

INITIAL STATEMENT OF REASONS

- a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

Section 30-701(1)(2)

Specific Purpose:

This section is being adopted to establish a clear definition of a Licensed Health Care Professional for the purposes of the Health Care Certification (LHCP-HCC).

Factual Basis

This section is necessary to comply with Welfare and Institutions Code (WIC) section 12309.1(a)(1) which defines a LHCP-HCC as an individual licensed in California by the appropriate California regulatory agency, acting within the scope of his or her license or certificate as defined in the Business and Professions Code. WIC section 12309.1(a) specifies that a LHCP-HCC includes, but is not limited to, a physician, physician assistant, regional center clinician, or clinician supervisor, occupational therapist, physical therapist, psychiatrist, psychologist, optometrist, ophthalmologist or public health nurse. The primary responsibilities of all of the individuals included in the statute are to diagnose and/or provide treatment and care for physical or mental impairments, which cause or contribute to an individual's functional limitations. This definition excludes other licensed individuals who work in the health care field, such as radiologic technologists, pharmacists, nursing assistants, massage therapists, etc., whose primary responsibilities are not diagnosis and treatment, as these individuals would not be able to speak to an individual's need for services.

Section 30-754.1

Specific Purpose:

This section is adopted to specify that each applicant for In-Home Supportive Services (IHSS) must obtain a health care certification before services can be authorized.

Factual Basis:

This section is necessary to comply with WIC section 12309.1(a) which requires a completed health care certification form be received prior to the authorization of services for new applicants, and WIC section 12309.1(a)(2) which requires that, except in certain circumstances, the certification shall be received prior to service authorization, and that services shall not be authorized in the absence of the certification.

Sections 30-754.11 through 30-754.111

Specific Purpose:

These sections are being adopted to specify the elements, which must be included on the health care certification. The certification must declare that the applicant is unable to perform some activities of daily living (ADLs) independently.

Factual Basis:

These sections are necessary to comply with WIC section 12309.1(a)(4)(A) which requires the health care certification form include a statement by the LHCP-HCC that the applicant is unable to perform one or more ADLs independently.

Section 30-754.112

Specific Purpose:

This section is being adopted to specify that certification must indicate that without services to assist the applicant with ADLs, the individual is at risk of placement in out-of-home care.

Factual Basis:

This section is necessary to comply with WIC section 12309.1(a)(4)(A) which requires that the health care certification form include a statement by the LHCP-HCC that one or more of the services available under the IHSS program is recommended for the applicant, in order to prevent the need for in out-of-home care.

Section 30-754.113

Specific Purpose:

This section is being adopted to specify that the health care certification must provide a description of any condition or functional limitation that has resulted in, or contributed to, the applicant's need for services.

Factual Basis:

This section is necessary to comply with WIC section 12309.1(a)(4)(B) which requires that the health care certification form include a description of any condition or functional limitation that has resulted in or contributed to the applicant's need for assistance.

Section 30-754.114

Specific Purpose:

This section is being adopted to specify that health care certification must be signed by a licensed health care professional.

Factual Basis:

This section is necessary to comply with WIC section 12309.1 that requires as a condition of receiving services, an applicant for services shall obtain a certification from a licensed health care professional. In order to be accepted as an officially approved certification, the signature of the LHCP-HCC is required.

Handbook Sections 30-754.114(a) through 30-754.114(a)(12)

Specific Purpose:

These handbook sections are being adopted to provide examples of individuals who are considered to be licensed health care professionals for the purpose of the health care certification.

Section 30-754.12

Specific Purpose:

This section is being adopted to specify that the health care certification must be dated no more than 60 days prior to the date it is submitted to the county.

Factual Basis:

This section is necessary to ensure that the county has the most up-to-date health information so that they can properly assess the applicant's service needs. The 60-day timeframe is being established because health conditions can change rapidly, and it is vital that the county have the most current information when assessing the applicant's need for services. In addition to the health care certification, an applicant may provide older medical records or other documentation to the county for consideration as evidence to substantiate his/her need for services.

Section 30-754.13

Specific Purpose:

This section is being adopted to specify the health care certification is not required on subsequent reassessments for continued eligibility.

Factual Basis:

This section is necessary to clarify that, once an individual has been determined eligible for services, he/she shall not be required to provide another certification on subsequent reassessments in order to maintain continued eligibility. WIC section 12309.1 states that an applicant must obtain a health care certification from a LHCP-HCC before services can be authorized; however, the statute remains silent on subsequent reassessments. Therefore, the department has made a decision that the health care certification shall not be required for establishing continued eligibility.

Section 30-754.2

Specific Purpose:

This section is being adopted to specify that the health care certification must be provided on the department-approved form, the California Department of Social Services In-Home Supportive Services Program Health Care Certification (SOC 873), which is incorporated by reference.

Factual Basis:

The section is necessary to comply with WIC section 12309.1(b) which requires that a standardized certification form be developed for use in all counties.

Section 30-754.21

Specific Purpose:

This section is being adopted to specify that counties must accept other forms of documentation in lieu of the department-approved health care certification form, provided that the alternative documentation includes specific information.

Factual Basis:

This section is necessary to comply with WIC section 12309.1(c) which requires counties to accept alternative documentation, in place of the department-approved health care certification form, to meet the health care certification requirement.

Sections 30-754.211 through 30-754.211(c)

Specific Purpose:

These sections are being adopted to specify that alternative documentation must include all of the following elements: a statement or description indicating the applicant is unable to independently perform one or more ADLs, a description of the applicant's condition or functional limitation that has contributed to the need for assistance, and a signature of a licensed health care professional.

Factual Basis:

These sections are necessary to comply with WIC section 12309.1(c) which requires counties to accept alternative documentation, in lieu of the department-approved health care certification form, provided it contains the necessary information, consistent with the requirements for the certification. In addition, this section will ensure statewide consistency for acceptable forms of alternative documentation.

Section 30-754.212

Specific Purpose:

This section is being adopted to specify that alternative documentation must be dated no earlier than 60 calendar days prior to submission to the county.

Factual Basis:

This section is necessary to ensure that the county has the most up-to-date health information so that they can properly assess the applicant's service needs. The 60-day timeframe is being established because health conditions can change rapidly, and it is vital that the county have the most current information when assessing the applicant's need for services. In addition to the health care certification, an applicant may provide older medical records or other documentation to the county for consideration as evidence to substantiate his/her need for services.

Section 30-754.22

Specific Purpose:

This section is being adopted to provide a concise description of alternative documentation. This section will contribute to program integrity by describing acceptable types of alternative documentation.

Factual Basis:

This section is necessary to comply with WIC section 12309.1(c) which requires the department to identify alternative documentation that shall be accepted, in lieu of the department-approved health care certification form, by counties to meet the health care certification requirements. The statute provides several examples of alternative documentation, including but not limited to, nursing facility discharge plans, minimum data set forms, and individual program plans, all of which are types of clinical and/or casework documents.

Handbook Sections 30-754.221 through 30-754.221(c)

Specific Purpose/Factual Basis:

These handbook sections are being added to provide examples and brief descriptions of some common types of alternative documentation that may be accepted in lieu of the department-approved health care certification.

Section 30-754.23

Specific Purpose:

The section is being adopted to specify that in the absence of alternative documentation, the department-approved health care certification must be utilized.

Factual Basis:

This section is necessary to comply with WIC section 12309.1 that requires either the department-approved health care certification form or alternative documentation in lieu of it be submitted as a condition of receiving services.

Section 30-754.3

Specific Purpose:

This section is being adopted to specify when the county must request the health care certification from an applicant. The form must be requested at or before the time of the in-home assessment.

Factual Basis:

This section is necessary to comply with WIC section 12309.1(e)(1) that requires the recipient shall be notified of the certification requirement before or at the time of the reassessment. Although the statute applies specifically to individuals who were receiving services at the time the health care certification requirement was first implemented, the same process is being established for new applicants for the sake of consistency. In order not to delay service authorization, it is critical that an applicant be informed of the requirement as early as possible in the application process.

Section 30-754.31

Specific Purpose:

This section is being adopted to specify that, when an application for services is received, the county must review it and, if there is clear evidence of a need for services, the county must not delay conducting the in-home assessment until the completed and signed health care certification has been returned by the applicant.

Factual Basis:

This section is necessary to ensure that the eligibility determination process, specifically the in-home assessment required pursuant to Section 30-761.211, is not unnecessarily delayed when an application for services is received and there is clear evidence of a need for services exists. It is critical that counties screen applications and prioritize the in-home assessment for those cases where the safety of the individual could potentially be compromised if the assessment were delayed until receipt of completed health care certification. Counties have the discretion to determine on a case-by-case basis when clear evidence of a need for services exists.

Sections 30-754.32 through 30-754.321

Specific Purpose:

These sections are being adopted to specify that the county must provide the applicant with a written notice, specifically the California Department of Social Services In-Home Supportive Services Program Notice to Applicant of Health Care Certification Requirement (SOC 874), which is incorporated by reference, indicating the specific date by which the completed health care certification must be received, and must retain a copy of the notice, which includes the specified due date, in the applicant's file.

Factual Basis:

These sections are necessary to ensure that the applicant has a clear understanding of the health care certification requirement, including the timeframe for returning the completed form to the county, and the specific it must be returned to the county.

Sections 30-754.4 through 30-754.41

Specific Purpose:

These sections are being adopted to specify that: 1) there is a 45-day timeframe in which the applicant must have the completed health care certification returned to the county; 2) the 45-calendar day timeframe begins when the health care certification is requested; and 3) that the completed health care certification must be received by the county or postmarked by the 45th calendar day. The IHSS program is a benefit of Medi-Cal. Consistent with Medi-Cal rules, Title 22 CCR section 50177 states there is 45-day timeframe for determining Medi-Cal eligibility. Adopting this section will keep the timeframe for returning the health care certification form consistent throughout the state.

Factual Basis:

These sections are necessary to establish a timeframe for applicants to return the completed health care certification to the county in order to ensure applications are not left open/pending indefinitely. WIC section 12309.1(e)(1) established a 45-day time period for recipients (individuals receiving services at the time the health care requirement was implemented) to return the health care certification; therefore the department is adopting the same timeframe for applicants.

~~Section 30-754.411~~

~~Specific Purpose:~~

~~This section is being adopted to specify that the county must deny an application if the applicant fails to return the completed health care certification to the county within the 45-day timeframe. Although it can be implied what action will result from an individual's failure to return the completed health care timely, this section is necessary to emphatically state that the result of such failure will be the denial of the individual's application.~~

~~Factual Basis:~~

~~This section is necessary to comply with WIC section 12309.1(a)(2) which specifies that services shall not be authorized in the absence of the health care certification.~~

Section 30-754.5

Specific Purpose

This section is being adopted to specify that the county should not ~~to~~ use the health care certification as the sole determining factor for establishing an applicant's need for services. Rather, it should be consider~~ed~~ as one indicator of need, along with other evidence or information, e.g., the in-home assessment.

Factual Basis

This section is being adopted to comply with WIC section 12309.1(a)(3) which states the county shall consider the certification as one indicator of the need for services, but it shall not be the sole determining factor.

Sections 30-754.6 through 30-754.62

Specific Purpose:

These sections are being adopted to specify the two circumstances under which services can be temporarily authorized prior to receipt of the health care certification.

Factual Basis:

These sections are necessary to comply with WIC sections 12309.1(a)(2)(A) and 12309.1(a)(2)(B) which specifies that services can be authorized prior to receiving the health care certification in two circumstances: 1) when services have been requested by or on behalf of an applicant who is being discharged from a hospital or a nursing home and services are needed to return safely to the community; or 2) when the county determines there is a risk of out-of-home placement. The term imminent has been added to differentiate between the general IHSS population, who are all presumably at some degree of risk of out-of-home placement, and those individuals particularly at-risk who require an exception to the requirement that the health care certification be returned prior to service authorization.

Sections 30-754.621 through 30-754.621(a)

Specific Purpose:

These handbook sections are being adopted to provide an example of when an applicant would be considered to be at imminent risk of out-of-home placement.

Section 30-754.63

Specific Purpose:

This section is being adopted to specify a timeframe to have the health care certification returned to the county for applicants who have been granted an exception pursuant to Sections 30-754.6 through 30-754.62. These individuals must return the completed health care certification within 45 calendar days following the date the county requests it.

Factual Basis

This section is necessary to establish a timeframe in which the health care certification must be returned for applicants who have been granted an exception pursuant to Sections 30-754.6 through 30-754.62. Applicants who have been granted an exception may be considered recipients as they are receiving services prior to submitting the health care certification; therefore, the 45-day timeframe specified in WIC section 12390.1(e)(2) would apply.

Section 30-754.64 through 30-754.644

Specific Purpose:

These sections are being adopted to: 1) specify that an applicant who has been granted an exception, pursuant to Sections 30-754.-6 through 30-754.62, may be granted an additional 45 calendar days to return the completed health care certification to the county, if he/she has good cause for being unable to submit it within the standard 45-day timeframe; 2) define the term “good cause” as a substantial and compelling reason beyond the control of the individual; 3) specify that the county must inform an individual who has been granted an exception that he/she may request an extension of the 45-day timeframe if he/she has good cause for being unable to return the health care certification timely; 4) specify that the individual must request an extension for good cause no later than 45 calendar days following the date the county requests the health care certification; and 5) specify that counties have the discretion to determine on a case-by-case basis when good cause exists.

Factual Basis:

These sections are necessary to comply with WIC section 12309.1(e)(2) which specifies that a county may extend the 45-period for a recipient to submit the health care certification on a case-by-case basis, if the county determines that good cause for the delay exists. Although this statute refers to recipients, rather than applicants, applicants who have been granted an exception to the health care certification requirement can be considered recipients in that these individuals will be receiving services prior to the time that the completed health care certification has been returned to the county. This section is also necessary to establish a clear definition of good cause for consistent application of the term. Additionally, this section is necessary to ensure that applicants who have been granted an exception to the requirement that the completed health care certification be submitted before services can be authorized are informed of their right to request a good cause extension. Finally, this section is necessary to establish a timeframe for when the good cause extension must be requested. If an extension is not requested before the 45th day, the county would otherwise proceed with the standard procedures for terminating the case for failure to submit the health care certification as required.

Handbook Section 30-754.645

Specific Purpose/Factual Basis:

This handbook section is being added to provide examples of good cause for when an applicant granted an exception fails to submit the health care certification timely.

Section 30-754.65 through 30-754.653

Specific Purpose:

These sections are being adopted to specify the actions the county must take to notify an applicant who has been granted an exception to the health care certification requirement pursuant to Section 30-754.61 that his/her application for services has been provisionally approved. The county must provide the individual in these circumstances with a notice of provisional approval of his/her application for services, including the services and hours that are being provisionally authorized. Because the individual's application is only provisionally, but not finally, approved, pending the in-home assessment and receipt of the health care certification, the notice is considered to be in place of the official notice of action and, as such, it does not confer upon the individual the right to a state hearing. Once the in-home assessment has been conducted, the county must provide the applicant with an official notice of action that confers hearing rights.

Factual Basis:

This section is necessary ensure that an individual who has been granted an exception to the health care certification requirement because he/she is being discharged from a hospital or nursing home and needs services to return home is informed of the provisional approval of his/her application. This information is critical so that all the necessary arrangements for the individual's transition home can be made as quickly and seamlessly as possible. Until all the program eligibility requirements, including the in-home assessment required pursuant to Section 30-761.211, have been met, the application can only be considered provisionally approved and the services and hours listed only preliminary. Because of this, the notice informing the individual of provisional approval of his/her application for services is not an official notice of action and it does not confer hearing rights. However, once the in-home assessment has been conducted, the county is required to comply with the notice of action requirements specified in Section 10-116. In addition, the notice of action issued by the county must comply with the hearing rights requirements of Section 10-117.

b) Identification of Documents Upon Which Department is Relying

Senate Bill (SB) 72 (Chapter 8, Statues of 2011)

c) Local Mandate Statement

These regulations do constitute a mandate on local agencies, but not on local school districts. There are state mandated local costs that require reimbursement, which is provided in the Budget Act to cover any costs that local agencies may incur.

d) Statement of Alternatives Considered

No other alternatives were identified or brought to the attention of the California Department of Social Services (CDSS) that would be more effecting in carrying out the purpose for which the regulations are proposed or would be as effective as and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

e) Statement of Significant Adverse Economic Impact on Business

The CDSS has made an initial determination that the proposed action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This determination was made because the regulations only apply to individuals applying for IHSS services.

f) Economic Impact Assessment [Government Code section 11346.3(b)]

In accordance with government Code section 11346.3(b), CDSS has made the following assessment regarding the provisions of SB 72 (Chapter 8, Statutes of 2011) relating to the requirement that, as a condition of eligibility, IHSS applicants submit a health care certification from a LHCP declaring that the individual is unable to perform one or more ADL independently and that, without assistance with ADL(s), the individual is at risk of placement in out-of-home care. The CDSS has made an initial determination that there is no impact on California businesses as a result of adopting these regulations because the rules only apply to county agencies that administer the IHSS program and individuals applying for IHSS.

This analysis is intended to be a tool or baseline to establish that these regulatory measures are the most cost-effective to affected California enterprises and equally effective in implementing the statutory policy or other provision of law.

Creation or Elimination of Jobs Within the State of California

The proposed regulations establish policies and procedures for counties to follow to ensure the consistent and uniform application of the requirement that, as a condition of eligibility for IHSS, an applicant must submit a health care certification from a LHCP declaring that the individual is unable to perform one or more activity of daily living (ADL) independently and that, without assistance with ADL(s), the individual is at risk of placement in out-of-home care. The proposed regulations specify what information shall be included on the health care certification, who may sign the health care certification, what documents shall be accepted in lieu of the health care certification, when the health care certification shall be requested from the applicant and when the applicant shall submit it to the county, and under what limited circumstances services may be authorized before the health care certification has been submitted.

The proposed regulations only impact county agencies that administer the IHSS program and individuals applying for IHSS. Thus, CDSS has determined that the proposed regulations will not result in the creation or elimination of jobs within the state.

Creation of New or Elimination of Existing Businesses Within the State of California

As noted above, the proposed regulations establish policies and procedures for counties to follow to ensure the consistent and uniform application of the requirement that, as a condition of eligibility for IHSS, an applicant must submit a health care certification from a LHCP.

The proposed regulations only impact county agencies and IHSS applicants. Therefore, CDSS has made a determination that the proposed regulations will neither create new businesses nor eliminate existing businesses within California.

Expansion of Businesses or Elimination of Existing Businesses Within the State of California

The proposed regulations establish policies and procedures for counties to follow to ensure the consistent and uniform application of the requirement that, as a condition of eligibility for IHSS, an applicant must submit a health care certification from a LHCP. As such, they only impact county agencies that administer the IHSS program at the local level and individuals applying for IHSS program services. Therefore, CDSS has determined that the proposed regulations will have no impact on the expansion or elimination of businesses within the state of California.

Benefits of the Regulations

The benefits of the regulatory action to the health and welfare of California residents, workers safety and the state's environment are as follows: The primary benefit of the proposed regulations is that counties, who administer the IHSS program at the local level, will have clear policies and procedures to follow to ensure the consistent and uniform application of the health care certification requirement. Additionally, program stakeholders will benefit from having all of the rules relating to the health care certification requirement, which have to date been released via multiple All County Letters, consolidated into a single place, namely the Manual of Policies and Procedures. Finally, the proposed regulations will help promote program integrity (i.e., eliminate fraud) by ensuring that services are provided only to applicants who have a legitimate need which has been documented by a licensed health care professional. There are no additional benefits for worker safety or the state's environment, as the regulations only affect county agencies that administer the IHSS program at the local level and individuals applying for IHSS program services.

The following documents were relied upon in proposing the regulatory action: Senate Bill 72 (Chapter 8, Statutes of 2011).

g) Benefits Anticipated from Regulatory Action

The CDSS anticipates that these proposed regulations will benefit program stakeholders by consolidating the rules relating to providing a health care certification for IHSS eligibility into a single place (i.e., the MPP), which have to date been released via multiple ACLs. A further benefit of the health care certification regulations is to promote program integrity (i.e., fraud prevention) by having a LHCP-HCC declare the applicant has a legitimate need to receive IHSS benefits. There are no additional benefits for worker safety or the state's environment, as the regulations only affect county IHSS agencies and program applicants.

h) Statement of Specific Technology or Equipment

This regulatory action will not mandate the use of new, specific technologies or equipment.