



CDSS

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DEPARTMENT OF SOCIAL SERVICES
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EDMUND G. BROWN JR.
GOVERNOR

March 15, 2016

ORD #0615-08

Notification of 15-Day Public Availability
of Changes to Supporting Documents and Information
for the Proposed Regulations

On November 4, 2015, a public hearing was held to consider the proposed adoption, amendment or repeal of the following regulations:

ITEM #1 – In-Home Supportive Services Health Care Certification Requirement

Pursuant to the provisions of Section 11346.8(c) of the Government Code, the California Department of Social Services (CDSS) has revised the Statement of Reasons, but has not made any changes to the proposed regulatory language. The Addendum to the Initial Statement of Reasons is enclosed for your review. Copies of the unchanged proposed regulations and other supporting documents are available at [In-Home Supportive Services Health Care Certification Requirement](#) for review and also available at the address listed below.

Any person interested may submit written statements or arguments relating to the modified language and documents or information during the public comment period from March 15, 2016, to March 30, 2016. These statements may be submitted to the Office of Regulations Development (ORD) at the address listed below, by e-mail to ord@dss.ca.gov or by fax at (916) 654-3286. In order to be considered, public comments must be received by CDSS on or before 5:00 p.m., March 30, 2016.

California Department of Social Services
Office of Regulations Development
744 P Street, M.S. 8-4-192
Sacramento, CA 95814

Any questions concerning the proposed regulations and documents or information may be directed to Ying Sun, Manager of ORD at (916) 657-2586.

Enclosures

ADDENDUM TO THE INITIAL STATEMENT OF REASONS

Pursuant to the provisions of Section 11347.1 of the Government Code, the California Department of Social Services (CDSS) has revised the Statement of Reasons, creating this addendum to add to the rulemaking file. This addendum addresses clarity concerns the Office of Administrative Law alerted CDSS to regarding specific purpose and factual basis statements, and other supporting information. The new language is in grey shade. This addendum will be made available to the public for a 15-day comment period. No changes have been made to the proposed regulation text.

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 completing and signing 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.

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

Specific Purpose/Factual Basis:

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. The examples of LHCP-HCCs included in this handbook section are appropriate because they meet the definition provided in Section 30-701(1)(2) that is derived, in part, from WIC section 12309.1(a)(1), which specifies as follows: “For purposes of this section, a licensed health care professional means 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.” The specific LHCP-HCCs listed in Section 30-754.144(a)(1) through (10) are taken directly from WIC section 12309.1(a). Two additional examples (Section 30-754.144(a)(11) and (12)), not directly referenced in WIC section 12309.1(a)(1)—a Licensed Clinical Social Worker (LCSW) and a Marriage and Family Therapist (MFT)—are included because when the health care certification requirement was first implemented (via All County Letter), multiple counties inquired as to whether a health care certification signed by a LCSW or a MFT would be acceptable. At that time, CDSS made a determination that a health care certification signed by either a LCSW or an MFT would be acceptable because, unlike other types of LHCPs such as radiologic technicians, pharmacists, or massage therapists, these individuals’ primary responsibility is to diagnose and/or provide treatment and care for mental impairments causing or contributing to an individual’s functional limitation, and as such, they could provide information to help substantiate an individual’s need for services.

Section 30-754.13

Specific Purpose:

This section is being adopted to specify the health care certification is not required on 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 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 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 (CDSS) 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.

The WIC section 12309.1(b) required the CDSS to consult with DHCS and stakeholders in the development of the health care certification form. In June 2011, CDSS convened multiple stakeholder meetings to solicit input on the content of the health care certification form. After significant negotiations with stakeholders, the final version of the In-Home Supportive Services Program Health Care Certification form (SOC 873) form is comprised of four parts (Parts A through D).

- Part A, which is completed by the county, provides identifying information about the applicant. This information is necessary so that the LHCP-HCC knows which client the form concerns. This information in Part A also allows the county to associate the completed and signed SOC 873 that has been returned by the LHCP-HCC with the appropriate applicant's case file.
- Part B, which is completed and signed by the applicant, provides the LHCP-HCC with authorization to release health care information to the county for the purpose of assisting in the determination of IHSS eligibility. Part B also provides the LHCP-HCC an explanation of the purpose of the form and, as required pursuant to WIC section 12309.1(b), a brief description of the IHSS program and the services that can be authorized after an individual's eligibility is determined.
- Part C, which is completed by the LHCP-HCC, includes eight individual questions/items.
 - Items 1 and 2 are Yes/No questions in which the LHCP-HCC indicates whether or not the individual: 1) is unable to independently perform one or more ADLs or Instrumental ADLs (examples of both are provided); and 2) requires one or more IHSS service in order to prevent the need for out-of-home care. These two items are necessary to comply with WIC section 12309.1(a)(4)(A).
 - Item 3 asks the LHCP-HCC to provide a description of any physical and/or mental condition or functional limitation that has resulted in or contributed to the individual's need for assistance from the IHSS program. This item is necessary to comply with WIC section 12309.1(a)(4)(B).

- Item 4 is a Yes/No question in which the LHCP-HCC can indicate whether or not the individual's condition(s) or functional limitation(s) is expected to last at least 12 consecutive months, or result in death within 12 months. This question is necessary to assist in determining eligibility for the IHSS program. In order to be eligible for the IHSS program, an individual must have a chronic, 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 (WIC section 14050.1),
- Items 5 through 8 ask the LHCP-HCC to indicate: 1) the nature of the services he/she provides to the individual; 2) how long the LHCP-HCC has provided services to the individual; 3) the frequency of contact with the individual; and 4) the date the LHCP-HCC last provided services to the individual. These items, which are not required to be completed in order for the certification to be considered valid, are intended to provide additional context to the previous responses in order to assist the worker in determining the individual's eligibility for the IHSS program.
- Part D, which is completed by the LHCP-HCC, is the actual certification by the LHCP-HCC which is required pursuant to WIC section 12309.1(a). By signing the form, the LHCP-HCC certifies that he/she is licensed in the State of California and/or certified as a Medi-Cal provider, and that the information provided on the form is true and correct. Space is provided for the LHCP-HCC to indicate his/her name and title, address, telephone and fax numbers, license number and name of the licensing authority. This information is necessary in case the worker needs additional information or to clarify any of the responses the LHCP-HCC has provided on the form.

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. The elements required to be included on acceptable alternative documentation are based on WIC section 12309.1(c), which specifies that alternative documentation shall contain, "the necessary information, consistent with the requirements specified in subdivision (a)." WIC section 12309.1(a), specifically WIC sections 12309.1(a)(4)(A) and (B), state that the health care certification include: 1) a statement by the LHCP-HCC that the individual is unable to independently perform one or more activities of daily living, and that one or more of the services available under the IHSS program is recommended for the applicant or recipient, in order to prevent the need for out-of-home care; and 2) a description of any condition or functional limitation that has resulted in, or contributed to, the applicant's or recipient's need for assistance. Additionally, the signature of the LHCP-HCC is required in order for the certification to be valid.

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.

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. The examples of acceptable alternative documentation provided in this handbook section are appropriate because they are taken directly from WIC section 12309.1(c), which specifies that alternative documentation, "...shall be accepted by counties to meet the requirements of this section, including, but not limited to, hospital or nursing facility discharge plans, minimum data set forms, individual program plans, or other documentation that contains the necessary information..." Brief descriptions of minimum data set forms and individual program plans are provided for those who may not be familiar with the documents to which these terms refer.

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 CDSS 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.

The WIC section 12309.1(d) required that CDSS, "develop a letter for use by counties to inform recipients of the (health care certification) requirements..." CDSS developed and made available to county such a notice when the health care certification requirement was first implemented in 2011. All individuals who were recipients at the time SB 72 was enacted have, by now, met the health care certification requirement. Therefore, that particular notice is no longer necessary. However, although the statute does not specifically require it, CDSS believes it is critical that individuals applying for IHSS understand the health care certification requirement. Therefore, a notice similar to the one required by WIC section 12309.1(d), has been developed to inform program applicants of the requirement. On this notice, the worker indicates the date by which the completed and signed health care certification must be returned to the county.

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 specify 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.

Handbook Sections 30-754.621 through 30-754.621(a)

Specific Purpose/Factual Basis:

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.

b) Identification of Documents Upon Which Department is Relying

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

c) Local Mandate Statement (No Change)

d) Statement of Alternatives Considered

No other alternatives were identified or brought to the attention of CDSS that 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.

e) Statement of Significant Adverse Economic Impact on Business (No Change)

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 regulations affect the health and welfare of California residents in that they pertain to an eligibility requirement for the IHSS program, which provides supportive services to elderly and disabled individuals to prevent placement in out-of-home care and allows them to remain safely in their own homes. 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 (No Change)

- h) Statement of Specific Technology or Equipment (No Change)