

NOTICE OF PROPOSED CHANGES IN REGULATIONS OF THE  
CALIFORNIA DEPARTMENT OF SOCIAL SERVICES (CDSS)

ITEM # 2 In-Home Supportive Services (IHSS) Program Provider Enrollment Requirements

The CDSS hereby gives notice of the proposed regulatory action(s) described below. Any person interested may present statements or arguments orally or in writing relevant to the proposed regulations at a public hearing to be held January 8, 2014, as follows:

Office Building # 8  
744 P St. Room 103  
Sacramento, California

The public hearing will convene at 10:00 a.m. and will remain open only as long as attendees are presenting testimony. The purpose of the hearing is to receive public testimony, not to engage in debate or discussion. The Department will adjourn the hearing immediately following the completion of testimony presentations. The above-referenced facility is accessible to persons with disabilities. If you are in need of a language interpreter at the hearing (including sign language), please notify the Department at least two weeks prior to the hearing.

Statements or arguments relating to the proposals may also be submitted in writing, e-mail, or by facsimile to the address/number listed below. All comments must be received by 5:00 p.m. on January 8, 2014.

Following the public hearing CDSS may thereafter adopt the proposals substantially as described below or may modify the proposals if the modifications are sufficiently related to the original text. With the exception of nonsubstantive, technical, or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption to all persons who testify or submit written comments during the public comment period, and all persons who request notification. Please address requests for regulations as modified to the agency representative identified below.

Copies of the express terms of the proposed regulations and the Initial Statement of Reasons are available from the office listed below. This notice, the Initial Statement of Reasons and the text of the proposed regulations are available on the internet at <http://www.dss.cahwnet.gov/ord>. Additionally, all the information which the Department considered as the basis for these proposed regulations (i.e., rulemaking file) is available for public reading/perusal at the address listed below.

Following the public hearing, copies of the Final Statement of Reasons will be available from the office listed below.

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## CHAPTERS

The CDSS Manual of Policies and Procedures (MPP), Social Service Standards Manual, Division 30, Chapter 30-700 (Service Program No. 7: In-Home Supportive Services), Sections 30-776 (Provider Enrollment Requirements) and 30-777 (Provider Employment Eligibility Verification).

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Prior to 2004, there were essentially no requirements that an individual seeking to become a provider of services for a recipient of the IHSS program was required to complete before the individual could be enrolled as a provider and receive payment for providing services.

Between 2004 and 2011, several bills were enacted by the Legislature which established specific enrollment requirements for IHSS providers.

Senate Bill (SB) 1104 (Chapter 229, of Statutes 2004) included a provision that prohibited an individual who, within the last 10 years, has been convicted of, or incarcerated following a conviction for, 1) fraud against a government health care or supportive services program; 2) specified abuse of a child (Penal Code [PC] section 273a(a)), or abuse of an elder or dependent adult (PC section 368), from receiving payment from the IHSS program for providing services. Additionally, SB 1104 mandated that an individual seeking to become a provider for an IHSS recipient complete and sign, under penalty of perjury, a provider enrollment form which includes a statement declaring that he/she has not, in the last 10 years, been convicted of, or incarcerated following a conviction for, any of the exclusionary crimes.

Assembly Bill of the Fourth Extraordinary Session of 2009 (ABX4) 4 (Chapter 4, Statutes of 2009) mandated that the prospective provider submit the provider enrollment form to the county in person, and present identification and allow it to be photocopied.

ABX4 19 (Chapter 17, Statutes of 2009) included additional requirements for individuals seeking to become IHSS providers, mandating that a prospective provider: undergo a criminal background check conducted by the Department of Justice; attend a provider orientation; and, sign a statement specifying that he/she agrees to comply with the program rules and requirements.

AB 1612 (Chapter 725, Statutes of 2010) expanded the list of crimes for which a conviction, or incarceration following a conviction, within the last 10 years, disqualifies an individual from being an IHSS provider, to include: 1) a violent or serious felony crime, as specified in PC section 667.5(c), and PC section 1192.7(c); 2) felony offenses for which a person is required to register as a sex offender, pursuant to PC section 290(c); and, 3) felony offenses for fraud against a public social services program, as defined in Welfare and Institutions Code sections 10980(c)(2) and (g)(2). AB 1612 also included a provision which permits an individual who has been found ineligible to be a provider on the basis of a conviction(s) for one of the crimes added by the legislation, but who otherwise meets all of the provider enrollment requirements, to provide services to a specific IHSS recipient(s) if the recipient(s) who chooses to hire the individual as his/her provider in spite of the criminal conviction(s) submits a request to the county for an individual waiver of the exclusion.

AB 876 (Chapter 73, Statutes of 2011) prohibited, an individual, except for a parent, guardian, or person having legal custody of a minor recipient, a conservator of an adult recipient, or spouse or

registered domestic partner of a recipient, from signing his or her own individual waiver form as the recipient's authorized representative.

As authorized by the legislation, the provider enrollment requirements have been implemented through various All County Letters (ACLs) until regulations are adopted. These proposed regulations adopt sections in the Manual of Policies and Procedures to affirm the policy directives that implemented the provider enrollment requirements.

The Department anticipates that these proposed regulations will benefit program stakeholders by consolidating the rules relating to IHSS provider enrollment requirements, which have to date been released via multiple ACLs, into single place, the Manual of Policies and Procedures. The provider enrollment requirements themselves promote safety and security of IHSS recipients while still allowing them to hire the provider of their choice by ensuring that the individuals seeking to become providers do not have a criminal background of disqualifying convictions, or if they do, recipients are made aware of the fact, and they may still elect to have these individuals as their providers in spite of it. Additionally, the provider enrollment requirements promote program integrity by ensuring that providers understand and agree to comply with program rules and regulations.

The Department reviewed existing program regulations and determined that no other regulations address the requirements for becoming an IHSS provider. Thus, these proposed regulations are not only consistent and compatible with existing state regulations but also with the intent of the Legislature in enacting SB 1104, ABX4 4, ABX4 19, AB 1612, and AB 876.

#### COST ESTIMATE

1. Costs or Savings to State Agencies: The funding was budgeted in 2013 May Revision, under the Provider Enrollment Statement Form/Process premise and Program Integrity – Administrative Activities Premise.
2. Costs to Local Agencies or School Districts Which Must Be Reimbursed in Accordance With Government Code Sections 17500 - 17630: None.
3. Nondiscretionary Costs or Savings to Local Agencies: The funding was budgeted in 2013 May Revision, under the Provider Enrollment Statement Form/Process premise and Program Integrity – Administrative Activities Premise.
4. Federal Funding to State Agencies: The funding was budgeted in 2013 May Revision, under the Provider Enrollment Statement Form/Process premise and Program Integrity – Administrative Activities Premise.

#### 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.

#### STATEMENT OF SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

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 seeking to become IHSS providers and to the recipients for whom they seek to provide services.

#### STATEMENT OF POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The CDSS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

#### SMALL BUSINESS IMPACT STATEMENT

CDSS has determined that there is no impact on small businesses as a result of filing these regulations because these regulations are only applicable to state and county agencies.

#### STATEMENT OF RESULTS OF ECONOMIC IMPACT ASSESSMENT

The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

The requirement, contained in these regulations, that individuals seeking to become IHSS providers undergo a criminal background check, could possibly impact businesses in the state that provide Live Scan fingerprinting services by increasing the number of individuals who seek such services. Although this will be an ongoing requirement for all individuals seeking to become IHSS providers, the bulk of the impact has already occurred because the requirement was implemented by an ACL in November 2009, and the large number of individuals who were already IHSS providers at that time had until December 2010 (initially, June 2010) to comply with this requirement. Therefore, the ongoing impact, though difficult to predict, is likely to be insignificant.

The benefits of the regulatory action to the health and welfare of California residents, worker safety, and the state's environment are as follows:

- The provider enrollment requirements promote safety and security of IHSS recipients while still allowing them to hire the provider of their choice by ensuring that the individuals seeking to become providers do not have a criminal background of disqualifying convictions. Additionally, the provider enrollment requirements promote program integrity by ensuring that providers understand and agree to comply with program rules and regulations.

#### STATEMENT OF EFFECT ON HOUSING COSTS

The proposed regulatory action will have no effect on housing costs.

#### STATEMENT OF ALTERNATIVES CONSIDERED

CDSS did not consider any other alternatives to the proposed regulatory action because the authorizing legislation specified that CDSS implement the provisions for which the regulations are proposed through All County Letters or similar instruction until regulations are adopted.

CDSS must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective 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.

**AUTHORITY AND REFERENCE CITATIONS**

The CDSS adopts these regulations under the authority granted in Sections 10553 and 10554, Welfare and Institutions Code. Subject regulations implement and make specific Sections 12301.24, 12305.81, 12305.86, and 12305.87, Welfare and Institutions Code; Immigration Reform and Control Act of 1986, Public Law 99-603 (8 United States Code 1324a); 26 United States Code, Section 3402; and 26 Code of Federal Regulation, Section 31-3402(f)(2)-1(a).

**CDSS REPRESENTATIVE REGARDING THE RULEMAKING PROCESS OF THE PROPOSED REGULATION**

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