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October 31, 2009

ALL-COUNTY LETTER NO. 09-70

TO: ALL COUNTY WELFARE DIRECTORS

SUBJECT: NEW IN-HOME SUPPORTIVE SERVICES
PROVIDER ENROLLMENT REQUIREMENT FOR FINGERPRINTING
AND CRIMINAL BACKGROUND CHECK

REFERENCE: ALL COUNTY LETTER 09-52

Reason For This Transmittal

- State Law Change
- Federal Law or Regulation Change
- Court Order or Settlement Agreement
- Clarification Requested by one or More Counties
- Initiated by CDSS

This All-County Letter (ACL) provides information regarding the new In-Home Supportive Services (IHSS) Program provider enrollment requirement for fingerprints and a criminal background check conducted by the California Department of Justice (DOJ) resulting from the passage of recent legislation. The letter also outlines the process for counties and public authorities to receive the DOJ criminal records and includes a description of the criminal record information that will be provided to the counties and public authorities in order to make a determination on an individual's eligibility to be enrolled and receive payment for providing supportive services in the IHSS program.

DOJ CRIMINAL BACKGROUND CHECK REQUIREMENT FOR ALL PROVIDERS

Assembly Bill, Fourth Extraordinary Legislative Session (ABX4) 19 (Chapter 17, Statutes of 2009), amended or added sections 12301.6 and 12305.86 to the Welfare and Institutions Code (W&IC) to require all existing and prospective providers submit to fingerprint imaging and undergo a criminal background check by the DOJ, as a condition of IHSS enrollment and that they be performed at the provider's expense.

Under the new provisions, counties must require all current and prospective non-registry providers, to undergo a fingerprinting and criminal background check and public authorities will require the same for those providers who are current registry providers or provider applicants seeking to be placed on a registry.

W&IC Section 12305.81, prohibits the provision of services or receipt of payment for providing services if, within the last 10 years, an individual has been convicted of, or incarcerated for a crime involving fraud against a government health care or supportive services program; or has been convicted of a crime of abuse of a child, elder or dependent adult, either in California or another state.

Additionally, existing federal Medicaid and state Medi-Cal statutes and regulations provide that any person who has ever been convicted of a felony crime or certain serious misdemeanor crimes is ineligible to be a provider of Medicaid/Medi-Cal-funded services. (Attachment A provides the list of disqualifying misdemeanor crimes that would preclude an individual from being eligible to be enrolled or to receive payment for providing supportive services in the IHSS program.)

TIMELINE FOR IMPLEMENTATION

Counties and Public Authorities (PA) are advised to begin instructing all current and prospective providers of the fingerprint and criminal background check requirement effective November 1, 2009.

All current providers must complete the fingerprint and criminal background check by July 1, 2010, the same date by which current providers must complete the other new provider enrollment process requirements outlined in ACL 09-52. Current providers who have not completed all of the requirements by July 1, 2010, will no longer be eligible to continue providing services or receiving payment for services provided.

County/PA with Existing Authorization to Receive DOJ Criminal Background Checks

Counties and PAs that have been administering DOJ criminal background checks as part of their provider enrollment process and/or registry inclusionary requirement, may continue using their existing processes to obtain criminal background check information from the DOJ, provided that they apply all new statutory provider enrollment standards. Specifically, for any current provider, a thorough review of the Criminal Record Offender Information (CORI) and any subsequent records received from the DOJ must be completed to ensure that there are no offenses that would preclude an individual from providing supportive services in the IHSS program.

PROCESS FOR COUNTY/PUBLIC AUTHORITY TO RECEIVE DOJ RECORDS

The DOJ provides an automated service for criminal history background checks that may be required as a condition of employment, licensing, certification, and other types of clearances.

All applicant fingerprint submissions must be transmitted electronically via scanned fingerprints process. Electronic submissions (Live Scan) provide the quickest way to submit and process background checks.

A government agency, (county or public authority) must first be authorized by DOJ to conduct fingerprint background checks. If a county and/or public authority is not already authorized to receive criminal background information for individuals seeking to be enrolled in the IHSS program, the county/PA must apply with the DOJ to become an authorized applicant agency. (Other non-IHSS criminal background relationships that have been previously established with DOJ and the county are separate.) The application process, which includes all the necessary application forms, can be found on the State of California, Office of Attorney General web site, at <http://ag.ca.gov/fingerprints/agencies.php>. The process, which is outlined below will enable the applicant agency, (county/public authority) to receive criminal background information from the DOJ:

- Find section “C” – **In-Home Supportive Care Providers ONLY authorization request packet**”; this tab is specific to applicant agencies requesting authorization to receive criminal background information for IHSS Care Providers.
- Select the PDF attached document, [Authorization Request Form for In-home Supportive Care Providers](#) for the application form and the instructions.
- Print the Authorization Request Form for IHSS Providers and the instructions and complete the form.
- The county/public authority must also complete the application to request subsequent arrest information in order to receive continuing notification from DOJ of convictions that may disqualify an IHSS provider.

Once the application packet is completed, mail it along with Live Scan Request Packet (available at) <http://ag.ca.gov/fingerprints/pdf/LiveScanPacketRev06.pdf> to:

Department of Justice
Record Security Section
P.O. Box 903387
Sacramento, CA 94203-3870

For questions regarding the application process, county/public authority staff may contact the DOJ telephone help lines at (916) 227-2928 or (916) 227-9508. The county/public authority will be notified in writing when the authorization application has been approved and can begin sending applicants to be fingerprinted.

DOJ does provide for specific confidentiality requirements for all agencies that are authorized to conduct fingerprint and criminal background checks. All information provided by the DOJ to the county/public authority is confidential and cannot be disclosed or disseminated to an unauthorized agency. All county/PA staff that processes the criminal background reports must undergo a fingerprint background clearance record check completed by DOJ. The staff that has access to the CORI must also be trained in the secure handling, storage, dissemination, and destruction of a CORI.

PROCESS FOR CURRENT AND PROSPECTIVE IHSS PROVIDERS

Counties/PAs should direct all current and prospective providers to the most convenient/nearest Live Scan agency in the county. We recommend that counties/PAs use the list made available by DOJ, at <http://ag.ca.gov/fingerprints/publications/contact.php> which provides the location and hours of operation of the Live Scan agencies. A provider/applicant provider should be informed that valid photo identification must be presented to the Live Scan Operator along with the Live Scan request form, (BC II 8016, which can be found at http://ag.ca.gov/fingerprints/forms/BCII_8016.pdf) and that they are responsible for the cost of the fingerprinting and criminal background check. Further, the county should indicate that a notice informing the provider/applicant provider of eligibility/ineligibility will be sent upon completion of all IHSS provider enrollment requirements. (Please refer to ACL 09-52 for the provider notices.)

It is advised that the county/PA personalize the Live Scan request form for their county, such as personalized county labels, or copies of the form with the county information, including the mail code, (five-digit code assigned by DOJ). Questions or assistance in personalizing the forms can be directed to DOJ at (916) 227-3823.

Based upon DOJ current processes, the county/PA should receive either a notice stating that no information meets the dissemination criteria; a CORI; or a notice of delay, within three to five days from the date DOJ receives the Live Scan fingerprints. If a notice of delay is sent, the county/PA should not presume that criminal history information is evident. The provider/applicant provider should contact the county to inquire about the receipt of any record from the DOJ.

If a provider/ applicant provider indicates that he/she has submitted fingerprint images and the county/PA has not yet received notification, the provider/applicant provider can use the automated telephone system [(916) 227-4557] to check on the submission; he/she will need to provide date of birth, the 10-digit Automated Transaction Identifier (ATI) that appears at the bottom of the BCII 8016 form.

For counties and PAs that have current providers who have previously completed a criminal background check conducted by DOJ, another criminal background check is not necessary, provided that the county/PA has continued to receive the subsequent notifications from the date of the original submission. If at any point, notification was sent to DOJ to discontinue the subsequent notification process, the county and PA must again request that the provider complete a criminal background check.

Counties/PAs are required to inform a provider/applicant provider who has been rejected as a result of information contained in the criminal background check report, of his/her right to a copy of the criminal background record and his/her right to submit a formal challenge to the DOJ to contest the criminal background report.

The provider/applicant provider must request a copy of his/her record from DOJ, by completing the Bureau of Criminal Identification and Information (BCII) form 8706. Any request for a waiver of the fee shall accompany the request for the record and shall include a claim and proof of indigency. A "Claim for Inaccuracy or Incompleteness" will be mailed to the provider/applicant provider along with his/her record. The provider/applicant provider must submit the form 8706 along with any supporting documentation to DOJ to the address provided on the form. The challenge will be reviewed and a written response will be provided along with an amended copy of the criminal history record if appropriate.

CRIMINAL BACKGROUND CHECK RESULTS

Once the applicant submission (Live Scan fingerprinting) is received and processed by the DOJ, the counties/PAs will receive results from DOJ either electronically via a Secure Mail Server or by U.S. mail- (if this option is used allow for a seven day response time). If it has been over 30 days and the county/PA still has not received a response, the Applicant Fingerprint Transaction Follow-up Request, (BCII 8043, (at <http://ag.ca.gov/fingerprints/forms/followup.pdf>), must be completed to request the status of an outstanding Live Scan result.

Three types of responses can be received from DOJ, either:

1. **A notification that DOJ has received the fingerprint transaction and there may be a delay in processing.**
2. **There is no criminal information in accordance with the dissemination criteria pursuant to California law.** Criminal background checks with no criminal record noted usually are returned to the county within two-three day timeframe.
3. **A response containing all criminal record information in accordance with the dissemination criteria pursuant to California law.** Pursuant to WI&C Section 15660, DOJ will be disseminating any felony convictions; any misdemeanors for a sex offense against a minor, and any misdemeanors for committing theft, robbery, or burglary within 10 years.

Counties/PAs will be reviewing the CORI for the following two types of offenses:

- a. **Felony convictions** – All felony convictions on a provider's/applicant's record will disqualify him/her from being eligible to be enrolled or receive payment for providing supportive services in the IHSS program, and
- b. **Misdemeanor convictions** – Certain serious misdemeanor crimes noted on a provider's record will also disqualify him/her from being eligible to be enrolled or receive payment for providing supportive services in the IHSS program. Please refer to the attached list for these misdemeanor offenses.

At this time, statute does not include a search of the criminal records of the Federal Bureau of Investigation; therefore, DOJ will not provide any information pertaining to offenses that occurred outside of California.

Subsequent Notices

As previously indicated in ACL 09-52 (New IHSS Provider Enrollment Requirements), provided there are no changes to the SOC 426 form and the county/PA has continued to receive subsequent notices from DOJ, once an individual has submitted the SOC 426 and completed all other provider enrollment requirements and has been enrolled as a provider, it remains valid for one year beyond the time that the individual stops providing services. If an enrolled provider stops providing services for a period longer than one year, the person will be required to complete a new SOC 426 and all other provider enrollment requirements before he/she can begin providing services again.

Counties/PAs must continue to receive any subsequent notices from DOJ until the provider/applicant provider is found ineligible or has stopped providing services for a period longer than one year. A county/PA is required to notify DOJ when this determination or situation occurs, so the county/PA will no longer receive subsequent arrest notifications for that provider/applicant provider. The county/PA shall complete the No Longer Interest Form, <http://aq.ca.gov/fingerprints/forms/nli.pdf>.

The county/PA that initiates the request of the current/prospective provider to have the fingerprint imaging for the criminal background record completed will receive the initial response and will also receive any subsequent notices. Therefore, for each current or prospective provider, the county/PA staff where the request originated will be responsible for reviewing all subsequent notices to determine if any disqualifying crimes have been reported and to update the provider eligibility screen in the Legacy Case Management, Information and Payrolling System (CMIPS).

CMIPS Modifications

Legacy CMIPS will be modified so that counties can track providers' completion of the new enrollment requirements. Modifications include creation of a provider eligibility information screen which will capture the IHSS provider eligibility status, the date, and the termination reason, including data entry fields for reasons for a failed criminal background check. The enrollment process requirements will include: SOC 426 Provider Enrollment Form, Fingerprint/Criminal Background Check, Orientation and SOC 846 Provider Agreement. The CMIPS screen will also provide information regarding any appeal filed. Additional technical information about the system changes can be found in ACL 09-66. Any further instruction shall be provided via an Electronic Bulletin Board (EBB) message.

Should you have questions regarding information in this ACL, please contact Jennifer Childress, Analyst in the APB Policy, Legislation and Litigation Unit at Jennifer.Childress@dss.ca.gov.

Sincerely,

Original Document Signed By:

EVA L. LOPEZ
Deputy Director
Adult Programs Division

Attachments

c: CWDA

ATTACHMENT A

**DISQUALIFYING MISDEMEANOR OFFENSES
FOR AN IN-HOME SUPPORTIVE SERVICES (IHSS) PROVIDER**

Any person who has EVER been convicted of OR in prison for a FELONY crime or ANY of the MISDEMEANOR crimes listed below, you are NOT eligible to be enrolled as a provider or to receive payment for providing supportive services

PENAL CODE SECTION	CRIME
273a	Child abuse- Convictions that trigger removal pending review.
273a(a)	Child abuse likely to cause great bodily harm.
273d	Corporal punishment or injury to child.
273g	Degrading, immoral practice in presence of children.
266	Entice minor into prostitution - Every person who deceives or entices any innocent unmarried female, under the age of 18 years, for the purpose of prostitution.
288	Lewd and lascivious acts upon minor
288a	Oral copulation Any person who willfully and lewdly commits any lewd or lascivious act, upon or with the body, or any part of a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, is guilty of a felony.
288.4	Contact with minor with sexual intent
311.1	Child pornography - Every person who knowingly sends, or brings into this state for sale or distribution, or prepares, publishes, produces, develops, duplicates, or prints any data, or image, of any obscene media based material with intent to distribute/exhibit/ or exchange it with others that depicts a person under the age of 18 years.
311.2	Child pornography - Every person who knowingly sends, or brings into this state for sale or distribution, or prepares, publishes, produces, develops, duplicates, or prints any data, or image, of any obscene media based material with intent to distribute/exhibit/ or exchange it with others that depict a person under the age of 18 years. If the person has previously been convicted of any violation of this section, the court may, in addition to the punishment, impose a monetary fine.
311.3	Sexual exploitation of child
311.4	Use of minor to perform prohibited acts
647.6	Previously (647a) Child molestation, misdemeanor