

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



August 20, 1991

ALL COUNTY INFORMATION NOTICE NO. I-67-91

TO: ALL COUNTY WELFARE DIRECTORS

- SUBJECTS:
1. Application of SB 198 Requirement of an Injury and Illness Prevention Program to the In-Home Supportive Services (IHSS) Program.
 2. Internal Revenue Services' (IRS) Employment Tax Exemption Policy for IHSS Parent Providers.

The purpose of this ACIN is to transmit information to Counties relative to the mandated Injury and Illness Prevention Program (SB 198), and IRS tax rulings regarding withholding exemptions applicable to IHSS parent providers.

Injury and Illness Prevention Program

In California, every employer has a legal obligation to provide and maintain a safe and healthful workplace for its employees, according to the California Occupational Safety and Health Act (CAL/OSHA) of 1973.

Senate Bill 198 (Greene), Chapter 1369, Statutes of 1989 added Labor Code Section 6401.7 and amended Title 8 of the California Code of Regulations, to require that all employers have in place an injury and illness prevention program effective July 1, 1991, in accordance with Section 3203 of the General Industry Safety Orders. The Chief Counsel for the California Department of Industrial Relations (DIR), Division of Occupational Safety and Health, has reviewed the law as it pertains to the IHSS Program.

The DIR has determined its jurisdiction is limited to a "place of employment" where employment is carried on [Labor Code Section 6303(a)], and that household domestic service is specifically excluded from the definition of "employment" under OSHA jurisdiction [Labor Code Section 6303(b)]. For this reason, DIR has ruled that IHSS recipient/employers are not required to maintain an injury and illness prevention program pursuant to SB 198.

All County Letter 90-119, Change of Instructions for Reporting of Injuries Occurring to Individual Providers of IHSS, requires Counties to file the Employer's Report of Occupational Injury or

Illness (SCIF 3167 IHSS) with the State Compensation Insurance Fund within five (5) days of knowledge of an injury to the provider. That form also requires the employer to report every industrial injury or occupational disease which requires medical treatment other than first aid to Cal/OSHA. However, as DIR has exempted in-home domestic services from the jurisdiction of Cal/OSHA, Counties are no longer required to report such injuries to Cal/OSHA.

IRS Withholding Exemptions for Parent Providers

The question of whether an IHSS Parent Provider is an employee under the usual common law rules, and therefore subject to employment tax withholdings, has been reconfirmed by the Internal Revenue Service.

In their analysis, the IRS referenced three similar sections of the Employment Tax Regulations; 31.3121(d)-1, 31.3306(i)-1 and 31.3401(c)-1, relating to the Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), and federal income tax withholding, respectively.

According to the IRS, there are specific employees and employment situations which are exempt from the withholding and payment of employment taxes. Internal Revenue Code Sections 3121(b)(3)(B) and 3306(c)(5) provide, in part, that employment for FICA and FUTA purposes shall not include services performed by an individual in the employ of his/her son or daughter. Therefore, our interpretation that remuneration paid to parent providers of IHSS is specifically exempt from FICA and FUTA, has been confirmed. Counties should relay this information to any parent provider who is being assessed by the IRS for unpaid FICA and FUTA taxes. Further, it should be made clear to such parent providers that they cannot qualify for FICA or FUTA benefits on the basis of their IHSS employment status in the service of their sons or daughters.

If you have any questions regarding the issues discussed in this Notice, please contact Mr. Michael Lorton, IHSS Case Management Information and Payrolling System Unit, Adult Services Branch at (916) 445-2672.



LOREN D. SYTER
Deputy Director
Adult and Family Services

cc: CWDA