

ADDENDUM TO FINAL STATEMENT OF REASONS

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

Sections 30-757.17 and .171

Specific Purpose:

Section 30-757.17 is amended to change the word "consisting" to "consists." Section 30-757.171 is being amended to delete the ambiguous phrase "This service" and replace it with specific "Protective Supervision" and to replace the term "monitoring" with "observing."

Factual Basis:

This section is being amended in accordance with the provisions of Welfare and Institutions Code Sections 12300(b), 10553 and 10554 which authorize the provision of protective supervision and which mandate adoption, repeal and amendment of regulations in connection with the law enforced by the Department. The term "observing" is replacing "monitoring" for consistency and to specify that Protective Supervision is available for observing behavior.

Final Modification:

As a result of testimony received, Section 30-757.17 is amended to include "intervening as appropriate" for clarification purposes. This clarifies that Protective Supervision not only includes observing recipient behavior but also includes intervening when appropriate to safeguard the recipient as acknowledged by the court appeal in Marshall v. McMahan 17 Cal App. 4th, 1841.

Sections 30-757.171(a) through (d)

Specific Purpose/Factual Basis:

These sections are being repealed as this text no longer applies to Section 30-757.171.

Section 30-757.171(a) (New)

Specific Purpose:

This section is being adopted to specify that Protective Supervision may be provided through the following or combination of alternative resources as specified by Sections 30-757-171(a)(1), (a)(2) and (a)(3).

Factual Basis:

This section is being adopted to clarify what 24-hours-a-day continuous care services are available enabling the recipient to remain safely in their own home in accordance with the Forms Stakeholders' Workgroup and provisions of Welfare and Institutions Code Sections 12300(b), 10553 and 10554 which authorize the provision of protective supervision and which mandate adoption, repeal and amendment of regulations in connection with the law enforced by the Department.

Section 30-757.171(a)(1) (New)

Specific Purpose:

This section is being adopted to specify that Protective Supervision may be provided by assistance from the In-Home Supportive Services program as defined in Section 30-700.

Factual Basis:

This section is being adopted to clarify an available care service enabling the recipient to remain safely in their own home in accordance with the Forms Stakeholders' Workgroup and provisions of Welfare and Institutions Code Sections 12300(b), 10553 and 10554 which authorize the provision of protective supervision and which mandate adoption, repeal and amendment of regulations in connection with the law enforced by the Department.

Section 30-757.171(a)(2) (New)

Specific Purpose:

This section is being adopted to specify that Protective Supervision may be provided by assistance from alternative resources, such as adult or child day care centers, community resource centers, and/or Senior Centers.

Factual Basis:

This section is being adopted to clarify an available care service enabling the recipient to remain safely in their own home in accordance with the Forms Stakeholders' Workgroup and provisions of Welfare and Institutions Code Sections 12300(b), 10553 and 10554 which authorize the provision of protective supervision and which mandate adoption, repeal and amendment of regulations in connection with the law enforced by the Department. The examples of alternative resources stated are those resources that provide services most similar to IHSS.

30-757.171 (a) (3) (New)

Specific Purpose:

This section is being adopted to specify that Protective Supervision may be provided by assistance from voluntary resources, such as a family member, close friend, or neighbor.

Factual Basis:

This section is being adopted to clarify an available care service enabling the recipient to remain safely in their own home in accordance with the Forms Stakeholders' Workgroup and provisions of Welfare and Institutions Code Sections 12300(b), 10553 and 10554 which authorize the provision of protective supervision and which mandate adoption, repeal and amendment of regulations in connection with the law enforced by the Department.

Section 30-757.171(a)(4) (New)

Specific Purpose:

This section is being adopted to specify that Protective Supervision may be provided by a reassurance phone service when feasible and appropriate.

Factual Basis:

This section is being adopted in accordance with the provisions of Welfare and Institutions Code Sections 12300(b), 10553 and 10554 which authorize the provision of protective supervision and which mandate adoption, repeal and amendment of regulations in connection with the law enforced by the Department.

Final Modification:

As a result of testimony received, Section 30-797.171(a)(4) is repealed to clarify that a reassurance phone service is not considered an appropriate form of observing and/or intervening for protective supervision purposes since an individual cannot verify whether a recipient is safe from harm.

Sections 30-757.172 through .172(b)(3)

Specific Purpose/Factual Basis:

These sections are being repealed and moved to Sections 30-757.171(a)(1), (2), and (4).

Section 30-757.172 (New)

Specific Purpose:

This section is being adopted to specify when Protective Supervision is not available under certain conditions.

Factual Basis:

This section is being adopted in accordance with the provisions of Welfare and Institutions Code Sections 12300(b), 10553 and 10554 which authorize the provision of protective

supervision and which mandate adoption, repeal and amendment of regulations in connection with the law enforced by the Department.

Sections 30-757.172(a) through (e) (New)

Specific Purpose:

These sections are being adopted to specify that Protective Supervision is not considered when it is friendly visiting or other social activities; that is to say, protective supervision is not to be authorized as a substitute for or to provide the recipient with friendly visiting or social activities; or if it is for a medical condition and supervision is medically required; or if it is in anticipation of a medical emergency; or if it is to prevent or control anti-social or aggressive and self-destructive recipient behavior.

Factual Basis:

These sections are being adopted in accordance with the provisions of Welfare and Institutions Code Sections 12300(b), 10553 and 10554 which authorize the provision of protective supervision and which mandate adoption, repeal and amendment of regulations in connection with the law enforced by the Department. Based upon comments we received by the State Hearings Division staff during the departmental review process, the section was amended to add language that clarifies that protective supervision is not assessed in cases of intentional self-destructive behaviors (e.g. suicide). The clarification is necessary to ensure county workers do not interpret all self-destructive behaviors to be precluded when assessing the need for protective supervision.

Final Modification:

Section 30-757.172(e) is amended to add language to clarify self-destructive behavior. Protective supervision is not intended in situations when an individual knowingly harms/hurts himself or herself or if he/she has the intent to commit suicide.

Section 30-757.173 (New)

Specific Purpose:

This section is being adopted to specify what conditions allow social service staff to determine if Protective Supervision is available.

Factual Basis:

This section is being adopted per discussion and clarification purposes as attained from the Forms Stakeholders' Workgroup and in accordance with the provisions of Welfare and Institutions Code Sections 12300(b), 10553 and 10554 which authorize the provision of protective supervision and which mandate adoption, repeal and amendment of regulations in connection with the law enforced by the Department.

Section 30-757.173(a) (New)

Specific Purpose:

This section is being adopted to specify that at the time of the initial assessment, social service staff will evaluate if a twenty-four-hours-a-day need exists in order for the recipient to remain safely at home.

Factual Basis:

This section is being adopted per discussion and clarification purposes as attained from the Forms Stakeholders' Workgroup and in accordance with the provisions of Welfare and Institutions Code Sections 12300(b), 10553 and 10554 which authorize the provision of protective supervision and which mandate adoption, repeal and amendment of regulations in connection with the law enforced by the Department. This requirement is not substantially changed from current regulation at Section 30-757.172(a).

Sections 30-757.173(a)(1) and (a)(1)(A) (New)

Specific Purpose:

These sections are being adopted to specify that at the time of the initial assessment, social service staff will identify a potential need for protective supervision and request the form SOC 821, "Assessment of Need for Protective Supervision for In-Home Supportive Services Program," be completed by a physician or other appropriate medical professional and returned to the county. The term "appropriate medical professional" is defined in regulation to clarify to counties that only limited medical professionals may complete the SOC 821.

Factual Basis:

This section is being adopted per discussion and clarification purposes as attained from the Forms Stakeholders' Workgroup and in accordance with the provisions of Welfare and Institutions Code Section 12301.21, enacted by SB 1104 (Chapter 229, Statutes of 2004), which requires the development of a standard form for certifying the need for Protective Supervision. Form SOC 821 is incorporated by reference and is not printed in CDSS' Manual of Policies and Procedures because it would be cumbersome and impractical; however, this form is readily available from the Department. The Forms Workgroup and Department has chosen the definition of an "appropriate medical professional" as our definition for what type of medical professionals can determine need for Protective Supervision and are competent in assessing for this need.

Final Modification:

Section 30-757.173(a)(1) is amended to add the phrase "which is incorporated by reference" next to the form number and name for consistency. Sections 30-757.173(a)(1), (2), (3),(4), (b), and (b)(1) are amended to change the revision date of the

form SOC 821 from (11/05) to (3/06). The form SOC 821 was revised for clarity and consistency with the regulations.

Section 30-757.173(a)(2) (New)

Specific Purpose:

This section is being adopted to specify that the form SOC 821 shall be used in conjunction with other pertinent information to assess the person's need for Protective Supervision.

Factual Basis:

This section is being adopted per discussion and clarification purposes as attained from the Forms Stakeholders' Workgroup and in accordance with the provisions of Welfare and Institutions Code Section 12301.21, enacted by SB 1104 (Chapter 229, Statutes of 2004).

Section 30-757.173(a)(3) (New)

Specific Purpose:

This section is being adopted to specify that the form SOC 821 shall not be determinative in the person's need for Protective Supervision, but considered as one indicator for that service.

Factual Basis:

This section is being adopted per discussion and clarification purposes as attained from the Forms Stakeholders' Workgroup and in accordance with the provisions of Welfare and Institutions Code Section 12301.21, enacted by SB 1104 (Chapter 229, Statutes of 2004).

Section 30-757.173(a)(4) (New)

Specific Purpose:

This section is being adopted to specify if the form SOC 821 is not returned or it is returned incomplete to the county, the social service staff may make its determination of need based upon other available information.

Factual Basis:

This section is being adopted per discussion and clarification purposes as attained from the Forms Stakeholders' Workgroup and in accordance with the provisions of Welfare and Institutions Code Section 12301.21, enacted by SB 1104 (Chapter 229, Statutes of 2004).

Handbook Section 30-757.173(a)(5) et seq. (New)

Specific Purpose:

These sections are being adopted to provide examples of other available evidence the county may use when determining the need for Protective Supervision if the form SOC 821 is not returned to the county.

Factual Basis:

These sections are being adopted per discussion and clarification purposes as attained from the Forms Stakeholders' Workgroup and in accordance with the provisions of Welfare and Institutions Code Section 12301.21, enacted by SB 1104 (Chapter 229, Statutes of 2004).

Section 30-757.173(b) (New)

Specific Purpose:

This section is being adopted to specify that at the time of reassessment, social service staff will determine the need to renew the form SOC 821, "Assessment of Need for Protective Supervision for In-Home Supportive Services Program."

Factual Basis:

This section is being adopted per discussion and clarification purposes as attained from the Forms Stakeholders' Workgroup and in accordance with the provisions of Welfare and Institutions Code Section 12301.21, enacted by SB 1104 (Chapter 229, Statutes of 2004).

Section 30-757.173(b)(1) (New)

Specific Purpose:

This section is being adopted to specify that if an updated form SOC 821 is determined necessary, it will be requested and documented in the recipient's case file by the social service staff.

Factual Basis:

This section is being adopted per discussion and clarification purposes as attained from the Forms Stakeholders' Workgroup and in accordance with the provisions of Welfare and Institutions Code Section 12301.21, enacted by SB 1104 (Chapter 229, Statutes of 2004).

Section 30-757.173(c) (New)

Specific Purpose:

This section is being adopted to clarify that IHSS recipients may request protective supervision and that they can obtain the SOC 821 from their physician or other appropriate medical professional and submit to the county.

Factual Basis:

This amendment is necessary to clarify that all IHSS services, including protective supervision, may be requested by a recipient in accordance with discussion and clarification purposes as attained from the Forms Stakeholders' Workgroup and provisions of Welfare and Institutions Code Section 12300.

Final Modification:

Section 30-757.173(c) is amended to delete "health care" and replace it with "medical" to be consistent with regulation section 30-757.173(a)(1)(A).

Section 30-757.174 (Renumbered from Section 30-757.173)

Specific Purpose:

This section is being renumbered from Section 30-757.173 to maintain numerical consistency. Further, it is amended to clarify that social service staff will discuss the Protective Supervision twenty-four-hours-a-day supervision need care plan with the recipient, or the recipient's guardian or conservator, and the appropriateness of out-of home care as an alternative to protective supervision.

Factual Basis:

This section is being adopted per discussion and clarification purposes as attained from the Forms Stakeholders' Workgroup and in accordance with the provisions of Welfare and Institutions Code Section 12301.21, enacted by SB 1104 (Chapter 229, Statutes of 2004).

Final Modification:

As a result of testimony received, this section is amended to add "or the recipient's parent(s)", which was inadvertently omitted from the proposed emergency regulation. In addition, this section is amended to add, "explain the availability of protective supervision" to clarify that social services staff inform parents, guardians, and conservators of the availability of protective supervision.

Section 30-761.12

Specific Purpose:

This section is being amended to correct the cross-reference to the regulation section that describes the purpose of the IHSS program.

Factual Basis:

This amendment is necessary to correctly cross-reference the regulation section that defines the IHSS program.

Section 30-761.13

Specific Purpose:

This section is being amended to add cross-references to new requirements that provide the option of extending the reassessment period up to six months beyond the regular 12-month period when certain conditions are met.

Factual Basis:

The amendment is necessary to specify that there are circumstances when the 12-month face-to face requirements do not apply and to reference the regulation that identifies these circumstances. These changes are necessary for consistency with new requirements being implemented in Section 30-761 that permit counties the option to extend the regular 12-month assessment period if certain circumstances exist. These circumstances are the same list of circumstances prescribed in Welfare and Institutions Code Section 12301.1(c)(1), enacted by SB 1104 (Chapter 229, Statutes of 2004). It is also necessary to exclude IHSS Plus Waiver cases from the option to extend the regular 12-month assessment period, based on the requirements of the Special Terms and Conditions (STC) for the California IHSS Plus Waiver granted under Section 1115 of the Social Security Act, Demonstration Projects. The STC, Section V, *Operational Protocol*, Number 30 e., *Eligibility/Enrollment*, third bullet, requires annual redeterminations for financial eligibility and reassessments of the need for personal care services.

Sections 30-761.212, .212(a) and Handbook Sections 30-761.213 and .214

Specific Purpose:

Sections 30-761.212 and .212(a) are being amended to add cross-references that provide the option of extending the reassessment period up to six months beyond the regular 12-month period when certain conditions are met. The sections are also amended to describe the type of assessment as a face-to-face assessment. The handbook sections have been added to provide two examples that demonstrate: 1) the end of the twelfth calendar month for the reassessment to occur, and 2) the adjustment of the 12-month period when a reassessment occurs prior to the end of the twelfth calendar month.

Factual Basis:

These amendments are necessary to specify that there are circumstances when the 12-month face-to face requirements do not apply and to reference the regulation that identifies these circumstances. These changes are necessary for consistency with new requirements that permit counties the option to extend the regular 12-month assessment period if certain circumstances exist. These circumstances are the same list of circumstances prescribed in Welfare and Institutions Code Section 12301.1(c)(1), enacted by SB 1104 (Chapter 229, Statutes of 2004). It is also necessary to exclude IHSS Plus Waiver cases from the option to extend the regular 12-month assessment period, based on the requirements of the Special Terms and Conditions (STC) for the California IHSS Plus Waiver granted under Section 1115 of the Social Security Act, Demonstration Projects. The STC, Section V, *Operational Protocol*, Number 30 e., *Eligibility/Enrollment*, third bullet, requires annual redeterminations for financial eligibility and reassessments of the need for personal care services. The amendment to describe a face-to-face assessment is necessary for clarity and consistency with current regulation Section 30-761.13, and the handbook sections are necessary to clarify the 12-month period.

Final Modification:

Handbook Sections 30-761.213 and .214 are amended for clarity by adding at the end of each example the phrase "of the following year."

Sections 30-761.215 through .215(h)

Specific Purpose:

These sections are being adopted to establish a county option to extend the reassessment period up to 6 months beyond the regular 12-month period if certain conditions are met and to specify the conditions that must be met to qualify for the extension of the reassessment period.

Factual Basis:

These sections are necessary to comply with the terms of Welfare and Institutions Code Section 12301.1(c)(1), enacted by SB 1104 (Chapter 229, Statutes of 2004) which authorizes a county the option to extend the reassessment period up to 6 months beyond the regular 12-month period for recipients whose needs are not likely to change during the extended period and who would not be at risk by the extending the reassessment period. The section is necessary to identify the specific circumstances that must exist to safeguard the recipient from being put at risk prior to extending of the reassessment. These are the same list of circumstances prescribed at Welfare and Institutions Code Section 12301.1(c)(1).

Sections 30-761.216 through .216(b)(1)

Specific Purpose:

These sections are being adopted to specify additional circumstances when an extension of the reassessment period up to 6 months beyond the regular 12-month period may still occur if all the conditions at proposed Section 30-761.213(a) through (h) are not met. This section also defines "licensed health care professional" for purposes of Section 30-761.216(b)(1).

Factual Basis:

These sections are necessary to comply with the terms of Welfare and Institutions Code Section 12301.1(c)(2), enacted by SB 1104 (Chapter 229, Statutes of 2004), which provides for additional circumstances which may qualify to extend the reassessment period if all the requirements of Welfare and Institutions Code Section 12301.1(c)(1). The additional circumstances identified in this section are the same as prescribed in Welfare and Institutions Code Section 12301.1(c)(2) to safeguard the recipient from being put at risk. Additionally the appropriate human services agencies are identified in this section pursuant to the Department's general charge to implement, interpret, and make specific the services specified in Welfare and Institutions Code Section 12301.1. A definition for "licensed health care professional" is necessary within this regulation section in order to distinguish the meaning from the existing definition in Section 30-701(1)(2).

Final Modification:

Section 30-761.216(b)(1) is amended for clarity by adding the phrase "by the appropriate California Regulatory Agency," after "medical professional licensed in California."

Section 30-761.217

Specific Purpose:

This section is being adopted to instruct the county that opts to extend the assessment, to document the basis for the determination to extend the reassessment period in the case file.

Factual Basis:

This section is necessary to ensure that there is appropriate documentation that conditions are met which safeguard the recipient from being put at risk by the determination to extend the reassessment period on the basis that the recipient's needs are not likely to change during the extended reassessment period, as prescribed by the criteria set forth at Welfare and Institutions Code Section 12301.1(c), enacted by SB 1104 (Chapter 229, Statutes of 2004).

Section 30-761.218 (Renumbered from Section 30-761.213)

Specific Purpose:

This section is renumbered and amended to specify that a reassessment may occur in less than a 12-month period when the recipient's needs are expected to decrease.

Factual Basis:

This amendment is necessary to ensure needs are not over-assessed for conditions that are expected to be temporary and that program funds are not misused. This amendment is necessary comply with the specific terms of Welfare and Institutions Code Section 12301.1(c)(3), enacted by SB 1104 (Chapter 229, Statutes of 2004). The renumbering of the section is also necessary to incorporate new adopted sections for consistency and clarity.

Sections 30-761.219 through .219(b)

Specific Purpose:

These sections are being adopted to establish the requirement for counties to conduct reassessments prior to the end of the reassessment period when the recipient requests a reassessment due to a change in circumstances affecting the recipient's supportive services' needs or when there are other indications or expectations of a change in circumstances affecting the recipient's need for supportive services.

Factual Basis:

These sections are necessary to specify that reassessments must occur less than 12 months at the recipient's request to ensure that the recipient's needs continue to be adequately met at a level which allows the recipient to remain safely in the home with the change in circumstance. This amendment complies with the specific terms of Welfare and Institutions Code Section 12301.1(d), enacted by SB 1104 (Chapter 229, Statutes of 2004).

b) Identification of Documents Upon Which Department Is Relying

- SB 1104 (Chapter 229, Statutes of 2004), Sections 41 and 44.

c) Local Mandate Statement

These regulations do impose a mandate upon local agencies, but not on school districts. If the Commission on State Mandates determines that these regulations contain reimbursable costs mandated by the state, reimbursement to local agencies for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

d) Statement of Alternatives Considered

CDSS has determined that no reasonable alternative considered would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

e) Statement of Significant Adverse Economic Impact On Business

CDSS has determined 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.

f) Testimony and Response

These regulations were considered as Item #3 at the public hearing held on August 16, 2006 in Sacramento, California. No oral testimony was received, however written testimony was received from Rosella A. Alm of Advocacy Services during the 45-day comment period from June 30, to 5:00 p.m. August 16, 2006. The comments received and the Department's responses to those comments follow.

Section 30-757.171

Protective Supervision is available for ~~monitoring~~ observing the behavior of nonself-directing, confused, mentally impaired, or mentally ill persons only, ~~with the following exceptions:~~

1. Comment:

If one only observes the behavior, and does not intervene to prevent accident, hazard or harm, where then is the benefit? Protective Supervision has to include an implied or stated mandate to intervene to prevent harm to the recipient.

Response:

CDSS thanks the testifier for the comments for consideration. CDSS has added "intervening as appropriate" to Section 30-757.17 to clarify that Protective Supervision includes intervening in order to safeguard the recipient from harm.

Section 30-757.171(a)(2)

Alternative resources such as adult or child day care centers, community resource centers, Senior Centers; respite centers;

2. Comment:

The category of alternative Resources must include Public Schools. All disabled children are entitled to a free appropriate public education, where they receive services

that they need. The most severely disabled children receive services similar to IHSS, such as bowel and bladder care, feeding, dressing, paramedical services, in school.

Response:

CDSS thanks the testifier for the comments for consideration. Originally, this section only stated "alternative resources," and it was revised to include a few examples of what can be considered an alternative resource. This provision does not imply that public schools or non-profit schools are excluded from this section. CDSS has chosen to use explicit examples of resources that provide supportive services most similar to IHSS.

Section 30-757.171(a)(4)

A reassurance phone service when feasible and appropriate.

3. Comment:

A phone service does not permit the observation of behavior, unless the State considers a modem a phone and the recipient is on video camera. Even so, being available by phone, or other remote means, one cannot intervene to safeguard the recipient against accident, hazard or injury.

Response:

CDSS thanks the testifier for the comments for consideration. In response to this comment, CDSS has repealed this section. Protective Supervision as described in MPP Section 30-757.17 requires the ability for an individual to intervene when appropriate and CDSS agrees that a reassurance phone service cannot accomplish this.

Section 30-757.173(a)

At the time of the initial assessment or reassessment, a need exists for twenty-four-hours-a-day of supervision in order for the recipient to remain at home safely, social services staff shall determine the need to renew the form SOC 821 (11/05).

4. Comment:

Social services staff shall explain the availability of twenty-four-hours-a-day of supervision to the parents, guardians, conservators, providers, or mentally ill individuals who potentially may need such supervision, at the time of the initial assessment.

Response:

CDSS thanks the testifier for the comments for consideration. In response to this comment, Protective Supervision through IHSS is not available for 24-hours; rather a 24-hour need must exist in order for a recipient to be eligible for Protective

Supervision. CDSS amended Section 30-757.174 for clarity to require social services staff explain the availability and requirements of Protective Supervision.

Section 30-757.174

Social services staff shall discuss the need for twenty-four-hours-a-day supervision with the recipient, or the recipient's guardian or conservator, and the appropriateness of out-of-home care as an alternative to Protective Supervision.

5. Comment:

I, as well as most parents and advocates, believe that the decision of if and when to consider out of home placement of a child or adult disabled family member is not within the purview of a social worker from the county. The nicest way to put it is that it appears that there is an ulterior motive in such a subject being brought up by a county social worker.

This subject has been brought up more than once by social workers and by county nurses. It has led to terror on the part of the parents who believed that the county would take their children away from them.

Response:

CDSS thanks the testifier for the comments for consideration. This section does not intend for social workers to make placement decisions; it only clarifies that they are to **inform** a person or their parent, guardian or conservator of other options available to them if their needs are not met through the IHSS program, which would be within the scope of their profession. The purpose of the IHSS program is to provide assistance to those eligible aged, blind, and disabled individuals who are unable to remain safely in their own home without this assistance. However, in situations where the need for twenty-four-hours-a-day supervision cannot be completely met in the home, even with Protective Supervision through IHSS, and the recipient's health and safety would otherwise be jeopardized, the appropriateness of out-of-home care should be discussed.

- h) Pursuant to Government Code Section 11346.8, a 15-day renote and complete text of modifications made to the regulations were made available to the public following the public hearing from November 9, 2006 to November 27, 2006. No comments were received on the amended regulations and therefore no further changes were made to the regulations.