardous. (**Note:** *This does not include routine yard maintenance and is not meant to replace the need for routine maintenance.*) [MPP 30-757.16; 30-780.1(b)(7), PCSP].

PARAMEDICAL SERVICES

Paramedical services are activities that the consumer would normally

provide for his/herself but cannot due to physical limitations. They are provided when ordered by a licensed health care professional and provided under the direction of the licensed health care professional. The time allowed is based on time indicated by the health care professional. [MPP 30-757.19].

These services include administration of medications, puncturing skin, inserting a medical device into a body orifice, activities requiring sterile procedures, or other activities requiring judgement based on training given by a licensed health care professional. Catheter insertion, ostomy irrigation and bowel program are considered to be paramedical. [MPP 30-757.191(c); 30-780.1(a)(9), PCSP].

These services are provided by persons who ordinary provide IHSS and at the same rate of pay as regular IHSS services. [MPP 30-757.195].

In order to provide paramedical services, the county must have a signed and dated order from a licensed health care professional. The order must include a signed statement of informed consent saying that the consumer has been informed of the potential risks arising from the receipt of the services. [MPP 757,196; 30-780.2(e),PCSP].

When Is It Used?

Services and support provided to an individual under a social security number fall under one of five goals designated in Title XX of the Social Security Act. IHSS (PCSP) falls under Goal No. 4 which is: "Preventing or reducing inappropriate institutional care by providing for community-based care, home-based care, or other forms of less-intensive care." [MPP 30-001.1].

IHSS is an alternative for individuals who might otherwise be placed in a nursing or other facility when they are unable to care for themselves in their own home. Personal care, domestic services and paramedical services are available. [MPP 30-700.1].

IHSS provides basic services to consumers who **cannot** perform the services themselves. When a consumer is able to perform a task in a safe manner without an unreasonable amount of physical or emotional stress he or she is expected to take responsibility for that task. The consumer's capacity rather than the level of dependence is used in assessment of need. [MPP 30-756.32; 30-761.25].

WHY use it?

have a mandate not only to serve consumers with services, but to provide services at the maximum cost-effectiveness possible. The requirement for cost-effectiveness and use of generic services is found throughout the Lanterman Act. Several of those sections are listed below. IHSS is considered to be a generic resource by DDS.

Lanterman Act (Welfare and Institutions Code)

4646.5(a) The planning process for the individual program plan described in Section 4646 shall include all of the following:

(4) A schedule of the type and amount of services and supports to be purchased by the regional center or obtained from generic agencies or other resources in order to achieve the individual program plan goals and objectives, and identification of the provider or providers of services responsible for attaining each objective, including, but not limited to, vendors, contracted providers, generic service agencies and natural support.

4647(a) Pursuant to Section 4640.7, service coordination shall include those activities necessary to implement an individual program plan, including, but not limited to, participation in the individual plan process; securing, through purchasing or by obtaining from generic agencies or other resources, services and supports specified in the person's individual plan.

4648(a)(8) Regional center funds shall not be used to supplant the budget of any agency which has legal responsibility to serve all members of the general public and is receiving public funds for providing those services.

4791(c) To carry out the intent of this provision, and notwithstanding Chapter 5 and Section 4643, each regional center contract shall include provisions which ensure the regional center will provide services to eligible consumers within the funds available in the contract throughout the contract term. Regional centers shall implement innovative, cost effective methods of service delivery, which may include, but not limited to, the use of vouchers, consumer or parent services coordinators increased administrative efficiencies, and alternative sources of payment for services.

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- (h)(1) The plan submitted to the department may include but not limited to:
- (B) The maximization of all alternative funding sources, including federal and generic funding sources.

NUTS AND BOLTS

Eligibility

Illinois uses SSI/SSP income and resource standards as eligibility criteria. All counties also use a state-issued assessment tool, called Uniformity, for initial assessments and periodic reassessments of functional capacity. [MPP 30-770; 30-773; 30-775]

IHSS services may be authorized under either IHSS (Non-PCSP) or

IHSS (PCSP). Most people receiving IHSS qualify for the PCSP which is 50% funded by the federal government. If a person is eligible for IHSS under both IHSS (Non-PCSP) and the PCSP, services will be authorized under PCSP. A person cannot receive the same personal care services through both IHSS (Non-PCSP) and PCSP.

[MPP 30-757.1; 30-780, PCSP]

(Note: The provisions in MPP section 30780(c) and (d) no longer apply as October 1, 1994, although the county may still require a physician's statement for general IHSS authorization.)

Eligibility for IHSS

A person is eligible for IHSS who is a California resident who is living in his or her own home, and who meets one of the following conditions:

- Currently receives SSI/SSP benefits
- Meets all SSI/SSP eligibility criteria including income, but not receive SSI/SSP benefits.
- Meets all SSI/SSP eligibility criteria, except for income in excess of SSI/SSP eligibility standards.
- Was once eligible for SSI/SSP benefits, but became ineligible because engaging in substantial gainful activity, and meets all of the following conditions:
 - The individual was once determined to be disabled in accordance with Title XVI of the Social Security Act (SSI/SSP).
 - The individual continued to have the same physical or mental impairments which were the basis of the disability determination.
 - The individual requires assistance in one or more of the areas specified under the definition of "severely impaired individual" (see July 31, 1996 *Definitions* section),
 - Otherwise eligible applicants who are currently institutionalized or in a licensed residential arrangement, who wish to live in their own homes and who are capable of safety doing so if IHSS is provided, shall upon application receive IHSS based upon a needs assessment. *[WIC 12304; 12305; MPP 30-755.1; 30-755.12; 30-755.23; 30-770.4].*

Eligibility for IHSS (PCSP) is limited to individuals who: 1) do not receive

advance IHSS payment; 2) receive SSI (are not just SSI eligible); 3) receive IHSS from someone other than a spouse, or a parent if the consumer is a minor; 4) needs one or more of the kinds of personal care as defined in WIC Section 14132.95(d)(1)¹; and 5) has a disabling condition that causes functional impairment that is expected to last at least 12 consecutive months, or that is expected to result in death within 12 months, and who would be unable to remain safely in his or her home if these services were not provided. [WIC 14132.93(f); 14132(k)²; MPP 30-780.4].

PCSP services do not include protective supervision. If this is authorized, it is paid through IHSS (Non-PCSP) [MPP 30-759(4)].

In cases with **excess income**, eligibility can be established with payment of a share of cost. Excess income is income that would disqualify a person for SSI/SSP. However, if a person is eligible for IHSS except for the excess income and the total income is insufficient to provide for the cost of care needed, he or she would be qualified for IHSS but the excess income would have to be used toward the purchase of needed IHSS type services. [WIC 112304.5; MPP 30-755.233; 30-755/31].

If the consumer is an **alien** permanently residing in the U.S., he or she may be eligible for IHSS. An alien is eligible to the extent permitted by federal law. [WIC 11104; MPP 30-770.41].

If a consumer receiving IHSS is **absent from the state** for 30 days or longer, it is considered to be a possible change of residence that will effect eligibility. If a consumer leaves or is leaving the state for 30 days or longer,

¹ **Welfare and Institutions Code (WIC) #14132.95**

(d)(1) For purpose of this section, personal care services shall mean all the following:

- (A) Assistance with ambulation.
- (B) Bathing, oral hygiene and grooming.
- (C) Dressing.
- (D) Care and assistance with prosthetic devices.
- (E) Bowel, bladder, and menstrual care.
- (F) Skin care.
- (G) Repositioning, range of motion exercises, and transfers.
- (H) Feeding and assurance of adequate fluid intake.
- (I) Respiration.
- (J) Paramedical services.
- (K) Assistance with self-administration of medications

² Ancillary services including meal preparation and cleanup, routine laundry, shopping for food and other necessities, and domestic services may also be provided as long as these ancillary services are subordinate to personal care services. Ancillary services may not be provided separately from the basic care services.

he/she must notify the county IHSS office. In some instances eligibility may continue until his or her return, or payment for IHSS may be made out of state. [MPP 30-770.42].

The consumer has responsibility to report any **change of eligibility status** to the county IHSS office within 10 calendar days of any change. [MPP 30-760.14]

APPLICATION

APPLICATION

Begin preparation for the IHSS application when the consumer first decides to move into his or her own home. Because SSI/SSP is essential to receipt of IHSS, now is the time to apply for SSI/SSP if the consumer is not already receiving it. This will help speed up the IHSS application after the move.

WHEN TO APPLY?

Apply on the FIRST DAY the consumer is in his or her home, or as soon as the consumer knows where he or she will be living. The county may take the application before the consumer is in his or her own home. The application may be done in writing or by telephone, either by the consumer or an authorized representative. If done by telephone, a county social services staff member may be given authorization to sign the application. Be sure to state that you are making an application for IHSS and document the date, person you spoke to, etc., in case follow-up is needed. A county social services staff worker will set up an appointment as soon as possible after the consumer is physically residing in his or her own home. [MPP 30-009.22].

The application must be processed within 30 days following the application. This includes eligibility determination, the needs assessment and the notice of action. An exception to the 30-day requirement may be made when a disability determination has not been received within the 30-day period. Benefits may be approved back to the date of the initial application (or move-in date, whichever is later) regardless of when the assessment is done. [MPP 30-009.227; 30-75.2; 30-759.4].

INFORMATION REQUIRED

Have this information available when you make the initial call:

- Full name of the consumer.

- Sex.

- Social Security Number. If the person is an alien with no social security number, see the *Eligibility Section*.
- Telephone number.
- Address where the consumer is living or will be living. This must be the home where the consumer will receive services.
- Date consumer moved in or plans to move in.
- Date of birth.
- Age.
- Spouse's name (if married).
- Spouse's social security number.
- The name and relationship of any person that will live in the home. Do not call a live-in attendant a roommate as this may cause error in the assessment of the authorized hours for some services.
- Whether others living in the home will apply for or are already receiving IHSS.
- Medical insurance information, Medi-Cal number or other insurance number.
- Confirmation of consumer receiving SSI/SSP. The county IHSS worker may ask to see confirmation at the time of the home visit.

Confirmation may be established by a current SSI/SSP Notice of Determination; a current SSI/SSP benefit check, a current Medi-Cal card; or by IHSS staff verification with the Social Security District Office. Expect processing to take longer if the consumer is not already receiving SSI/SSP. [MPP 30-755.22].

*Confirmation of disability and income may be required along with other information. Regional center case file information **may** meet some of these requirements. If SSI/SSP has been applied for, some information may be used. [MPP 30-755.26].*

Once the application is filed, a home-visit will be scheduled.

ASSESSMENT

THE MOVE

A needs assessment must be done before authorization of any IHSS services and at least every twelve months after that. An assessment must also be done whenever the county has information that the consumer's needs have changed, including a change of residence.

Although some counties may accept an application before the move, according to regulation, the assessment may be done only after the consumer is in his or her own home.

MPP 30-756.33

“The recipient’s needs shall be assessed **within his/her environment**, . . . “

MPP 30-761.13

Services shall be authorized only in cases which meet the following condition:

“ *Social services staff of the designated county department has had a face-to-face contact with the recipient **in the recipient’s home** at least once within the past 12 months, . . .”*

PREPARING FOR THE ASSESSMENT

Spend time with the consumer and, with the consumer’s permission, anyone else who knows the details of the consumer’s needs before the assessment appointment. Be sure that the consumer knows that intimate details may be discussed in order to present an accurate picture of the services and time needed for personal care as well as domestic services. Let the consumer know that he or she can expect to be treated with dignity and respect by the county social services staff.

Review the *What kinds of services? section*. List every domestic and personal service that is needed for the consumer to live safely in his/her home and that is needed to prevent placement back in an institutional or other more restrictive setting. Then list the time required for each of these services. Use this checklist at the assessment interview to be sure that everything is covered.

When preparing this checklist think about things that may be out of ordinary or may not readily visible during the assessment. Some examples are:

- More frequent dusting and vacuuming because of allergies or respiration

problems.

- More frequent changing and laundering of bed linens because the consumer spends a lot of time in bed or sweats a lot while in bed.
- More preparation time is used for meals because of special diet.
- Sensitive skin requires that laundry be put through an extra rinse.
- Feeding takes additional time because of a tendency of the consumer to choke.
- Shopping for food takes longer because the market is a long distance from the home.

Create a list for your use only of all IHSS type services that are provided by others whether paid or not. IHSS is not intended to replace volunteer or unpaid services with paid support. However, the time used for these services may be used to establish whether a consumer meets the 20 hours per week of personal care needs to be classified as severely impaired. Some examples are:

- Consumer spends time with the family or friends who take care of personal care needs during those visits.
- Some of the consumer's personal care needs are met while at a day or work program.
- Consumer gets personal care while attending school through the school district or other program.
- Consumer gets paramedical services from a visiting nurse, etc.

When a consumer is moving into his or her own home:

- Be sure that accessing IHSS is a generic service listed in the IPP.
- Plan on temporary payment for IHSS-type services until the assessment is completed. It is important to include the funding for these services as being temporary in the supported living services vendor contract.
- If asked, let the IHSS worker know that the payment is temporary and in lieu of IHSS until service is established. The only reason another agency is funding the services is because the IHSS evaluation is not done until the consumer is actually in the home. This means someone must temporarily fund the services, otherwise the consumer would never be able to move into his or her own home.
- Be sure the continuing role of the regional center/supported living services agency is not to provide funding for services that are available

through IHSS or other generic resources.

Plan to **be there** when the assessment is to be done. The IHSS worker will observe and discuss the consumer's needs. If the consumer has trouble communicating be sure to have someone there to help facilitate.

HOW NEED IS RANKED

The consumer is evaluated in the following activities of daily living and given a ranking of 1 (high functioning) to 5 (low functioning) for each: [MPP 30-756].

- Housework
- * Bowel
- Laundry
- Repositioning
- Shopping and errands
- Eating
- Meal preparation and cleanup
- Respiration (a)
- Mobility inside
- Memory (b)
- Bathing and grooming
- Orientation (b)
- Dressing
- Judgement (b)

(a)(b) These functions have fewer ranks because differing functional ability in these areas does not result in significantly different need for human assistance. [MPP 30-756.35].

(a) *Respiration is assigned only 2 possible ranks, 1 or 5.*

(b) *Only 3 possible ranks are assigned to these mental functions, ranks 1, 2 and 5. This scale is used to determine the need for protective supervision. [MPP 30-756.37].*

Rank 1: Independent: able to perform without human assistance, although the consumer may have difficulty in performing the function, but the completion of the function, with or without a device or mobility

aid, poses no substantial risk to his or her safety. A recipient who ranks a "1" in any function will not be authorized that service. *(A rank 1 will be assigned if the consumer's needs for any function are met entirely with paramedical services. If paramedical services are required, the assessment may include paramedical hours, but they will be listed separately from activities of daily living services. [MPP 30-756.4].*

Rank 2: Able to perform a function, but needs verbal assistance, such as reminding, guidance, or encouragement.

Rank 3: Can perform the function with some human assistance, including, but not limited to, direct physical assistance from a provider.

Rank 4: Can perform a function but only with substantial human assistance.

Rank 5: Cannot perform the function, with or without human assistance.

TIME PER TASK - DOMESTIC AND RELATED SERVICES

State regulations list time guidelines for performing **domestic** functions. Time per task guidelines can be used only if they are appropriate in meeting the individual's particular circumstances. Exceptions to these guidelines are allowed only when necessary to enable the consumer to establish and maintain an independent living arrangement and/or remain safely in his/her home. *[WIC 12301.2; MPP 30-758].*

Time per task guidelines may not be used for:

- ***Personal care services***
- ***Meal preparation***
- ***Meal cleanup***
- ***Paramedical services [MPP 30-758.2].***

The county may establish time per task and frequency guidelines for other services except those listed below. Those established by regulation are:

- Domestic - not to exceed 6 hours per month.
- Laundry, when the facilities are in the home - not to exceed 1.0 hour per week. The provider is expected to accomplish other tasks while clothes

are washing and drying.

- Laundry, when the facilities are not in the home - not to exceed 1.5 hours per week. It is expected that the provider will use a local Laundromat during nonpeak hours and will use as many machines simultaneously as necessary to be efficient.
- Food shopping - not to exceed 1.0 per week.
- Other shopping/errands - not to exceed .5 hours per week. [MPP 30-758.1].

DETERMINING THE NEED

The county social service staff determines the need for services based on all of the following:

- The recipient physical/mental condition or living/social situation.
- The recipient's statement of need.
- Available medical information.
- Other information that he or she considers to be necessary and appropriate to assess the recipient's needs.
In addition, the needs assessment form must include the following:
- Recipient information including age, sex, living condition, the nature, and extent of the recipient's functional limitations, and whether the recipient is severely impaired.
- The types of services to be provided through the IHSS program, the service delivery method and the number of hours per service per week.
- Types of IHSS provided without cost or through other resources, including sources and amounts of those services.
- Unmet need for IHSS.
- Beginning date of service authorization. [MPP 30-761.27].

MAXIMUM HOURS

Individuals who are eligible for ***IHSS (Non-PCSP)*** assistance are limited to a maximum of ***195 hours*** of services per month unless they are classified as ***severely impaired***. Those classified as severely impaired may be authorized up to ***283 hours per month***. These hours apply to those using the individual provider mode of delivery. See "Contract Agency Counties" later in

this section for information about how the use of a contract agency may effect the hours. [WIC 12300(g)(3); 12303.4; 12304(d); MPP 30-765.1].

IHSS (PCSP) has a single maximum of **283 hours** regardless of severity of impairment. A non-severely impaired person who becomes eligible for PCSP may receive additional hours (up to a maximum of 283) if there are unmet needs at the 195 hour level. However, unmet protective supervision hours may not be included, since it is not a service of IHSS (PCSP). If a non-severely impaired person receiving IHSS (PCSP) later becomes ineligible for the PCSP, hours may be reduced to the non-PCSP level with a maximum not to exceed 195 hours. [WIC 14132.95(g)].

SHARED LIVING ARRANGEMENTS

When the consumer lives with a roommate or attendant, the assessment of need for domestic and related services is prorated based on the following guidelines. [MPP 30-763.3]

Domestic services and heavy cleaning

- The living area is divided into areas used solely by the recipient, areas used in common with others, and areas not used by the recipient.
- No need will be assessed for areas not used by the recipient.
- Need for services in the common living areas will be prorated to all the housemates.
- For areas used solely by the recipient, the assessment will be based on the recipient's individual need. [MPP 30-763.31]

Related services

- When the need is met in common with those of other housemates, the need will be prorated to all the housemates involved.
- When the service is not being provided by a housemate, and is being provided separately to the recipient, the assessment is based on the recipient's individual need. [MPP 30-763.32]

Protective supervision

- The need will be assessed based on the individual's need; except

-
- When two or more IHSS recipients live together and both require protective supervision, the need shall be treated as a common need and prorated accordingly.
 - No needs exists for protective supervision during periods when a provider is in the home to provide other services. [MPP 30-763.33]

Teaching and demonstration

- The services will be based on the individual's need.
- When recipients live together and have a common need, the need shall be met in common when feasible. [MPP 30-763.34].

Transportation and paramedical services are to be based on individual need. [MPP 30-763.341].

Yard hazard abatement is not assessed except when all housemates fall into one or more of the following:

- Other IHSS recipients unable to provide such services.
- Other persons physically or mentally unable to provide such services.
- Children under the age of 14 years. [MPP 30-763/352]

There are ***exceptions*** when assessing needs in shared living arrangements. Some are listed below. Check the MPP or ask the county assessment worker for more information about these.

- Able and available spouse
- Landlord/Tenant arrangements, i.e., services the landlord is obligated to provide and services the tenant is obligated to pay.
- Recipient move into a relative's home primarily for purpose of receiving services.
- Recipient is under 18 and living with his or her parents - hiring provider other than parent.
- Recipient is under 18 and living with his or her parents - parent as provider.
- Recipient is a parent living with his/her children who are under 14 years old and who are not eligible or do not need IHSS services.

- Live-in provider. [MPP 30-763.4].
-

MEAL ALLOWANCE

A consumer who has adequate cooking facilities at home but whose disabilities prevent their use has an option to receive a restaurant meal allowance in lieu of menu planning, meal preparation and meal cleanup. That allowance is \$62.00 per month for an individual. This is not available if the consumer already receives a restaurant meal allowance as part of the SSP grant. (**Note:** *This amount is the equivalent of 14.6 hours of IHSS services. Using this allowance would result in 14.6 hours of actual IHSS services.*) [WIC 12303.7; MPP 30-747.134; 30-765.13]

PROTECTIVE SUPERVISION

Protective supervision is a service of IHSS that is sometimes controversial and misunderstood. Since a person requiring this service needs 24-hour observation, it means that IHSS should be assessed at the maximum hours (295 or 283 depending on whether classified as severely impaired or not). A consumer's mental function evaluations in memory, orientation and judgement are used to determine the need for protective supervision. Often standard questions will be asked and used in the determination. If you feel these questions do not adequately show the need, be sure to point this out. Statements from the consumer's doctor, counselor, social worker or other health care professional may help explain the need. [WIC 12300(b); MPP 30-756.372]

Protective supervision consists of observing the consumer's behavior in order to safeguard the consumer against injury, hazard or accident. It is used for monitoring the behavior of nonself-directing, confused, mentally impaired, or mentally ill persons. It is available when social services staff have determined that the consumer can remain at home safely with protective supervision. [MPP 30-757.17].

Don't be surprised if the IHSS worker discusses with you whether out-of-home care is more appropriate alternative than protective supervision. It is something they supposed to consider. [MPP 30-757.173].

Protective supervision is **not available:**

- For friendly visiting or other social activities.

- When the need is caused by a medical condition and the supervision required is medical.
- In anticipation of a medical emergency.
- To prevent or control anti-social or aggressive behavior by the consumer. [MPP 30-757,171].
- When the provider is in the home to provide other services. [MPP 30-763.33].
- For a minor **except** as needed because of the functional limitations of the child. This means that protective supervision may be authorized only for activities that are over and above the supervision that would be required for a child without a developmental disability. [MPP 12300(d)(4)]

See also the comments in the “Shared Living Arrangements” part of this section. Protective supervision may not be denied based on the presence of a nonprovider housemate in the home.

NOTICE OF ACTION

Whenever an IHSS needs assessment or reassessment is completed the consumer is to receive a “Notice of Action”. This notice must include a description of each task allowed, the number of hours authorized and the difference in hours if they are being changed from those on the last assessment. The “Notice of Action” is to be mailed no later than 30 days following the date the application is completed. (**Note:** Remember that there is no penalty to the county for not meeting this timeline.) [WIC 12300.2; MPP 30-759,7; 30763.8].

CONTRACT AGENCY COUNTIES

NOTE: Senate Bill 1780 (Chapter 206, Statutes of 1996) became law on July 22, 1996. In addition to other changes, it adds a new mode of service delivery - the “task frequency mode of service delivery.” The California Department of Social Services will be developing regulations to specify how this mode of service delivery will be implemented, It is expected that services will be delivered in a manner similar to that described below. However, only that contracts for task frequency mode will be able to use “efficiencies” to reduce the number hours of services provided. The bill also added consumer protections for those receiving services under this mode of service delivery.

Some counties choose to deliver IHSS services through a county contract with a nonprofit agency or through a public authority established by ordinance. When this is done, all IHSS services are provided by that agency, except that a person classified as severely impaired may hire his or her own individual provider. The agency is also to give preference to any qualified individual provider who is chosen by a consumer receiving personal care services.

Contract agencies may pay a higher hourly wage and sometimes additional benefits to IHSS providers. However, the agency does not receive any more money per consumer than would be paid if an individual provider is used. How does this add up? The following example is based on an actual case:

The Situation:

The county has an exclusive contract with an agency to provide IHSS services.

The consumer was granted 195 + IHSS hours. Regional center did not have a supported living vendor yet and chose to use the contract agency. Instead of an independent provider (IP), so there would be hiring and supervision of the IHSS worker by other than the regional center.

What Happened:

This agency rate is \$12.68 per hour. IHSS pays a maximum of 195 hours x \$5.75 = \$1,221.25 a month. The agency must provide all required services at a cost of no more than \$1,221.25 per month. Since the rate is \$12.68 per hour, they provide 96.4 of service time (\$1,221.25: 12.68).

IHSS (Non-PCSP) through a contract agency is based on services to be provided, not necessarily hours. The IHSS assessment will list all the services needed by the consumer and the number of IHSS hours granted. The contract agency can apply “efficiencies” to allow them to perform the **same** services in a fewer number of hours. Efficiencies may be hard to accomplish for personal services. Each case would have to be evaluated separately to determine if needs are being met.

IHSS (PCSP) is NOT subject to the reduction in hours. Services must be provided without reducing the number of authorized hours. If you are not sure whether services are IHSS (PCSP) or IHSS (Non-PCSP) ask the county social services agency.

What to do:

If services are provided through IHSS (PCSP) and you are receiving fewer than the hours authorized by the county, ask the contract agency to adjust the hours of services being provided. If the agency does not adjust the hours, contact the county social services agency. The counties were notified that IHSS (PCSP) hours could not be reduced by All County Letter (ACL) 95-45 dated August 11, 1995.

If you receive IHSS (Non-PCSP) at the fewer hours than authorized by the county and if you feel that the services cannot be or are not being delivered in the few hours by the contract agency, speak to the agency first.

- Review the type of services that IHSS has included in the hours granted.
- Ask the agency how it will provide all the services in the number of hours they have allocated.
 - This may be possible if the hours are for domestic services (cleaning, etc.) The agency may send in a team rather than one person or otherwise get the services done more quickly. Remember, personal care services may not be figured by a formula. The time allowed must be the actual time that is necessary for each individual's services. [MPP 30-75.2].
- If a consumer is classified as severely impaired for IHSS purposes, he or she may hire an independent provider. If the contract agency does not provide the services needed and you cannot resolve this, hiring an IP may be the way to go.
 - The IP will lose any benefits that were provided by the contract agency.
 - The "efficiencies" may not be used by IP's to work fewer hours and bill at a higher level.

ALTERNATIVE RESOURCES

One of the requirements of the needs assessment is for the county IHSS worker to establish whether there are alternative sources for services for the consumer. This may include an able and available spouse, parents of a minor, community and school services, and any other agency or generic resources that is available to the consumer. *[WIC 12301(a); MPP 30-761.273.4; 30-763.6].*

The IHSS hours will be reduced by any service available from an alternative resource. At times, IHSS may be denied because the regional center/supported living services provider is already paying for IHSS-type services while waiting for assessment. Usually this is remedied by explaining the temporary nature of this funding. *[MPP 30-763.63].*

Remember, when a consumer is moving into his or her own home:

- Be sure that accessing IHSS is a generic services in the IPP.
- Plan on temporary payment for IHSS-type services until the assessment is complete.
- Let the IHSS worker know that the payment is temporary and in lieu of IHSS until service is established. The only reason another agency is funding the services is because the IHSS evaluation is not done until the consumer is actually in the home. This means someone must temporarily fund the services, otherwise the consumer would never be able to move into his or her own home.
- Be sure the continuing role of the regional center/supported living agency is not to provide services that are available through IHSS or other generic services.

STAFFING & PAYMENT

CONSUMER CHOICE

A consumer receiving personal care or paramedical services is not required to accept services from any specific person, except for these individuals recruited by his or her guardian, conservator, or, if a minor, the parents. Preference is to be given to the provider chosen by the consumer. *[WIC 12304.1; MPP 30-77.2; 30-767.4(a); 30-769.735].*

If service is provided through a nonprofit consortium contracting with a county or by a public authority established by the county, the consumer retains the right to select, terminate and direct the work of his or her IHSS provider. *[WIC 12301.6(c)(1); 12301.6(g)].*

PCSP PROVIDER ENROLLMENT

All providers of IHSS (PCSP) must sign the PCSP enrollment agreement form. Signing of this form means the provider agrees to comply with all laws and regulations governing Medi-Cal. One of these is that the provider agrees to accept the wages paid by the IHSS program as payment in full. *[42 CRF Chap.IV § 447.15; MPP 30-767.4]*

RATE OF PAY

Generally, the rate of pay for an individual provider is the minimum wage rate of \$4.25 per hour. *[WIC 14132.95(j); MPP 30-765]*

Payment of a supplement to increase the hourly rate is prohibited for both IHSS (PCSP) and IHSS (Non-PCSP):

“Notwithstanding any other provision of this article, the rate of reimbursement for in-home supportive services provided through any mode of service shall not exceed the rate of reimbursement established under subdivision (j) of Section 14132.95 for the same mode of service unless otherwise provided in the annual “Budget Act” (**Note:** *WIC sec. 14132.95 is the section relating to the PCSP - see “Eligibility Section” [WIC 12300(g)(2), as added January 1, 1995].*

“A State plan must provide that the Medicaid agency must limit participation in the Medicaid program to providers who accept, as payment in full, the amounts paid by the agency plus any deductible, coinsurance or copayment required by the plan to be paid by the individual” [42 CFR 447.1].

If the consumer has a need for more IHSS services than authorized and is not receiving the maximum IHSS hours (185 or 283), document the need and request a reassessment. See the *Assessment Section* for help with this.

If the consumer is receiving the maximum hours, additional help may be hired to provide whatever services are needed by the consumer, including more IHSS-type services.

Consumers receiving IHSS hours often still need further assistance in types of services that are not provided by IHSS. These may be in community services, other activities outside of the home, house hunting, learning to ride the bus, facilitating medical appointments, etc. The rate for these hours could be higher than that paid for the IHSS services.

PROVIDER BENEFITS

At the end of this section is a copy of a CDSS publication that explains IHSS individual provider benefits. There are deductions from the paycheck for social security, Medicare tax and state disability insurance. The provider receives unemployment insurance and workers' compensation benefits with no deduction. These deductions are automatically made by the state payroll agency when services are provided by an individual provider, whether the consumer is receiving advance pay or not. Contract agencies are responsible for these deductions for their employees. [WIC 12302.2; MPP 30-769.8].

Income tax withholding is available but not mandatory. The provider must request the county to withhold state and federal taxes from their pay if he or she wants this done. Be sure the provider knows that if they do not request tax withholding, the wages may still have to be reported and taxes paid depending on their income level. [MPP 30-769.84]

PAYMENT

An IHSS provider may be paid by one of these ways:

- From the state by submission of a timesheet to the IHSS office.
- Directly from a consumer who receives advance payment.
- From the contract agency in a contract county.
- From the county as a county employee.

Timesheets

Timesheets for individual providers are submitted twice a month, on the 15th of the month and at the end of each month. Payment to provider is usually made within 10 days. [MPP 30-753 (p)(2)].

In each case, the consumer is responsible for signing the time sheet and assuring that the hours and services claimed are what was received during that pay period. [MPP 30-769.7].

Advance Payment

Any consumer who is classified as ***severely impaired*** has the right to receive advance payment for IHSS services. Any amounts advanced will be minus the required deductions. The consumer may receive this payment through electronic transfer. [WIC 1230(a); 12304.3; MPP 307439d)(3); 30-769.731; 30-79.73]

The county has the right to stop advance payment to a consumer if the consumer:

- is using his or her payment for other than the purchase of authorized services.
- has not submitted timesheets at the end of each month.
- has not paid his or her providers timely. [MPP 30-767.133; 30-769.737]

Provider Grievance/Complaint Process

The county shall respond to and resolve payment inquiries from recipients and providers. [MPP 30-769.24(e)].

For providers of IHSS (PCSP), MPP section 30-767.5 lists the procedures to follow if a provider of personal care services has a grievance or complaint about the processing or payment of money for services provided.

BACK PAYMENT FOR SERVICES

When IHSS services and hours are authorized, they may be paid back to the date of the initial application. However, these payments will only be made to the actual provider of the services. If an agency or the regional center has already paid the provider, IHSS will not reimburse those wages. *[MPP 30-759.4; 30-769.73]*

REASSESSMENT /REVIEW

Any time that there are misunderstanding or dissatisfaction with an action or inaction by a county affecting an application for or receipt of public social services, a review may be requested.

A reassessment is merely an assessment done for a consumer who is already receiving benefits. This may be done in response to a request from you or the consumer to reevaluate the need for more or less service. It will also be done if the county receives information that the situation of the consumer has changed.

The CDSS encourages the county to resolve differences with this informal process and requires the county to specifically designate staff to be responsible for requests for review. **Using the county review process does not extend the time limits for filing a state hearing.** [MPP 22-009; 22-073.23]

APPEAL/STATE HEARING

provides information about state hearings for IHSS. It is not the place of legal advice. We provide references to regulations that may apply to the most typical appeals. If you are not sure what applies or how it applies to individual case, you may want to seek advice or help from someone with expertise in handling these matters. See “*Who Can Help*” at the end of this publication for some suggestions.

Regulations that guide the state hearing process for social services (including IHSS) are contained in the California Department of Social Services’ *Manual of Policies and Procedures, Confidentiality, Fraud, Civil Rights, and State Hearings* publication. The hearing regulations start with Division 22. You may review these sections at the county welfare office. A copy of specific sections may be requested from them to help determine whether a state hearing should be requested or to prepare for a state hearing. Or you can order a complete copy - see Introduction page at the beginning of this guide. [MPP 22-051.3].

Informal resolution is preferred and encouraged by the state and county. However, it is important to remember that ***working to resolve issues informally does not change the strict timelines for filing a request for appeal.*** If an appeal is filed and the issues are then worked out informally before the hearing, the hearing process can be stopped.

ADDITIONAL TERMS USED IN THIS SECTION

An ***Administrative Law Judge (ALJ)*** is a person designated by the Director and assigned by the Chief Administrative Law Judge to conduct state hearings. [MPP 22-001(a)(2)].

The term ***complaint*** is used throughout the Manual of Policy and Procedures and is used synonymously with ***consumer*** throughout this section. A consumer is the person who has requested a state hearing and is or has been an applicant for or recipient of aid. Reference to the consumer also includes the authorized representative, when appropriate. [MPP 22-001(c)(2)].

County or CWD refers to the county welfare department. Some counties may use terms other than welfare such as social services or human services. [MPP 22-001(c)(4)].

Director refers to the director of the California State Department of Social Services (CDSS). [MPP 22-001(d)(4)].

NOTICE OF ACTION TO DENY OR CHANGE BENEFITS

If the county denies or intends to change a consumer's IHSS services, it must give a written notice to the consumer. That notice must include the following:

- The action the county intends to take,
- The reason for that action,
- The specific regulations supporting the action,
- An explanation of the right to request a hearing, and, if appropriate,
- The circumstances under which aid will be continued if a hearing is requested.

Except in limited circumstances, the notice of action must be mailed to the consumer at least 10 days before the effective date of the action. The 10 days does not include the date of mailing or the date that the action is to take effect. [MPP22-001(1); 22-071; 22-072; 30-009.236].

Reasons when a timely notice is not required include the death of the consumer or admission to an institution, intermediate care facility or a skilled nursing facility. [MPP 22-072.2].

WHAT CAN BE APPEAL?

A state hearing is available to a consumer who is dissatisfied with a county action and who requests a hearing in the required manner. [MPP 22-003].

There are some instances where a hearing will not be granted or will be dismissed. Some of these are:

- When a state or federal law requires an automatic adjustment for all persons receiving that service, unless the reason for the request is that the amount was figured incorrectly. This applies if the change affects **all** people receiving IHSS services and everyone's benefits are automatically adjusted in the same way because of a change in law.

[MPP 22-003;12; 22-054.1].

- Complaints of discourteous treatment by a county employee when that treatment did not result in any denial, delay, discontinuance or reduction in aid or services. [MPP 22-003.15].
- When the request for hearing is filed after the time limit set in regulation. [MPP 22-054.32].
- When the identical issue has been the subject of a previous state hearing involving the claimant. [MPP 22-054.34].
- If the request is because the county has not complied with a previous adopted state hearing decision. There is another way to handle this issue that is discussed later in the *After the Hearing* section. [MPP 22-054; 22-078.31].
- The request is withdrawn or abandoned. [MPP 22-054.2].
- If state hearing does not have jurisdiction. [MPP 22-049.53; 22-054.31].
- If the ALJ determines at the hearing that the consumer or authorized representative is unwilling to present his/her case. [MPP 22-054.33].

SHOULD I APPEAL?

This is a good time to research the law, regulations and reason for the county's decision. Ask for help if there is anything you do not understand (see *Who Can Help?*). A good question to ask is: Do I agree with the county decision and, if I don't, can I support my position?

TIMELINES FOR APPEAL

If the consumer is already receiving IHSS services, **file the request for appeal during the 10 calendar days BEFORE the Notice of Action is effective.**

If the request is filed within the 10-day period, the benefits will not change until there is a hearing and a decision issued. [MPP 22-072.5].

A request for hearing **MUST** be filed within **90 calendar days** after the date of the county action or inaction. However, if the request is filed after the 10-day period mentioned above, the benefits will NOT continue pending the hearing. In this case, if the decision is for the consumer, the judge may order back payment. The date of action is the date the notice of action was mailed

by the county. *[MPP 22-001(f); 22-009.1]*.

A request for a rehearing must be filed within **30 calendar days of receipt** of the decision. If the rehearing is requested by the county, the consumer has **5 calendar days from the receipt** of the notice to file a written response with the Director either supporting or opposing the hearing request. *[MPP 22-06]*.

If a letter is received by the consumer or authorized representative stating that the request will be dismissed because of no jurisdiction, a filing after the deadline or because the issue is a matter of compliance with a prior state hearing, the consumer has until the effective date of the dismissal to submit further information on why it should not be dismissed. The notice is mailed by the Chief ALJ, or someone designated by him or her, 5 days before the effective date. *[MPP 22-054.4]*.

WHO FILES THE APPEAL?

The consumer or an authorized representative on behalf of the consumer. A group of consumers with a common complaint may request a group hearing to be scheduled. *[MPP 22-047]*.

AUTHORIZED REPRESENTATIVE

An authorized representative is an individual or organization that has been authorized by the consumer to act for him or her in any and all aspects of the state hearing. An authorized representative may include legal counsel, a relative, friend or other person. *{MPP 22-001(a)(5)}*.

The authorization may be oral or written. However, it is best to be written, signed and dated. If the consumer is not present at the hearing, the authorization must be written, signed and dated on or after the date of the county action. *[MPP 22-085.1]*.

When a consumer has an authorized representative, that person must be given a copy of all notices and decisions concerning the state hearing that are provided to the consumer. This means that the consumer or representative must notify the county of the authorization and keep them informed of any change of address. *[MPP 22-054.222(a)(1); 22-085.3.4]*.

WHERE TO FILE THE APPEAL

A request for a state hearing may be written or oral. There is a request form on the back of the Notice of Action. However, a form is not required and the request may be by letter or another written format. If the form on back of the Notice of Action is used, be sure to keep a copy of the entire form. If asked, the county must furnish a duplicate copy of the Notice of Action if the back of that form is used to request a hearing. [MPP 22-003; 22-071.5].

The written request is filed with the CWD. The address is on the Notice of Action form with the information about the right to request a hearing. For record keeping purposes, it is best to file a written request. [MPP 22-004.2].

An oral request is filed in person or by telephone at the California Department of Social Services in Sacramento. The toll-free number is 1(800) 952-5253 or TDD 1(800) 952-8349. [MPP 22-004.3].

FILING THE APPEAL

The request for a state hearing should include the following information:

- The aid program involved, i.e., IHSS.
- The reason for the disagreement with the county action.
- If an interpreter is needed and what kind, i.e., language, sign, etc.
- A copy of the applicable Notice of Action. [MPP 22-004.2 12].

The county welfare office must assist with the filing of the request of the appeal if requested. In addition, the county is to provide any and all information which can be of assistance to the consumer in preparing the hearing. This includes revealing any and all regulations and evidence including that which might be favorable to the consumer's case. If the consumer is not fluent in English an explanation of the hearing process must be made in the consumer's language. [MPP 22-004; 22-073.232(c)].

Remember to keep the county informed of any change of address during the appeal process so notices for the hearing are received. *And, remember the deadline for filing.*

AID PAID PENDING

Except under limited conditions, when a timely request for a state hearing is filed, aid will continue in the amount the consumer would have been paid if the county had not taken the action. This aid paid pending the decision is not to be considered an overpayment even if the decision is in favor of the county. [MPP 22-072; 22-073; 30-768.111].

If adequate notice was NOT given to the consumer as required and aid was discontinued, suspended, canceled, terminated or reduced then the CWD must reinstate the benefits retroactively. [MPP 22-049.523].

Aid pending will stop when:

- The consumer withdraws or abandons the request for a state hearing. If the withdrawal is conditional (see *Conditional Withdrawal from Hearing*) and the hearing is reinstated, aid paid pending will be reinstated retroactively.
- The claim is denied or dismissed by the preliminary hearing process (see *Preliminary Hearing*).
- The ALJ determines, based on the hearing record, that the issue involved is one of law or change in law and not one of incorrect application of law.
- The consumer voluntarily and knowingly, in writing, waives the continuation of aid.
- The consumer is granted a postponement of the hearing by the ALJ for reason that does not constitute good cause. [MPP 22-053.15; 22-054.222(b); 22-727; 22-074.3].

If there is a disagreement with the aid paid pending decision, the consumer or the county may submit a written request for reconsideration within ten days from receipt of the decision to the Administrative Adjudications Division. [MPP 22-072.8].

WHAT HAPPENS NEXT

If a written request is filed with the county welfare office, they send a copy to the Administrative Adjudications Division in Sacramento within 3 days. The Adjudications Division is the office that is responsible for setting up the hearing date and holding the hearing. That office then mails a written acknowledgment to the consumer. The regulations do not state a time period for the mailing of the acknowledgment, but it is usually within 2 - 5 days of

receipt of the hearing request by the Adjudications Division office. [MPP 22-004.22; 22-043].

Begin to prepare for the hearing as soon as the request is filed. Do not wait until the notice of hearing date is received. There are many decisions to be made now such as:

- Who is going to help.
- Will you need an attorney.
- What copies need to be requested from the county.
- What documents need to be reviewed.
- List of witnesses, if any.
- Will any witnesses need to be subpoenaed.
- Are special accommodations needed for the consumer or witnesses.
- What law or regulations support the county position.
- What law or regulations support your position.
- Etc.

The Administrative Adjudications Division must mail or deliver to the consumer and to the county a written notice of the time and place of the hearing not less than ten days prior to the hearing.

The consumer may waive the 10-day requirement and accept a shorter time period. [MPP 22-045.3].

SUBPOENA

The ALJ or official designee may issue a subpoena to require the presence of any witness whose testimony has been shown to be relevant. A subpoena duce tecum may be issued to require certain books, papers, correspondence, memoranda or other records be produced for the hearing. It is the responsibility of the party requesting the subpoena to have it served. [MPP 22-051.4; .6].

WITNESS FEES AND MILEAGE

A witness subpoenaed at the request of the consumer and who appears at the hearing may demand for witness fees and mileage from the Department

on a form specified for that reason. A witness subpoenaed by the county submits the fees on a form specified by the county. The amount to be paid is specified by the Government Code §68093. The current witness fee is \$35.00 per day and round trip mileage at \$.20 per mile. [MPP 22-052].

The claim form for these fees is often part of the subpoena document. The claim for fees and mileage may be presented to the ALJ at the time of the hearing or mailed within 10 calendar days after the hearing to the address on the form.

EXAMINATION OF RECORDS

Upon request, the CWD must allow the consumer to examine the case record during regular working hours. The consumer has this right both prior to and during the hearing. [MPP 22-051.1;2].

Also, upon request, the county must give copies of specific policy materials, including regulations, necessary for the consumer or his/her authorized representative to determine whether a state hearing should be requested or to prepare for a state hearing. These copies must be without charge or at a charge related to the cost of reproduction. [MPP 22-051.3].

COUNTY POSITION STATEMENT

Before the hearing, the CWD must prepare a typewritten position statement. The position statement summarizes the facts of the case and the regulatory justification for the CWD action. It also includes copies of documentary evidence and a list of witnesses which the county intends to use during the hearing.

If the count received a 10-day prior notice of the date and time of the hearing, it must make a copy of the position statement available to the consumer at the CWD not less than two working days before the hearing date. It is important to review the position statement in order to be sure that you are prepared to respond to all issues that will be raised by the county. There may be more research to do so don't wait until the last minute! [MPP 22-073.25].

CONDITIONAL WITHDRAWAL FROM HEARING

If an agreement to do a redetermination of benefits is reached between

the consumer and the county before the scheduled hearing, the request for hearing may be conditionally withdrawn. The conditional withdrawal agreement must be in writing and signed by both the county and the consumer. The agreement must provide that the actions of both parties will be completed within 30 days from the date the agreement is signed by both parties and received by the county. {MPP 22-053.211(b)(3)}.

Once the county does the redetermination, it must issue a notice of determination and give adequate notice to the consumer before the action is to take place. If the consumer disagrees with the redetermination, he or she may request that the hearing be reinstated. The same timelines for the reinstatement request apply as for the original hearing request (see *Timelines for Appeal*). [MPP 22-009; 22-054.211(b)(3); 22-071.14].

WHO CAN ATTEND THE HEARING

Attendance is usually limited to the consumer, authorized representative, county representative, legal counsel, authorized interpreter and witnesses relevant to the issue. The consumer or an authorized representative is required to attend the hearing unless it is a rehearing or further hearing. [MPP 22-049.1].

Other persons may attend the hearing if the consumer agrees to or requests their presence **and** the ALJ determines that their presence will not be adverse to the hearing. [MPP 22-049.1].

The ALJ can require a witness wait outside the hearing room during the testimony of other witnesses. [MPP 22.049.12].

INTERPRETERS

If requested before the hearing, an interpreter will be provided by the state. The ALJ may also require an interpreter if, at the hearing, he or she determines that an interpreter is necessary. [MPP 22-049.6].

The ALJ determines if an interpreter is qualified through certification by the California Department of Social Services or by otherwise examining the qualifications and competency of the interpreter. The ALJ has the discretion to disqualify interpreters who are:

-
- consumer's relatives, friends, or an authorized representative;
 - county staff who participated in making the decision complained of;
 - the county appeals representative;
 - any other person determined by the ALJ to be detrimental to the hearing or having a bias or the appearance of being biased. [MPP 22-049.6].

THE HEARING

The hearing must be held in California in the county in which the consumer ***is living at the time of the hearing*** and at the reasonable time, date and place. [MPP 22-045.1; 22-045.2].

If the consumer is unable to attend the hearing at the hearing location because of poor health, the hearing will be held in the consumer's home or in another place agreed to by the county and the consumer. Verification may be required from the consumer as to why he or she cannot attend the hearing at the hearing location. A hearing may also be conducted by telephone or video conference instead of an in-person hearing if the consumer agrees. [MPP 22.045.1].

The hearing is to be conducted in an impartial manner with all testimony submitted under oath, affirmation, or penalty of perjury. It will be taped recorded or otherwise recorded. [MPP 22-049.2; 3; 4].

The issues must be limited to those which are reasonably related to the request for hearing. If other issues are going to be brought up, both the CWD and the consumer must jointly agree before or at the hearing. [MPP 22-049.5].

If the consumer received adequate notice and is still not ready to discuss the issues, the case will be dismissed. If the consumer did not receive adequate notice, the AJL must postpone the hearing unless the consumer waives the adequate notice requirement. [MPP 22-049.52].

During the hearing both sides have the right to examine parties and witnesses, conduct cross-examination, introduce exhibits, bring witnesses, examine documents prior and during the hearing, question opposing witnesses and parties on relevant matters even if not covered in the direct examination, make oral or written argument and rebut the evidence. [MPP 22-

049.7].

All documents submitted by either the consumer or the county shall be made available to both parties. Be sure to take a copy for the CWD. Copies of the documents must be provided to the consumer free of charge. [MPP 22-049.8].

Failure to appear at the hearing will cause the case to be dismissed unless the consumer requests that the hearing request be reinstated and establishes good cause for failing to appear as scheduled within 10 days from the scheduled hearing date. [MPP 22-054.222].

EVIDENCE

The rules of evidence for state hearings are not the same as the rules in judicial proceedings. In general, the rules for state hearings are less restrictive. [MPP 22-050.2].

The AJL may take *official notice* of facts and propositions that are reasonably subject to dispute and that can be readily determined to be accurate by using sources of reasonably indisputable accuracy. This means that the ALJ may accept the existence and truth that certain facts exist without requiring the actual production of evidence to prove those facts. [MPP 22-050.4].

POSTPONEMENTS

Postponements are granted under limited conditions. The ALJ may postpone a hearing at any time before the hearing or at the request of the county at the hearing. Other reasons that establish *good cause* for a postponement by the consumer include:

- Death in the family.
- Personal illness or injury.
- Sudden and unexpected emergencies which prevent the consumer or the authorized representative from appearing.
- A conflicting court appearance which cannot be postponed.
- When the county, when required, does not make a position statement available to the consumer not less than two working days before the date of the scheduled hearing.

- When the county has modified the position statement after providing the statement to the consumer AND the consumer waives the 90-day period within which a decision must be issued. [MPP 22-053.1; 14;16; 22-073.253].

Failure of the consumer or authorized representative to receive the hearing notice is not good cause IF the reason is because the CWD or CDSS was not notified of a change of address. [MPP 22-054.222(a)(1)].

When the hearing is postponed, continued or reopened at the consumers request, the 90-day period within which a decision is required will be extended, not to exceed 30 days each. If this is done, the consumer must be given a written notice that explains the time for rendering a decision will be extended. [MPP 22-053.3].

CONTINUANCES FOR ADDITIONAL EVIDENCE

A continuance to receive additional evidence into the record may be granted under limited conditions. If the ALJ determines that the evidence not available at the hearing is necessary for the proper determination of the case, the ALJ has the authority to continue the hearing to a later date or close the hearing and hold the record open for a period not to exceed 30 days. {MPP 22-053.2}.

When a hearing is postponed, continued or reopened at the consumers request, the 90-day period within which a decision is required will be extended, not to exceed 30 days for each postponement, continuance, etc. If this is done, the consumer must be given a written notice that explains that the time for rendering a decision will be extended. [MPP 22-053.3].

DISQUALIFICATION OF AN ALJ

A ALJ must voluntarily disqualify himself or herself and withdraw from any proceedings in which he/she cannot give a fair and impartial hearing in which he/she has an interest. The consumer or the county may also request that an ALJ be disqualified for the same reasons. This request must be done before the close of the record. [MPP 22-055].

COMMUNICATIONS AFTER THE HEARING

Oral or written communications to the CDSS after the hearing will not be included in the case record or used in making a decision. Evidence requested by the ALJ at the hearing and for which the record is being held open may be submitted within the deadline set by the ALJ. The ALJ may also reopen the record to receive additional information under certain conditions. [MPP 22-059.1].

DISPOSITION OF STATE HEARINGS

All state hearings must be decided or dismissed within 90 days from the date of the consumer's request for the state hearing unless the consumer waives the requirement or withdraw or abandons the request. If the consumer has conditionally withdraw an appeal, the 90-day period is extended from the date the request for hearing is reinstated. {MPP 22-060}.

THE DECISION

It is the consumer's and authorized representative's job to be sure that all evidence is produced for the hearing record. The decision will be based **only** the testimony and exhibits from the hearing record and all papers and the request for the hearing filed in the hearing proceedings. The ALJ must specify the reasons for the decision and identify the supporting evidence and records. *MPP 22-061,5; 22-064.1].*

After the hearing is closed, the ALJ either submits a proposed decision for review by the Chief ALJ and the CDSS director or, if authorized by the CDSS Director, adopts a final decision. If the ALJ has the authority to adopt a final decision, it becomes final when the ALJ signs and dates it. A proposed decision is not effective unless it is adopted by the director or the director takes no action within 30 days of receipt of the proposed decision. [MPP 22-001(p)(2)]

When the decision goes to the CDSS director, he or she must:

- Adopt the decision as it is written, or
- Decide the matter based on the record, including the transcript, with or without taking additional evidence and issue an alternative decision, or
- Order a further hearing to be conducted.

An alternate decision is one issued by the Director that is different than

the proposed decision. The director must act within 30 days of receipt of the proposed decision or the proposed decision becomes final. [MPP 22-001(a)(4); 22-062].

After the proposed or final decision is adopted or an alternate decision is issued by the Director, a copy is mailed to the consumer and to the county. If the director adopts an alternative decision, the proposed decision must be included with the final decision. The notice of decision will also include information about the right to a judicial review, any rehearing rights and the right to attorney's fee and the cost of the suit if a judicial court finds in the consumer's favor. *MPP 22-063*.

Records of the hearing are available to the consumer and the county during normal working hours at the Administrative Adjudications Division or other mutually agreed upon location for three years after the date of the decision. *[MPP 22-064]*.

REHEARING

Either the consumer or the county may file a request for a rehearing. That request must be filed in writing with the Office of the Adjudications Division not more than 30 calendar days after the receipt of the hearing decision. There is no particular form required to file for a rehearing. *[MPP 22-065.1]*.

If the request for a rehearing is to present additional evidence it must include the following:

- A description of the additional evidence;
- Why it was not previously introduced;
- Why it is important to the case; and
- How this additional evidence will change the outcome of the hearing decision.

The rehearing request must also include the date the decision was received. *[MPP 22-065.12;13]*.

The director will mail a copy of the rehearing request to the other party of the hearing. That party has 5 calendar days to file a written response with

the Director either supporting or opposing the rehearing request. [MPP 22-065.2].

The Director must grant or deny the request no earlier than 5 or no later than 15 working days after it is received by the Chief ALJ. If the Director does not act within this period, the request will be considered denied. [MPP 22-065.3].

If a rehearing is granted, the Director will:

- Order reconsideration of the decision based on the evidence in the record and any new evidence presented by either side. Any new evidence will be given to the other party for rebuttal.
- Or, order a new hearing on one or more of the issues presented at the original hearing. [MPP 22-065.4].

The decision of the Director issued based on the rehearing is not subject to further state hearing. There is still a right to a judicial review whether or not the rehearing is granted. [MPP 22-065.6;7].

COMPLIANCE WITH THE DECISION

As soon as the county receives the decision, it must start action to comply with the decision, even if a rehearing is requested. [MPP 22-078.1].

If the decision is wholly or partially in favor of the consumer, the county must report to the Administrative Adjudications Division within 30 days on how they have complied or are complying with the order of the decision. [MPP 22-0768.2].

When the CDSS receives the county compliance report, it determines whether or not the compliance is appropriate. It then notifies the county and the consumer whether or not the compliance is approved. If compliance is not approved, the county is given instructions on how to ensure proper compliance. [MPP 22-078.8].

The consumer may contact the California Department of Social Services, orally or in writing, if he or she is dissatisfied with the compliance.

The CDSS will take appropriate action to ensure compliance with the decision. [MPP 22-078.3;4].

Another hearing may be requested only if there are still issues that were not resolved in the prior state hearing or that resulted from prior hearing requiring the county to make further determinations regarding the consumer's eligibility or amount of benefits. The timelines for filing this request for hearing are the same as for the prior hearing (see *Timelines for Appeal*). This deadline is not extended just because the CDSS is reviewing the compliance. Non-compliance alone does not give the right to another hearing. [MPP 22-078.31; .5].

PRELIMINARY HEARING

There are circumstances when a county may hold a preliminary hearing at the county level before the state hearing. In order to hold a preliminary hearing the county must have prior written approval of the Administrative Adjudications Division. If the CWD has this approval, it must hold a preliminary hearing for all state hearing requests concerning actions by that county. For more information about preliminary hearings see *MPP 22-074 to 22-076*.

WHO CAN HELP?

Consumers only:

- **Regional Center.** Contact the case manager. He or she may help or refer you to another person who has more experience with state hearings within the regional center.
- **Area Board.** Ask the regional center for address and telephone number of the Area Board serving your area.
- **Supported Living Services Agency.** For consumers receiving supported living services the agency who provides those supports may be able to help with representative of find someone else who can help.

Regional Center Consumers and Others:

- **County Department of Social Services (County Welfare Dept.)**
When asked, the CWD will assist with the filing of the appeal and will provide all information that can be of assistance in preparing for the hearing. Also, upon request they furnish copies of the relevant documents, sections of laws, regulations, etc. They will also explain the hearing process in the consumer's language when the consumer is not fluent in English.
- **Independent Living Center.** Independent Living Center (ILC) are nonprofit agencies funded by the Department of Rehabilitation to provide consultation, training, information and referral on housing, advocacy, and accessibility. A list of ILCs is available from the Department of Rehabilitation, Independent Living Section, 830 K St. Mall, Sacramento, CA 95814-3510. Telephone: (916) 324-3874.
- **Legal Aid Program.** Look for "Legal Aid" in your telephone directory.
- **Protection and Advocacy, Inc.** Toll-free (800) 776-5746.
The document titled IHSS FAIR HEARING AND SELF-ASSESSMENT PACKET is also available from them.
- **Other Attorney.** When looking for a private attorney, ask if the person

has experience with administrative law and the fair hearing process.

Do you need an attorney? That is up to you. An attorney is not required, however, sometimes there are complex issues involved that may require an attorney's help.

I.H.S.S. FAIR HEARING

HEARING

If you are challenging a reduction, you must request a fair hearing within 10 days of receiving the cutback notice in order to get your IHSS continued at the current level until the hearing. If you believe you have not been allowed enough hours, you may challenge the allocation at any time. However, the hearing officer may only go back 3 months prior to your hearing request. (You always have the right to ask your worker to reassess you to see if he or she agrees you need more hours.)

To request a hearing:

- a. Fill out the back of the notice of action form and send to the address indicated, or
- b. Send the letter to :

**IHSS Fair Hearing
Department of Social Services
744 "P" Street
Sacramento, CA 95814**

Give your name and State number and say that you want a fair hearing because you do not believe you have been allowed the hours you need. If you need the hearing to be held in your home, include that in your request.

INFORMATION YOU NEED TO GET STARTED

Get together information about how your IHSS hours are allocated.

- a. Ask your IHSS worker for a copy of your assessment forms. These are your "SOC 293" forms. If you are challenging a reduction, ask for both your new and your old SOC 293 forms. You need both to see exactly how your hours were allocated before and after the reduction.
- b. Ask you IHSS worker for a copy of the County's time-per-task guidelines. Remember. time-for-task guidelines may not be used for personal care tasks.
- c. Ask your worker for copies of any doctor or medical reports in your

file.

-
- d. If your hours are reduced, ask your IHSS worker for copies of the regulations listed on your reduction notice.

HOW YOU MEASURE IHSS NEED?

The general standard for measuring individual need for IHSS services (assuming the disabled person is unable to perform the needed services because of his or her disability*) is set out in Welfare & Institutions Code N 12300. The disabled person is entitled to receive services needed to enable him or her:

1. to safely remain in his or her own home or abode of his or her own choosing, and/or
2. to establish and maintain an independent living arrangement.

Identify by service category listed on the enclosed IHSS worksheet where you and the County disagree about what you need. The IHSS worksheet follows the listing of the County's SOC 293 assessment form. If you are challenging a cutback, you may find after you go over your SOC 293 forms that you have not been allowed enough time in a service category which has not been cut (or not given any time). To ensure that you will be able to discuss this at the fair hearing, include that in your request.

It is sometimes helpful to keep a log where you write down what is done, just how many IHSS hours are actually spent, and what is needed.

GETTING READY FOR THE HEARING: THE IHSS WORKSHEET

For the hearing, complete the enclosed IHSS worksheet. The worksheet, like the County assessment is based on a one-week period. Hours are calculated in 10ths:

| | | |
|------------------|------------------|------------------|
| .1 = 6 minutes | .4 = 24 minutes | .7 = 42 minutes |
| .15 = 9 minutes | .45 = 27 minutes | .75 = 45 minutes |
| .2 = 12 minutes | .5 = 30 minutes | .8 = 48 minutes |
| | | minute |
| | | s |
| .25 = 15 minutes | .55 = 33 minutes | .85 = 51 minutes |
| .3 = 18 minutes | .6 = 36 minutes | .9 = 54 minutes |
| .35 = 21 minutes | .65 = 39 minutes | .95 = 57 minutes |

Figure the worksheet hours on a weekly basis-just as the hours are figured on the county SOC 293 forms.

- a. First list in column headed "**Now Allowed**" what the county worker wrote on the last assessment form. If the county is trying to reduce your hours, list in the column "**Previously Allowed**" what the county worker wrote on the old assessment form.
- b. If you agree with the last assessment in a particular category, write in the amount in the column headed "**Need**",
- c. If you disagree with the last assessment in a particular category, fill in the time you believe you need. If the time you need is more than the time allowed, write the difference in the column headed "**Difference**". Thus, if the county allowed an hour a week for laundry and you believe an hour and a half is needed, you would write "1.5" in the "**Need**" column and ".5" in the "**Difference**" column. In particular categories you may believe you need less time even though overall you need more. You should show that too in the "**Difference**" column, but with parenthesis around the number to show that it is to be deducted when you add up the column.
- d. Add up the columns. The "**Now Allowed**" column should be the same as the weekly total on the last SOC 293 assessment form. The total of the "**Now Allowed**" column and the "**Difference**" column should equal the "**Need**" column.
- e. You then multiply the weekly hours by 4.33 (4 1/3) to get the monthly totals.

Finally, on a separate piece of paper you need to write down the reasons why you believe you need more IHSS time. To help you, enclosed is a list of "Reasons why more IHSS time is Needed" that we have seen in individual cases. Some of these reasons may apply in your case.

"SEVERELY IMPAIRED"

To determine whether or not you qualify as a "severely impaired" recipient, add up the "essential" services categories labeled on the worksheet with an asterisk. If they total 20 hours or more a week (including services not provided through IHSS), you qualify as severely impaired.

If you are severely impaired, you are:

-
- a. entitled to secure your own IHSS provider even in contract agency counties,
 - b. entitled to advance payment so that you may pay your workers rather than waiting for San Francisco computer to pay them afterwards, and
 - c. if needed, are entitled to a higher maximum than non-severely impaired recipients.

DOCUMENTING SPECIAL NEEDS

Get documentation verifying special needs, for instance, a note from your physician explaining that you need a dust-free environment because of allergies or pulmonar/respiratory problems, a note verifying bowel and bladder problems, or a need to have bed linens changed more than twice a month. If you need range of motion exercises or other physical therapy, or shots, or catheterization, or suctioning, etc., get the forms from your County IHSS worker for doctor/therapist verification of need and authorization for paramedical services.

COUNTY STATEMENT OF POSITION

You are entitled to the County's statement of position two days in advance of the hearing. (You are entitled to look at your file at any time whether or not you have a hearing pending.) The County's statement of position will help you identify other evidence and witnesses you may need. If you do not get a copy until just before the hearing, you can ask to have the record left open to submit additional evidence (such as letters or statements) to respond to any statement in the County's position paper. Even if you get the County statement of position in time, you may still ask to have the hearing record left open so that you may submit additional evidence.

AT THE HEARING

The hearing will involve the presentation of evidence (testimony by witnesses, letters, medical reports) about your needs in the service category areas you and the County disagree. The evidence should explain what you need, how long it takes to provide the services, the reason you need more time than that set out in the assessment or the County guidelines, and what risks you may exposed to if you do not receive the level of services requested. IHSS fair hearing are informal. The important thing is explaining why more

time is needed.

Witnesses may include-in addition to the IHSS recipient-past and present IHSS providers, Regional Center counselor, friends and family etc. For each witness list the points you want that witness to make and cross off each point as it is made.

For more help, call your local Regional Center, Independent Living Center, Legal Aid Program, Senior's Program, or the PAI hotline (800) 952 5746.

FACTORS OR REASONS INDICATING WHY MORE IHSS TIME IS NEEDED

hour-a-month domestic services guideline (less if living situation) in the initially adopted emergency regulations was expressly based on someone providing domestic services only twice a month. Although the domestic services 6-hour-a-month since March of 1982 no longer indicates twice-a-month service deliveries, twice a month is what the 6-hour-guideline was based on and therefore any need for services more frequently than twice a month may indicate for more than 6 hours a month.

For instance :

- a. Allergy or pulmonary respiration problem indicating a need for a dust-free environment and a need for frequent dusting and vacuuming.
- b. Trash need to be removed daily because of roach or other vermin problems.
- c. Recipient spills things which requires frequent cleaning, particularly if roach or vermin problems.
- d. Incontinent results in a need to spot clean floor, furniture, etc.
- e. Trash bin located through a couple of double locked doors at the rear of the building and it takes 10 minutes to get there and back.
- f. Accidents in bathroom requiring more frequent cleaning.
- g. Recipient eats in bed. Bed must be vacuumed and remade three times a day to remove crumbs. Bed linen must be changed more frequently because of spills.
- h. Because of incontinent/accidents, bed linen must be changed (daily, three times a week, once a week, etc.)
- i. Because of dropping things, more picking up is required.

j. Since seal in refrigerator worn out, more time needed for cleaning and defrosting refrigerator.

k. Because iHSS recipient spends most of his/her time in bed or because of sweating, sheets are changed more frequently than twice a month.

l. Building-wide roach spraying requiring, on a one-time basis, that everything be removed from kitchen and shelves, washed and, after spraying, returned. (time for this is justified not only for health and safety reasons, but also necessary for establishing and maintaining an independent living situation since failure to comply may put you at risk of eviction.)

2. Extra time needed in meal preparation and/or menu planning because a special diet-i.e., a diet excluding salt and sugar and requiring fresh foods, the need to cut up or puree food.

3. Diet and eating patterns differ from rest of family and meals are prepared separately.

4. Bathroom is inaccessible to a wheelchair. This means additional time is required in bathing and other personal care/grooming activities.

5. Recipient is sensitive to pain-even combing hair is very painful. Personal care services have to be performed slowly and carefully.

6. Recipient eats and chews slowly and has to be coaxed or the jaw manually manipulated. Each meal may take up to 45 minutes for feeding.

7. Extra time is needed for laundry because:

a. of extra bed linen and clothing changes due to incontinence/spilling,

b. need to wash mattress cover separately,

c. need to stay with laundry during wash and dry because of theft,

d. need to wash bed clothing etc., separately.

8. Extra time is needed for shopping, errands, because:

- a. distance to primary market,
- b. need to go to market more frequently or to go more than one place because of special diet, need for fresh food,
- c. frequent need to get medication because of Medi-Cal limitations on prescription size.

9. Although recipient can feed self, needs attendant available to help lift things, and because of choking problems.

10. No time allowed for feeding snacks, between-meal liquids.

11. Need to be bathed more than twice a week because of spilling, incontinence, skin problems.

12. Need to be shampooed more than once a week due to dandruff, getting food etc. in hair.

13. Need for extra time for communication with IHSS provider (as for a person with cerebral palsy, who must use word board and alphabet).

14. Recipient needs two to three times as much food because of cerebral palsy with spasticity and therefore needs more time for meal preparation, menu planning and cleanup, shopping and feeding.

15. Susceptible to respiratory infections and therefore hair must be dried after shampoo.

16. Time was assessed (and guidelines based on) county contract IHSS providers who do not provide services over the weekend; client needs and is entitled to receive services over the weekend regardless of what it says in the contract between the county and the attendant/homemaker chore agency.

**ANSWERS TO
COMMONLY
ASKED
QUESTIONS**

DO MY IHSS EARNINGS AFFECT HIS OR HER SSI BENEFITS?

Income earned by a parent for providing IHSS services to a disabled child is not counted in determining the amount of the child's SSI benefits. Social Security does not treat IHSS income like other income a parent might earn. This is because the IHSS income is based on the needs of the child and is from a state-funded program.

MY CHILD RECEIVES SSI AND I RECEIVE AFDC AS THE CARETAKER. IF I CHOOSE TO BE PAID AS MY CHILD'S IHSS WORKER, WHAT WILL HAPPEN TO MY OWN MEDICAL BENEFITS? WHAT IF I HAVE OTHER CHILDREN ON AFDC?

You would be eligible for "Medically Needy" Medi-Cal, though you would probably be assessed a share of cost in any month in which you need medical care. If you have other children, they also would be covered by "Medically Needy" Medi-Cal. If you continue to receive AFDC because you would earn less than the AFDC grant for you and other children as your disabled child's IHSS worker, you still would be eligible to be paid about 17 to 18 hours of IHSS services per month. These IHSS earnings would not affect your AFDC because the first \$75.00 you earn does not reduce your AFDC grant.

THE COUNTY WORKER SAYS I CANNOT BE MY CHILD'S IHSS WORKER BECAUSE I COULD WORK FULL TIME WHILE MY CHILD IS AT SCHOOL. IS THAT RIGHT?

While you may be able to work part-time while your child is in school, very few children are at school long enough to enable a parent to work full-time. Full-time work usually means 10 hours a day when you add travel time and meal break. In addition, you may be prevented from even working part-time because of your child's school absences and/or frequent doctor visits.

THE COUNTY WORKER SAYS NO TIME CAN BE ALLOWED FOR DRESSING MY CHILD BECAUSE I WOULD HAVE TO DO THAT EVEN IF MY CHILD WERE NOT DISABLED. IS THAT RIGHT?

That is not necessary correct. The State Legislature provided that parents could be the IHSS workers for their children so that parents would not be forced by economic pressure to place their children outside the home. Once it is determined that your child qualifies for IHSS because of his or her special care needs and the family situation, the county worker must allow the

time needed to meet your child's care needs without looking to see what part of the help is needed because your child is disabled and what part of the help is needed because he or she is young. The only exception is time spent in protective supervision, which may be authorized only because of your child's disability.

CAN MY SPOUSE BE MY IHSS WORKER? CAN I RECEIVE IHSS SERVICES IF I MARRIED A NON-DISABLED PERSON?

IHSS will pay an IHSS worker to provide the personal care and paramedical services needed by a married IHSS recipient. A disabled person may elect to have his or her spouse be the IHSS worker for these services.

IHSS will also pay the spouse IHSS worker to provide protective supervision and to accompany the IHSS recipient to medical appointments under the following circumstances:

1. the spouse IHSS worker cannot work full-time because there is no other suitable provider, and
2. in the absence of the spouse provider the IHSS recipient would not receive adequate care or would be at risk of being inappropriately placed out of the home.

A non-spouse IHSS worker may also provide services:

1. when the non-disabled spouse needs to be out of the home, such as work,
2. when the non-disabled spouse is unable to perform the services because of strength or stamina limitations, or
3. to provide respite (a break) for the non-disabled spouse.

CAN I GET EXTRA TIME AUTHORIZED EVEN IF I NEED THE EXTRA TIME FOR ONLY 1 OR 2 MONTHS?

Yes, you can. For instance, you may have developed a hip problem which requires you to go for treatment once a week for two months and you need additional hours authorized so that your IHSS worker can accompany you. Or your landlord is spraying the building and you need extra hours authorized so that your IHSS worker can remove things from your cupboards

and put them back after spraying. Remind your county worker that he or she would have no problem deducting time if you spent a few days in the hospital.

THE COUNTY WORKER SAID ONLY 2 HOURS A MONTH COULD BE AUTHORIZED FOR DOMESTIC SERVICES BECAUSE I LIVE WITH TWO OTHER PEOPLE. IS THAT RIGHT?

Yes. Time-for-task guidelines are for entire household and not for the individuals within the household. The time-for-task guideline for domestic services is 6 hours a month. If there are three persons in the household, your pro-rata share would be 2 hours per month. Other time-for-task household guidelines include:

1. laundry at one hour per week when laundry facilities are at home, and one and half hours per week to go to the laundromat;
2. shopping for food at one hour per week;
3. other errands at one-half hour per week.

However, "time-for-task" standards can be used only if appropriate in meeting the "individual's particular circumstances." You may also need exceptions based on health, and safety concerns. For instance, the six hours guideline was based on someone providing domestic services twice a month. If your sheets need to be changed more than twice a month, or the trash needs to be taken out more than twice a month, you may be entitled to more time.

I NEED TO SEE THE DOCTOR TWICE A MONTH AND MY ATTENDANT TAKES ME THERE AND STAYS WITH ME. MY COUNTY WORKER SAYS MY ATTENDANT CAN ONLY BE PAID FOR THE TIME IT TAKES TO DRIVE ME TO THE DOCTOR AND BACK. WHAT CAN I DO?

Your attendant may be paid to stay with you at the doctor's office if you need help getting around, and if you need help with your personal care needs while there. If you need paramedical services, your attendant may need to stay with you to receive the training needed to perform paramedical services at home. Ask your doctor's office to write a letter explaining why your attendant needs to stay with you, explaining that office is unable to provide the attendant care services you need.

If your attendant does not need to stay with you, then the IHSS program should authorized the hours necessary for two round trips to the doctor's office for each doctor visit - one to take you there and one to pick you up - plus the time it takes to get you in and out of the car and the doctor's office.

MY COUNTY WORKER WILL AUTHORIZE TIME FOR ONLY TWO BATHS A WEEK. HOW CAN I GET TIME FOR MORE BATHS A WEEK?

You need to be able to show you need the number of baths a week you ask for. The reasons need to be related to your health and safety. Incontinence, spilling, sweating, skin problems, etc., may indicate need for more frequent baths.

Also, be sure your county worker is not using time-per-task guidelines in determining personal care needs. State law says that counties may not use time-for-task standards for determining the need for personal care, meal preparation and meal clean-up, or paramedical services.

I AM GOING IN THE HOSPITAL FOR TWO WEEKS. I AM AFRAID I WILL LOOSE MY IHSS WORKER WHILE I AM IN THE HOSPITAL. IS THERE ANY WAY MY IHSS WORKER CAN BE PAID WHILE I AM IN THE HOSPITAL?

No. Your IHSS worker may be paid only to provide services to you while you are in your home. However, some counties have programs to provide temporary or emergency IHSS workers to IHSS recipients whose IHSS workers have left or are themselves sick. Your IHSS worker might be able to work under such a program while you are away. Ask your county worker.

MY IHSS WORKER IS QUITTING NEXT MONTH. WHAT CAN I DO TO FIND A REPLACEMENT?

If your IHSS worker is provided through a county contract agency, the agency will find you a replacement. If your IHSS worker is hired by you, your county worker has primary responsibility in assisting you to find a replacement. Ask your county worker about any emergency program for providing a temporary IHSS worker until you find one. Most Centers for Independent Living have IHSS workers registries. The IHSS workers on the registries have been screened. In addition, IHSS workers' unions in some counties, like Los Angeles, maintain lists of available IHSS workers. Your county worker can give you the phone number of the Center for Independent Living nearest you and any IHSS workers' union or other registry.

MY AUNT PAYS MY IHSS WORKER AN EXTRA 50 CENTS AN HOUR. WILL THAT AFFECT MY IHSS? MY SSI?

No, as long as your aunt pays your worker directly and the money is

WHAT ABOUT IHSS

never in your hands. The IHSS program follows SSI rules. That means that things paid for directly do not count as income unless what is purchased can be used for food, clothing, shelter, or can be converted to cash. Payments made directly to your IHSS worker to supplement the hourly rate, or to pay for services not covered under the IHSS program, or to pay your IHSS worker while you are hospitalized, do not count as income to you and will not affect your entitlement to IHSS or SSI.

IF I AM RECEIVING SSI AT THE BOARD-AND-CARE RATE, AM I ALSO ELIGIBLE FOR IHSS?

The State says you are not, that IHSS is only available to assist you to remain safely in your own home or in the home of your choice. If you are receiving or are eligible to receive the non-medical, out-of-home rate (also known as "the board-and-care" rate), the State does not consider you to be living in your own home or in the home of your choice.

If you are living with a relative and receiving the board- and-care SSI rate, you may elect to waive the higher SSI board- and-care SSI rate and receive SSI at the individual rate so that you may also be eligible for IHSS.

I LIVE IN A HOTEL. AM I ELIGIBLE FOR IHSS?

Yes. Your home may be your house or apartment or even a hotel room.

WHO CAN RECEIVE PROTECTIVE SUPERVISION?

Under the IHSS regulations, protective supervision is only available to "non-self-directing, confused, mentally impaired, or mentally ill persons" to "safeguard the recipient against injury, hazard or accident." The regulations say protective supervision will not be provided to the above persons, however, if the "need is caused by medical condition and the form of supervision required is medical", or if the need is "in anticipation of medical emergency", or if the need is "to prevent or control anti-social or aggressive behavior."

I AM THE IHSS WORKER FOR MY ADULT DISABLED CHILD. DOES IHSS COVER THE TIME I NEED TO BE HOME TO PROTECT MY ADULT CHILD OR JUST THE TIME IT TAKES TO DO SPECIFIC DUTIES FOR MY ADULT CHILD?

If your adult disabled child cannot be left alone because he or she does not understand concepts of danger and might hurt himself or herself, or burn

down the house, then your adult child needs protective supervision. A parent or housemate is entitled to be paid to provide protective supervision the same way anyone else would be paid to provide that service.

I AM A QUADRIPLÉGIC, ON A RESPIRATOR, AND NEED SOMEONE WITH ME AROUND THE CLOCK. WHY WAS I DENIED PROTECTIVE SUPERVISION?

You were denied because you are self-directing, and State regulations limit protective supervision to persons who are not self-directing.. Even if you were not self- directing, you probably would not get protective supervision because State regulations classify need for a respirator as a medical condition and the form of supervision required as medical.

MY SON IS COMATOSE AND QUADRIPLÉGIC. WHY WAS MY CHILD DENIED PROTECTIVE SUPERVISION?

Even though your child is not self-directing, and the need for protective supervision is solely because of his or her disability, he or she is not eligible for protective supervision because State regulations consider this need to be "medical". However, the only statutory limitation is that the protective supervision be "needed because of the functional limitations of the child."

HOW CAN I SHOW THAT MY SIX-YEAR-OLD CHILD NEEDS PROTECTIVE SUPERVISION BECAUSE OF FUNCTIONAL LIMITATIONS?

You must show how the level and intensity of the protective supervision required by your disabled child differs from protective supervision that would be required by a non-disabled six-year-old . For instance, a non-disabled six-year-old could attend an after school program, but your child cannot; a non-disabled six-year-old could play in a fenced front yard with occasional overlooks, but your child cannot; a non-disabled six-year-old can tell when something hurts or when he needs help, but your child cannot. If your child is a Regional Center client, ask your counselor to help you in putting together the explanation and evidence you may need to establish your child's entitlement to protective supervision. You need to explain how the level and intensity of protective supervision your child requires is necessary to prevent the risk of harm, or injury.

WHAT IF I DISAGREE WITH A COUNTY DECISION?

If you disagree with any county action, you have the right to request a fair hearing before an administrative law judge who will listen to what you have

to say and what the county has to say.

You may challenge a denial or termination of IHSS benefits, a reduction of IHSS benefits, a refusal to allow the IHSS hours you need. If because of your disability you are homebound, you may have the hearing at your home. If you request a fair hearing within 10 days of the notice to reduce or terminate your benefits, your benefits will continue at the same level until the hearing takes place. Notice must be on state-approved form which lists all services, the old and the new hours and the amount of any decrease or increase. If the proper notice is not used, the hours cannot be decreased until the proper notice is sent.

You also have the right to appeal "share of cost" determination.