STATE OF CALIFORNIA—OFFICE OF ADMINISTRATIVE LAW

NOTICE PUBLICATION/REGULATION SUBMISSION

REGULAR

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
	Z-2014-1209-03	2015-1014-07S	

For use by Office of Administrative Law (OAL) only

2015 OCT 14 P 3:00

OFFICE OF ADMINISTRATIVE LAW

NOTICE

REGULATIONS

ENDORSED - FILED
in the office of the Secretary of State of the State of California

NOV 30 2015

3:41 PM

AGENCY WITH RULEMAKING AUTHORITY: California Department of Social Services

AGENCY FILE NUMBER (If any): ORD #1212-08

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE:
TITLE(S):
FIRST SECTION AFFECTED:
2. REQUESTED PUBLICATION DATE:

3. NOTICE TYPE
☐ Notice re Proposed Regulatory Action ☐ Other
4. AGENCY CONTACT PERSON:
TELEPHONE NUMBER:
FAX NUMBER (Optional):

OAL USE ONLY — ACTION ON PROPOSED NOTICE: ☐ Approved as Submitted ☐ Approved as Modified ☐ Disapproved/ Withdrawn
NOTICE REGISTER NUMBER: 2014, 512
PUBLICATION DATE: 12/19/2014

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S): IHSS Program Provider Enrollment Requirements

1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S):

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)

ADOPT: Section 30-777

AMEND: Sections 30-701 and 30-776

REPEAL:

TITLE(S): MPP

3. TYPE OF FILING

☒ Regular Rulemaking (Gov. Code §11346)
☐ Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)
☐ Emergency (Gov. Code, §11346.1(b))
☐ Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.
☐ Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)
☐ Emergency Readopt (Gov. Code, §11346.1(h))
☐ File & Print
☐ Other (Specify)
☐ Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
☐ Print Only

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)
July 29 - August 12, 2015

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)
☒ Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))
☐ Effective on filing with Secretary of State
☐ §100 Changes Without Regulatory Effect
☐ Effective other (Specify)

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY
☒ Department of Finance (Form STD. 399) (SAM §6660)
☐ Fair Political Practices Commission
☐ State Fire Marshal
☐ Other (Specify)

7. CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)
Ying Sun, Manager, Office of Regulations	(916) 651-8267	(916) 654-3286	Ying.Sun@dss.ca.gov

8. **I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.**

SIGNATURE OF AGENCY HEAD OR DESIGNEE: [signature]
DATE: 10/13/15

TYPED NAME AND TITLE OF SIGNATORY: Brian Dougherty, Deputy Director, Administration Division

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

NOV 30 2015

Office of Administrative Law

State of California
Office of Administrative Law

In re:
Department of Social Services

Regulatory Action:

California Code of Regulations
Manual of Policies and Procedures (MPP)

Adopt sections: 30-777
Amend sections: 30-701, 30-776
Repeal sections:

NOTICE OF APPROVAL OF REGULATORY ACTION

Government Code Section 11349.3

OAL Matter Number: 2015-1014-07

OAL Matter Type: Regular (S)

In this regulatory action, the Department amends two existing sections in the Manual of Policies and Procedures (MPP) to add definitions and establish provider enrollment requirements for the In-Home Supportive Services (IHSS) program. It also adopts a new section in the MPP to require an IHSS recipient to verify the employment eligibility of an individual prior to hiring him or her as a provider.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 1/1/2016.

Date: November 30, 2015

Thanh Huynh
Senior Attorney

For: DEBRA M. CORNEZ
Director

Original: Will Lightbourne
Copy: Ying Sun

Amend Section 30-701 to read:

30-701 SPECIAL DEFINITIONS (Continued) 30-701

(a) (4) Applicant provider means an individual who is seeking to become a provider but who has not yet completed any of the provider enrollment requirements. (Continued)

(c) (4) ONLY FOR THE PURPOSES OF THE PROVIDER ENROLLMENT REQUIREMENTS, AS SPECIFIED IN SECTION 30-776, county means the county IHSS office, or any other organization or agency, such as the county IHSS Public Authority, or Non-Profit Consortium, designated by the county to perform provider enrollment functions.

(~~4~~5) County Plan (Continued)

(~~5~~6) CRT (Continued)

(~~6~~7) CRT County (Continued)

(p) (6) Prospective provider means an individual who is seeking to become a provider and who has completed at least one, but not all, of the enrollment requirements.

(~~6~~7) Provider Cost-of-Living Adjustment (Continued)

(~~7~~8) Public Authority (Continued)

(t) (1) Tier 1 disqualifying crime means any one of the crimes specified in Welfare and Institutions Code Sections 12305.81(a)(1) and 12305.81(a)(2), namely:

(A) Fraud against a government health care or supportive services program; or

(B) A violation of subdivision (a) of Section 273a of the Penal Code; or

(C) A violation of Section 368 of the Penal Code; or

(D) A violation(s) similar to those specified in Section 30-701(t)(1)(B) or 30-701(t)(1)(C) in another jurisdiction.

(2) Tier 2 disqualifying crime means any one of the crimes specified in Welfare and Institutions Code Sections 12305.87(b)(1), 12305.87(b)(2) and 12305.87(b)(3), namely:

(A) A violent or serious felony, as specified in Penal Code section 667.5(c), and Penal Code Section 1192.7(c); or

(B) A felony offense for which a person is required to register as a sex offender pursuant to Penal Code Section 290(c); or

(C) A felony offense for fraud against a public social services program, as defined in Welfare and Institutions Code Sections 10980(c)(2) or 10980(g)(2).

(3) Turnaround Timesheet means a three-part document issued by the state consisting of the paycheck, the statement of earnings, and the timesheet to be submitted for the next pay period. (Continued)

Authority cited: Sections 10553, 10554, 12301.1, and 22009(b), Welfare and Institutions Code; and Chapter 939, Statutes of 1992.

Reference: Sections 10554, 11102, 12300(c), 12301, 12301.6, 12304, 12305.81, 12305.87, 12306, 12308, 13302, 14132.95, 14132.95(e), 14132.95(f), and 22004, Welfare and Institutions Code.

Amend Section 30-776 to read:
Post-Hearing: Amend Section 30-776 Title, .411(h), .411(j), .411(k), .411(l), .415, .416, .42, .421(c), .421(e), .421(f), .43, .431(a), .433, .441(c), .463(a), .582(a), .583(c)(1), .61, .611, .62, .77, and .921(b)(2)(A) to read:

30-776 PROVIDER ~~IDENTIFICATION~~ ENROLLMENT 30-776

~~.1 Proof of provider identification shall be required pursuant to Welfare and Institutions Code Section 12306.5.~~

~~HANDBOOK BEGINS HERE~~

~~Welfare and Institutions Code Section 12306.5 states that any public or private agency, including a contractor as defined in Welfare and Institutions Code Section 12302.1, who maintains a list or registry of prospective In-Home Supportive Services providers shall require proof of identification from a prospective provider prior to placing the prospective provider on a list or registry or supplying a name from the list or registry to an applicant for, or recipient of, In-Home Supportive Services.~~

~~HANDBOOK ENDS HERE~~

~~.11 Proof of identification shall not be required for prospective providers to remain on a list or registry that existed before April 1, 1988. However, proof of identification shall be required prior to providing those prospective providers' names to an applicant or recipient of In-Home Supportive Services, or prior to providing the names of any prospective providers where proof of identification has not been established.~~

~~.12 Proof of identification shall include, but is not limited to, one of the following:~~

~~.121 A positive photograph identification from a government source, such as:~~

~~(a) a valid California driver's license;~~

~~(b) a valid identification card issued by a government agency; or~~

~~(c) a valid military identification card.~~

~~.122 A valid student identification card issued by an accredited college or university.~~

.1 An applicant provider shall complete the enrollment requirements specified in Sections 30-776.41, 30-776.42, 30-776.43, and 30-776.44 before he/she can be enrolled as a provider and receive payment for providing services for a recipient(s).

.2 An applicant provider shall be allowed a maximum of 90 calendar days to complete all of the enrollment requirements specified in Sections 30-776.41, 30-776.42, 30-776.43, and 30-776.44.

.21 The county shall deem ineligible a prospective provider who does not complete all of the enrollment requirements within 90 calendar days of initiating the enrollment process.

.211 Initiating the enrollment process shall be defined as either:

(a) Completing any one of the enrollment requirements specified in Sections 30-776.41, 30-776.42, 30-776.43, and 30-776.44, or

(b) Being designated by a recipient (in writing) as the individual from whom the recipient elects to receive his/her authorized services.

.22 Prior to determining an individual who has failed to complete the enrollment requirements within 90 calendar days ineligible to be a provider, the county shall send a notice to the prospective provider informing him/her that he/she will be determined ineligible to be a provider unless he/she completes the remaining provider enrollment requirements.

.221 The notice shall include the following:

(a) The specific provider enrollment requirements that the individual has failed to complete.

(b) The date by which the individual must complete the requirements or be determined ineligible.

.222 The notice shall be sent at least 15 calendar days before the 90-day time period for completing the enrollment requirements ends.

.23 The county may extend the period for which an individual may be allowed to complete the enrollment requirements by an additional 45 calendar days for "good cause," which includes, but is not limited to:

(a) A delay that is directly attributable to a county error;

(b) A delay in the county's receipt of the results of the individual's criminal background check from the Department of Justice;

(c) An unforeseen illness, hospitalization, or other medical issue prevents the individual from completing the enrollment requirements.

.3 Provision of services prior to completing enrollment requirements.

.31 An individual who provides authorized services to a recipient before he/she has completed all of the enrollment requirements shall be eligible to receive retroactive payment from the IHSS program for authorized services he/she provides prior to being enrolled only when all of the following conditions have been met:

.311 The individual completes all of the enrollment requirements within 90 calendar days of the date he/she begins providing authorized services; and

.312 Upon completion of the enrollment requirements, the county deems that the individual is eligible to be enrolled as a provider.

.32 Retroactive payment from the IHSS program for authorized services provided by an individual prior to completion of the enrollment requirements shall be limited to a maximum of 90 calendar days back from the date the individual completes the enrollment requirements and is enrolled as a provider by the county.

.321 The county shall extend the period for which an individual may be paid retroactively by an additional 45 calendar days for "good cause," as specified in Section 30-776.23.

.33 When a recipient designates an individual who has not completed the enrollment requirements as the individual from whom he/she elects to receive his/her authorized services, the county shall inform the recipient

.331 Of the conditions and limitations on retroactive payment for services provided prior to an individual's completion of the enrollment requirements, and

.332 That the recipient shall accept financial responsibility for paying for the following:

(a) In the case of an individual who is ultimately deemed ineligible – any and all services provided; or

(b) In the case of an individual who is ultimately deemed eligible but who completes the enrollment requirements more than 90 calendar days from the date he/she begins providing services – any and all services provided between the date the individual begins providing services and the date 90 days prior to the date that he/she completes the enrollment requirements.

HANDBOOK BEGINS HERE

.34 Example:

An individual begins providing authorized services for an eligible recipient, on August 12, 2012. The individual successfully completes all of the enrollment requirements and is enrolled as a provider by the county on December 22, 2012.

The individual would be eligible to receive retroactive payment for the authorized services provided to the recipient prior to completion of the enrollment requirements. However, retroactive payment from the IHSS program could only be made for services provided 90 calendar days back from the date that he/she completed the enrollment requirements, which would be September 22, 2012. The individual would not be eligible to receive payment from the IHSS program for those services provided between August 12, 2012 and September 21, 2012. The recipient would be financially responsible for paying the individual for the services he/she provided during this period.

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.4 Provider Enrollment Requirements

.41 The applicant provider shall complete a provider enrollment form.

.411 The provider enrollment form includes the following elements:

(a) A statement indicating that an individual who, within the last 10 years, has been convicted of, or incarcerated following a conviction for, a Tier 1 or Tier 2 disqualifying crime(s), as defined in Sections 30-701(t)(1) and 30-701(t)(2), is not eligible to be enrolled as a provider or to receive payment for providing services.

(b) A statement informing the applicant provider that as part of the provider enrollment process he/she is required to submit his/her fingerprints and undergo a criminal background check by the California Department of Justice.

(c) A statement indicating that if the individual's responses to questions on the provider enrollment form or the results of the criminal background check indicate that the individual has been convicted of, or incarcerated following a conviction for, a disqualifying crime within the last 10 years, he/she will not be eligible to be enrolled as a provider or to receive payment for providing services.

(d) A statement indicating that if an individual has been convicted of, or incarcerated following a conviction for, a Tier 2 disqualifying crime(s),

he/she may be eligible to be enrolled as a provider in spite of the conviction/incarceration, if he/she meets one of the following conditions:

(1) He/she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code, or the information or accusation against him/her has been dismissed pursuant to Section 1203.4 of the Penal Code, or

(2) A recipient, who has been informed of the Tier 2 disqualifying crime(s) for which he/she has been convicted/incarcerated, and who wishes to employ the individual in spite of his/her criminal background, submits to the county an individual waiver of the exclusion, or

(3) He/she has applied to the Department and has been granted a general exception of the exclusion.

(e) A brief explanation of the process that a recipient must follow to request an individual waiver of an individual's exclusion as a provider based on a Tier 2 disqualifying conviction/incarceration and rules and limitations pertaining to the provision of services under an individual waiver.

(f) A brief explanation of the process for applying for a general exception of an individual's exclusion as a provider based on a Tier 2 disqualifying conviction/incarceration.

(g) A statement indicating that completion of the provider enrollment form is one of the provider enrollment requirements and that an individual must complete all of the provider enrollment requirements before he/she can be enrolled as a provider and receive payment for providing services.

(h) Fields for the individual to provide the following information: full name; date of birth; gender; home and mailing addresses; telephone number; email address; Social Security number; driver's license or government-issued identification number, issuing state and expiration date; and primary spoken and written languages.

(i) Questions asking whether the individual, in the last 10 years, has been convicted of, or incarcerated following a conviction for, a Tier 1 or Tier 2 disqualifying crime(s).

(j) If the individual has indicated that, within the last 10 years, he/she has been convicted of, or incarcerated following conviction for, a Tier 2 disqualifying crime, a question asking whether he/she has obtained a certificate of rehabilitation or expungement (dismissal pursuant to Penal Code section 1203.4) of the conviction.

(k) If the individual has obtained a certificate of rehabilitation or an expungement, a statement indicating that he/she must provide the county with a copy of the documentation.

(l) A declaration indicating that the individual understands and agrees that:

(1) He/she cannot receive IHSS program funds as payment for authorized services he/she provides to any eligible recipient of IHSS until he/she has completed the entire provider enrollment process and has been officially enrolled as a provider by the county;

(2) Completion and submittal of the provider enrollment form is one of the requirements of the provider enrollment process; and

(A) He/she must complete all of the provider enrollment requirements within 90 calendar days;

(B) The 90 calendar day period begins either when he/she completes the first enrollment requirement or when a recipient designates the individual as his/her provider; and

(C) If he/she begins providing authorized services for an eligible recipient before he/she completes the provider enrollment requirements, and he/she is ultimately determined eligible to be enrolled as a provider, he/she will be eligible to be paid retroactively for services he/she provided before completing the requirements no more than 90 calendar days before he/she completed the provider enrollment requirements and was determined eligible to be a provider.

(3) As part of the provider enrollment process, he/she must provide fingerprints and undergo a criminal background check, and that he/she is responsible for paying the cost of fingerprinting and the background check;

(4) If it is found, either through the individual's responses on the form, the results of the criminal background check, or some other means, that within the past 10 years, he/she has been convicted of or incarcerated following a conviction for a Tier 1 exclusionary crime, he/she will not be eligible to be an IHSS provider, and the recipient who wished to hire him/her will be informed that he/she is ineligible to be a provider because of a disqualifying criminal conviction which will not be specified;

(5) If it is found, either through the individual's responses on the form, the results of the criminal background check, or some other means, that within the past 10 years, he/she has been convicted of or incarcerated following a conviction for a Tier 2 exclusionary crime, and he/she has not received a certificate of rehabilitation or had the conviction expunged, then:

(A) He/she will not be eligible to be an IHSS provider, unless an IHSS recipient who wishes to hire him/her to provide services, requests an individual waiver, or he/she applies for and is granted a general exception; and

(B) The IHSS recipient who wishes to hire him/her as a provider will be informed of his/her conviction and the types of crimes for which he/she was convicted, and the recipient will be directed to keep the information confidential;

(6) If the individual is ultimately enrolled by the county as an IHSS provider, and the person for whom he/she provides services receives IHSS through the Medi-Cal program, he/she will be considered to be a Medi-Cal provider of personal care services, and therefore, he/she will be required to comply with all Medi-Cal program rules relating to the provision of services;

(7) Payment for the authorized services he/she provides to an IHSS recipient will be from federal, state and/or county IHSS funds, and any false statement he/she provides, including false entries on a timesheet or withholding of information, may be prosecuted under federal and/or state laws;

(8) He/she will be required to reimburse the state for any overpayment paid to him/her, and that the amount of any overpayment, individually or in the aggregate, may be deducted from any future warrant to him/her for services provided to any recipient; and

(9) He/she will be required to provide services without discrimination based on race, religion, color, national or ethnic origin, gender, age, sexual orientation, or physical or mental disability.

(m) The text of subdivision (a) of Section 273a of the Penal Code, Section 368 of the Penal Code, subdivision (c) of Section 290 of the Penal Code, subdivision (c) of Section 667.5 of the Penal Code, subdivision (c) of Section 1192.7 of the Penal Code, and paragraph (2) of subdivisions (c) and (g) of Section 10980 of the Welfare and Institutions Code.

.412 The provider enrollment form shall be signed by the individual under penalty of perjury.

.413 The completed provider enrollment form shall be returned to the county in person by the individual seeking to become a provider.

.414 When returning the completed provider enrollment form, the applicant provider shall present and allow the county to photocopy the following original documents:

(a) A valid (unexpired) positive photograph identification issued by a U.S. federal or state government agency or by a federally-recognized Native American or Alaskan Native tribal organization.

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(1) Examples of acceptable identification include: a driver license or identification card issued by a state department of motor vehicles, a U.S. passport, or a U.S. military identification card, or a Native American or Alaskan Native tribal identification card.

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(b) His/her original Social Security card, or a replacement card issued by the Social Security Administration.

(1) Official correspondence from the Social Security Administration showing the individual's Social Security number may be accepted in lieu of the Social Security card.

(2) For the purpose of acceptance of the provider enrollment form, a Social Security card imprinted with the notation "Valid for Work Only with DHS Authorization" may be accepted.

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(A) Refer to Section 30-777 for policies and procedures for verifying an individual's eligibility to work in the United States (U.S.).

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.415 The county shall retain the signed provider enrollment form and copies of the prospective provider's identification documents in the individual's provider file.

(a) If the prospective provider is deemed eligible and is enrolled as a provider, the documents shall be retained for a period of one year beyond the date that the individual stops providing services for any recipient.

(b) If the prospective provider is deemed ineligible, the documents shall be retained until the individual has exhausted his/her appeal rights.

.416 The county shall provide the prospective provider with a copy of the completed provider enrollment form for his/her records.

.42 The prospective provider shall attend an in-person provider orientation. The prospective provider may only attend the in-person provider orientation after he/she has completed the requirements of Section 30-776.41.

.421 The orientation shall include the following:

(a) The requirements to be an eligible IHSS provider.

(b) A description of the IHSS program.

(c) IHSS program regulations and requirements.

(1) Program requirements shall be defined as provider-related processes and procedures which include, but are not limited to, the following:

(A) Timesheet requirements, standards and practices; and

(B) Any process designed to meet federal provider revalidation requirements; and

(C) Cooperation with any process intended to address program integrity and fraud prevention efforts.

(d) The consequences of committing fraud in the IHSS program.

(e) The Medi-Cal toll-free telephone fraud hotline number and internet web site for reporting suspected fraud or abuse in the provision or receipt of in-home supportive services.

(f) The applicable federal and state requirements regarding wages and compensation.

.422 Any oral and written materials presented at the orientation shall be translated into all languages spoken by a substantial number of the public served by the IHSS Program, in accordance with Section 7295.2 of the Government Code.

.423 Representatives of the recognized employee organization in the county shall be permitted to make a presentation of up to 30 minutes at the orientation.

.43 At the conclusion of the provider orientation, the prospective provider shall sign a provider enrollment agreement.

.431 The provider enrollment agreement includes statements indicating that the individual acknowledges and/or understands that he/she:

(a) Is required to attend the provider orientation, sign the provider enrollment agreement, and complete all of the other enrollment requirements before he/she can be enrolled as a provider and receive payment for providing services;

(1) He/she must complete all of the provider enrollment requirements within 90 calendar days;

(2) The 90 calendar day period begins either when he/she completes the first enrollment requirement or when a recipient designates the individual as his/her provider; and

(3) If he/she begins providing authorized services for an eligible recipient before he/she completes the provider enrollment requirements, and he/she is ultimately determined eligible to be enrolled as a provider, he/she will be eligible to be paid retroactively for services he/she provided before completing the requirements no more than 90 calendar days before he/she completed the provider enrollment requirements and was determined eligible to be a provider.

(b) Was given a description of the IHSS program and information about the requirements for and responsibilities of being provider, the consequences of committing fraud and instructions for reporting suspected fraud or abuse in the program;

(c) Received instruction and/or a demonstration of how to complete a timesheet and that he/she understands that only time worked to perform authorized services should be reported on the timesheet, that by signing the timesheet, he/she is certifying that the information reported on it is true and correct, that if he/she is convicted of fraudulently reporting information on the timesheet, in addition to any criminal penalties, he/she may be required to pay civil penalties of at least $500, and not more than $1,000, for each instance of fraud;

(d) Is required to complete the U.S. Citizenship and Immigration Services' (USCIS) Employment Eligibility Verification (Form I-9) to verify that

he/she has a legal right to work in the U.S., and that the recipient(s) for whom he/she provides services will retain a copy of the completed form;

(e) Has the option to submit Internal Revenue Services' Employee Withholding Allowance Certificate (Form W-4) to request federal income tax withholding and/or California Employment Development Department's Employee Withholding Allowance Certificate (Form DE 4) to request state income tax withholding from my wages, but if he/she does not submit Form W-4 and/or DE 4, there will be no taxes withheld from his/her wages;

(f) Cannot be paid for authorized services performed when the recipient is away from his/her home, for example, when the recipient is in the hospital or away on vacation, and that he/she must contact the recipient's social worker for approval of any services that may be performed when the recipient is away from the home;

(g) Will receive a notice informing him/her of the services he/she is authorized to perform for each recipient(s);

(h) Must cooperate with state or county staff to provide requested information related to the evaluation of a recipient's case; and

(i) Accepts the responsibility to follow all program rules and requirements explained at the provider orientation, and that failure to follow the program rules and requirements may result in being terminated as a provider.

.432 The county shall indefinitely retain the signed provider enrollment agreement in the individual's provider file.

(a) Pursuant to Government Code section 12168.7, the signed provider enrollment agreement may be retained in electronic format, as long as it is not substantially altered from its original form.

.433 The county shall provide the prospective provider with a copy of the signed provider enrollment agreement for his/her records.

.44 The applicant provider shall undergo a criminal background check conducted by the Department of Justice.

.441 The criminal background check shall establish whether the individual has been convicted of, or incarcerated following a conviction for, any Tier 1 or Tier 2 disqualifying crime(s) within the last 10 years.

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(a) A list of Tier 2 disqualifying crimes may be accessed on CDSS' website at: http://www.cdss.ca.gov/agedblinddisabled/res/Tier2_Crimes.pdf

HANDBOOK ENDS HERE

(b) An applicant provider who has been convicted of or incarcerated following a conviction for a Tier 2 crime within the last 10 years shall not be deemed ineligible if:

(1) He/she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with section 4852.01) of Title 6 of Part 3 of the Penal Code; or

(2) The information or accusation against him or her has been dismissed pursuant to section 1203.4 of the Penal Code.

(c) The last 10 years shall be defined as any point in time during the period 10 years immediately preceding the date the criminal background check results are received by the county.

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(1) Example: Prospective Provider A has submitted her fingerprints as part of the process to be enrolled as an IHSS provider. The county IHSS office received the CORI results on August 1, 2015, which shows that she was convicted of an exclusionary crime on February 1, 2001, and was incarcerated as a result of the conviction until January 1, 2007. When the social worker examines the CORI to determine the prospective provider's eligibility status, he can only deny her eligibility for exclusionary crimes for which either the date of conviction or the last date of incarceration following the conviction occurred within the 10 years prior to the receipt of the CORI results (from August 1, 2005 to August 1, 2015). Although the social worker sees that the conviction date is out of the range of this time period (February 1, 2001), the prospective provider's last date of incarceration following the conviction is within the time period (January 1, 2007). Therefore, the social worker must deny the prospective provider's enrollment.

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(d) For the purposes of this section, "incarceration" shall be defined as being held in confinement in a correctional facility, including but not limited to, a jail or prison, or a correctional institution, detention center, colony, farm or camp.

(1) Incarceration includes commitment to a state hospital for the care and treatment of the mentally disordered and/or an alternative custody program, including but not limited to, home detention with electronic monitoring, or work, in lieu of confinement, in a work release program.

(2) Incarceration does not include parole or probation.

(3) If an individual violates the terms of his/her parole or probation and he/she is returned to custody to serve out the remainder of his/her original sentence, the time served counts as incarceration for the original conviction. Therefore, the 10-year period would not begin until after the individual was released from custody for the second time.

(e) If the criminal background check establishes that the applicant provider has been convicted of, or incarcerated following a conviction for, a disqualifying crime within the last 10 years, the individual shall be deemed ineligible to be a provider.

.442 The criminal background check shall be conducted at the expense of the applicant provider.

.45 Refusal or failure to complete any of the enrollment requirements specified in Sections 30-776.41, 30-776.42, 30-776.43, or 30-776.44, shall result in the applicant provider being deemed ineligible to be a provider in the IHSS program.

.46 An applicant provider shall not be required to complete the enrollment requirements specified in Sections 30-776.41, 30-776.42, 30-776.43, and 30-776.44 more than once, provided that he/she remains active and continuously enrolled as a provider.

.461 Active shall be defined as having submitted at least one (1) timesheet for providing services to any recipient statewide during a period of twelve (12) consecutive months.

.462 A county shall accept a criminal background check clearance for an individual who has been deemed eligible by another county.

(a) A criminal background check clearance shall be defined as one of the following:

(1) A response as described in Section 30-776.582; or

(2) A Criminal Offender Record Information response which does not include any disqualifying convictions as described in Section 30-776.583(b).

(b) If an individual was determined ineligible to be a provider on the basis of a Tier 2 disqualifying conviction, but his/her exclusion as a provider has been waived by a recipient pursuant to Section 30-776.7, the waiver does not constitute a criminal background clearance.

(c) Existence of a clearance shall be determined by verification through the Case Management, Information, and Payrolling System (CMIPS).

.463 When an individual is providing services to a recipient(s) in a county other than the one in which he/she underwent the criminal background check, or when an individual is providing services for recipients in more than one county, the county which originally secured the criminal background check information from the Department of Justice shall be referred to as the originating county.

(a) The originating county shall be responsible for:

(1) Providing all other counties in which the individual is providing services to a recipient with copies of the provider enrollment form submitted to the originating county pursuant to Section 30-776.41 and the provider enrollment agreement completed by the prospective provider in the originating county pursuant to Section 30-776.43 to be placed in the provider files in the county IHSS office or IHSS public authority office.

(2) Following the procedures outlined in Section 30-776.8 for Notifications of Subsequent Arrest and/or Disposition information.

(3) Following the procedures outlined in Section 30-776.6 for providing notice of an individual's ineligibility to be enrolled as a provider to:

(A) The provider; and

(B) Any and all recipient(s) for whom the individual provides services in the originating county.

(4) Within three (3) calendar days, informing any other county(ies) in which the individual provides services for recipients subsequent to the county of origin, that the individual is ineligible to continue to

provide services due to a subsequent conviction for a disqualifying crime.

(A) The county(ies) in which the individual provides services subsequent to the originating county shall be responsible for following the procedures outlined in Section 30-776.6 for providing notice of an individual's ineligibility to be enrolled as a provider to any and all recipient(s) for whom the individual provides services in that county.

1. The originating county shall not provide the subsequent arrest notice provided by the Department of Justice to another county(ies) as this information must be kept confidential; however, if public documents, including but not limited to court records, are used to establish that an arrest resulted in a conviction for a disqualifying crime, such documentation may be shared with the other county(ies) so that the other county(ies) have information necessary to fulfill the requirement to provide notice to recipients receiving services from the disqualified individual in that county(ies).

.5 Procedures for the criminal background check.

.51 The county shall establish and maintain authorization from the Department of Justice to receive criminal background check information on individuals seeking to become IHSS providers.

.511 As part of the Department of Justice authorization process, the county shall request to receive notifications of subsequent arrest and/or disposition information.

.52 The county shall comply with all Department of Justice requirements and directives on the receipt, handling, storage, dissemination and destruction of criminal background check information.

.521 If an applicant provider is deemed ineligible to be enrolled as a provider based on information contained in the criminal background check information received from the Department of Justice, the county shall retain the criminal background check information until such time that the individual has exhausted all of his/her rights to appeal the ineligibility decision.

.53 The county shall provide the applicant provider with the necessary form(s) and instructions for having his/her fingerprints scanned and transmitted to the Department of Justice as required for the criminal background check.

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.531 In addition to the Department of Justice's designated form for requesting Live Scan fingerprint imaging service, on which the county shall have provided all county-specific information, the county may provide the following information:

(a) Notification that valid photo identification shall be presented to the Live Scan Operator along with the Live Scan request form;

(b) Information about the location of nearby Live Scan sites.

(c) Notification that the fingerprinting and criminal background check shall be conducted at the provider's expense.

(d) Contact information for the Department of Justice's automated telephone service to check on the status of a fingerprint submission.

(e) Notification that if the individual seeking to become a provider is a minor the Live Scan agency may require the individual to provide parental consent for fingerprinting.

.54 After the applicant provider has submitted his/her fingerprints, and the Department of Justice has completed processing them, the Department of Justice will transmit the result to the county.

.55 Pursuant to Welfare and Institutions Code Section 15660(a), the Department of Justice shall secure the criminal record of a person to determine whether the person has:

.551 Ever been convicted of a violation or attempted violation of Section 243.4 of the Penal Code, a sex offense against a minor; or any felony that requires registration pursuant to Section 290 of the Penal Code; or

.552 Within the past 10 years has been convicted of or incarcerated as a result of committing a violation or attempted violation of Sections 273a and 273d, or subdivision (a) or (b) of Section 368 of the Penal Code, or as the result of committing theft, robbery, burglary, or any felony.

.56 Pursuant to Penal Code Section 11105(n)(2)(A), the Department of Justice shall disseminate the following information:

.561 Every conviction for a violation or attempted violation of any offense specified in Welfare and Institutions Code Section 15660(a); and

.562 Every arrest for a violation or attempted violation of an offense specified in Welfare and Institutions Code Section 15660(a) for which the individual is presently awaiting trial, whether he/she is incarcerated or has been released on bail or on his/her own recognizance pending trial.

.57 Unless a conviction is for an offense for which registration is required pursuant to Penal Code Section 290, the Department of Justice shall only disseminate information if the conviction occurred within 10 years of the date of the request for information or if the conviction occurred over 10 years ago but the subject of the request was incarcerated within 10 years of the request for information. Conviction information for offenses requiring registration as a sexual offender shall be disseminated without regard to when the conviction or incarceration occurred.

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.58 Dependent on the type of response received from the Department of Justice, the county shall take the following action:

.581 If the county receives a notification that the Department of Justice has received the fingerprint transaction but that there will be a delay in processing/ responding, it shall await the final response and, when it is received, proceed as specified below.

.582 If the county receives a response stating that there is no criminal information on the individual meeting the dissemination criteria pursuant to Welfare and Institutions Code Section 15660, it shall:

(a) Consider the prospective provider to have met the criminal background check enrollment requirement, and

(b) Provided that the other enrollment requirements specified in 30-776.41, 30-776.42, and 30-776.43, have been met, deem the individual eligible to be enrolled as a provider.

.583 If the county receives Criminal Offender Record Information, which is a response containing all criminal offender record information meeting the dissemination criteria pursuant to Welfare and Institutions Code Section15660, it shall:

(a) Review the information to determine whether:

(1) The applicant provider has been convicted of, or incarcerated following a conviction for, a Tier 1 or Tier 2 disqualifying crime(s), and

(A) Crimes involving fraud against a government health care or supportive services program may be prosecuted under various sections of the Penal Code and/or Welfare and Institutions Code.

(B) When a county learns that an individual has been convicted of a crime involving fraud against a public social services program, the county is responsible for obtaining additional information, including but not limited to, court documents, necessary for determining whether the program against which the fraud was committed was a government health care or supportive services program.

(2) The conviction, or incarceration following the conviction, occurred within the last 10 years.

(b) If both of the conditions specified in (a)(1) and (2) above are met, deem the individual ineligible to be enrolled as a provider.

(c) If only one of the above conditions are met, or if neither are met:

(1) Deem the prospective provider to have met the criminal background check enrollment requirement, and

(2) Provided that the other enrollment requirements specified in sections 30-776.41, 30-776.42, and 30-776.43, have been met, deem the individual eligible to be enrolled as a provider.

.59 If the county receives verifiable documentation, including but not limited to, Federal Bureau of Investigation background check, or court documents from another state, indicating that, within the last 10 years, the applicant provider has been convicted of, or incarcerated following a conviction for, a Tier 1 disqualifying crime, in another jurisdiction, the county shall deem the individual ineligible to be enrolled as a provider.

.6 Providing notice of an individual's eligibility or ineligibility to be enrolled as a provider.

.61 Within 20 calendar days of the county's determination of a prospective provider's eligibility or ineligibility to be enrolled as a provider, the county shall provide notice of the individual's eligibility or ineligibility to:

.611 The prospective provider; and

.612 Any and all recipients for whom the prospective provider is providing or is seeking to provide services.

.62 CDSS has developed various notices designated as "Required – No Substitutions Allowed" which shall be used to inform both prospective providers and recipients of an individual's eligibility or ineligibility to be enrolled as a provider.

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.621 These notices may be accessed on CDSS' Forms/Brochures web page at: http://www.cdss.ca.gov/cdssweb/PG183.htm.

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.63 When a prospective provider or provider is deemed to be ineligible to be a provider for any reason:

.631 The notice to the individual shall include:

(a) The specific reason he/she was deemed ineligible;

(b) In the case of a provider who is found ineligible based on a conviction for a disqualifying crime subsequent to being enrolled, the date on which he/she will no longer be eligible to receive payment for services provided;

(1) In order to allow for mailing and receipt of the notice, and time for the recipient(s) to find and hire a new provider(s), the county shall allow the individual to remain eligible to provide services and receive payment for services provided for current recipients only for a period of 20 calendar days from the date the county deems the individual ineligible.

(c) Any actions the individual may take to be deemed eligible, if appropriate;

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(1) For example, if the individual has been deemed ineligible because of his/her failure to complete one or more of the provider enrollment requirements, the notice should indicate that if the individual successfully completes these requirements he/she would then be eligible to be enrolled as a provider.

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(d) If the individual has been deemed to be ineligible based on a disqualifying criminal conviction, information about his/her right to appeal the county's decision and the process for requesting an appeal.

.632 The notice to any and all recipients shall include:

(a) The name of the individual deemed ineligible to provide services;

(b) In the case of a provider who is found ineligible based on a conviction for a disqualifying crime subsequent to being enrolled, the date on which the individual will no longer be eligible to receive payment for services provided;

(c) A statement informing the recipient that he/she must choose another individual to provide his/her services, and that if he/she chooses to continue receiving services from the individual deemed ineligible, he/she will be responsible for reimbursing the individual for any services he/she provides; and

(d) The telephone number the recipient can call for assistance in finding a new provider.

.633 When an individual is found to be ineligible due to a conviction, or incarceration following a conviction, for a disqualifying crime within the last 10 years, along with the appropriate notice of ineligibility, the county shall provide the individual who has been found ineligible to be a provider with the following:

(a) An unaltered copy of his/her criminal offender record information as provided to the county by the Department of Justice; and

(b) Information on how the individual may contest the accuracy and completeness of, and refute any erroneous or inaccurate information in his/her criminal offender record information.

.7 Policies and Procedures for Individual Waiver of Disqualifying Convictions.

.71 A recipient shall be permitted to choose as his/her provider an individual who has been found to be ineligible based on a conviction(s), or incarceration following a conviction(s), for a disqualifying Tier 2 crime(s) within the last 10 years, but who otherwise meets all provider enrollment requirements, by requesting an individual waiver of the exclusion.

.72 A recipient shall not be permitted to request an individual waiver of an exclusion based on an ineligible individual's conviction(s), or incarceration following a conviction, within the last 10 years, for a disqualifying Tier 1 crime(s).

.73 When an individual is found to be ineligible to be a provider based on a conviction(s), or incarceration following a conviction(s), for a disqualifying Tier 2 crime(s) within the last 10 years, the county shall provide to the recipient:

.731 Information explaining the process for requesting an individual waiver of an ineligible individual's exclusion based on a disqualifying Tier 2 conviction(s); and

.732 An individual waiver request form which includes:

(a) The specific Penal Code sections, names and descriptions that describe in plain language the ineligible individual's disqualifying conviction(s); and

(b) A statement that the recipient, or his/her authorized representative, if applicable, is aware of the individual's conviction(s) and that he/she agrees to waive the individual's exclusion and employ the individual as his/her provider.

.74 The individual waiver form shall be signed by the recipient, or by the recipient's authorized representative, if applicable, and returned to the county by mail or in person.

.741 Except for a parent, guardian, or person having legal custody of a minor recipient, a conservator of an adult recipient, or a spouse or registered domestic partner of a recipient, an individual shall not sign his/her own individual waiver form as the recipient's authorized representative.

(a) Upon receipt of the completed waiver request, the county shall determine whether the waiver request was signed by the recipient or another individual who has authority to sign a waiver on his/her behalf.

(1) If the waiver request was signed by the recipient or an individual who has authority to sign on his/her behalf, the county shall:

(A) Provide notice to the recipient acknowledging receipt of the waiver request and indicating that the individual is eligible to begin providing and receive payment for providing his/her authorized services; and

(B) Provide notice to the individual indicating that he/she is eligible to begin providing and receive payment for providing authorized services for the recipient who signed the waiver.

1. If an individual began providing authorized services for the recipient before a valid waiver request was received by the county, the individual cannot be paid retroactively for services he/she provided more than 90

days back from the date that the county acknowledged receipt of the valid waiver request.

(2) If the waiver request was signed by an individual who does not have authority to sign on his/her behalf, the county shall provide notice to the recipient indicating that the waiver was invalid because it was signed by an individual who does not have authority to sign the waiver on behalf of the recipient.

.742 The county shall retain the waiver form and a copy of the individual's criminal offense record information until the date that the convictions that are the subject of the waiver request are no longer within the 10-year exclusionary period.

.75 A provider hired pursuant to an individual waiver may be employed only by the recipient who requested that waiver, and the waiver shall only be valid with respect to convictions that are specified in that waiver.

.751 A new waiver shall be required if the individual is subsequently convicted of another disqualifying Tier 2 crime(s).

(a) When the county receives information indicating that an individual who has been providing services under a waiver has been convicted of another disqualifying Tier 2 crime, the county shall provide notice of the provider's ineligibility to continue to provide services to both the recipient and the provider as specified in Sections 30-776.632 and 30-776.73.

.76 An individual who is eligible to receive payment for services provided to a recipient under an individual waiver shall be permitted to provide services to an additional recipient(s) in the originating county, as defined in Section 30-776.463, if the additional recipient(s) request an individual waiver of the individual's exclusion.

.77 An individual who is eligible to receive payment for services provided to a recipient under an individual waiver shall not be permitted to provide services to the same recipient or any additional recipient(s) in a county other than the originating county, as defined in Section 30-776.463, unless and until he/she undergoes another criminal background check in the county(ies) in which he/she wishes to provide services under a waiver.

.8 An enrolled provider who has been working under an individual waiver, as provided for under Section 30-776.7, may become eligible to work as a provider without an individual waiver or general exception due to lapsing of the ten-year time period referenced in Section 30-776.583(a)(2).

.81 The following conditions must be met for the enrolled provider to be eligible to work as a provider without an individual waiver or general exception:

(a) The county has not notified the Department of Justice to terminate sending subsequent arrest notifications as provided under Section 30-776.93 at any time subsequent to the provider's enrollment; and

(b) The enrolled provider's criminal offender record information and subsequent arrest and disposition notifications, as required under Sections 30-776.583 and 30-776.91, indicate that the enrolled provider has not had a conviction(s) for a disqualifying crime(s) during the previous ten years.

.82 When a provider who has been working under an individual waiver requests to work for a recipient without an individual waiver due to his/her becoming eligible as specified in Section 30-776.8, the county shall:

(a) Review the provider's case file to determine if the provider has become eligible to work as a provider without an individual waiver as specified in Section 30-776.8.

(1) If the county determines that the provider is eligible to work without an individual waiver or general exception as specified in Section 30-776.8, the county shall:

(A) Provide documentation within the provider's case notes indicating the provider's ineligibility for Tier 2 criminal conviction under Section 30-776.583(b) has expired due to the lapse of the ten-year time period referenced in Section 30-776.583(a)(2) and that the provider is now eligible to serve recipients without the need for an individual waiver or general exception; and

(B) Provide notice to the provider that his/her status has changed to eligible to work as a provider without a waiver or general exception as of the date that the ten-year time period referenced in Section 30-776.583(a)(2) lapsed.

(2) If the county determines that the provider remains ineligible to work as a provider without a waiver, the county shall notify the provider accordingly.

.9 Procedures for Notifications of Subsequent Arrest and/or Disposition Information.

.91 Counties will receive notifications of subsequent arrest and disposition information from Department of Justice for those individuals for whom criminal background checks were requested. The notification may include information about a subsequent

arrest, including but not limited to, date of the arrest, code violation, and/or information about the disposition of the subsequent arrest.

.92 When a notification of subsequent arrest and disposition information is received from the Department of Justice, the county shall:

.921 Review the notification to determine whether it includes information only about a subsequent arrest or disposition of a subsequent arrest.

(a) If the notification includes information only about a subsequent arrest, and not disposition of a subsequent arrest, whether or not the arrest is for a disqualifying crime, the county shall not take any action to deem individual ineligible.

(b) If the notification includes information about the disposition of a subsequent arrest, the county shall determine whether there has been a conviction for a Tier 1 or Tier 2 disqualifying crime within the last 10 years.

(1) If the conviction is not for a disqualifying crime, the county shall not take any further action.

(2) If the conviction is a for Tier 1 or Tier 2 disqualifying crime, the county shall deem the individual ineligible to continue to be enrolled as a provider.

(A) The county shall provide the individual and all recipients for whom the individual provides services with notice of the individual's ineligibility as outlined in Section 30-776.6.

(i) The notices shall indicate that the individual may continue to provide services and receive payment for providing services for 20 calendar days in order to allow the recipient(s) adequate time to find and hire a new provider(s).

.922 The county shall retain the following information:

(a) The notification of subsequent arrest and/or disposition information that the county received from the Department of Justice; and

(b) A copy of the notice informing the individual of his/her ineligibility;

.93 The county shall follow Department of Justice procedures to notify the Department of Justice to terminate sending subsequent arrest notifications under the following conditions:

.931 When a county deems an individual ineligible to be enrolled as a provider, and the individual has exhausted all of his/her rights to appeal the ineligibility determination; or

.932 An individual who has been enrolled as a provider has stopped providing services for any recipient for a period longer than one year.

Authority cited: Sections 10553 and 10554, Welfare and Institutions Code.

Reference: Sections 12300, 12301.22, 12301.24, 12301.25, 12305.81, 12305.86, and 12305.87, Welfare and Institutions Code; Section 12168.7, Government Code; Sections 13040 and 13041, Unemployment Insurance Code; Immigration Reform and Control Act of 1986, Public Law 99-603 (8 United States Code Section 1324a); 26 United States Code Section 3402; 26 Code of Federal Regulation Section 31.3402(f)(2)-1(a).

Adopt Section 30-777 to read:

30-777 PROVIDER EMPLOYMENT ELIGIBILITY VERIFICATION 30-777

.1 The recipient, prior to hiring an individual to be his/her provider, shall verify that the individual is legally authorized to work in the U.S.

.11 Verification of the individual's authorization to work in the U.S. shall be accomplished by obtaining, completing, signing, retaining, and otherwise complying with all of the requirements contained in the most current version of U.S. Citizenship and Immigration Services' (USCIS) Employment Eligibility Verification (Form I-9).

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.111 The completed Form I-9 shall be retained by the recipient in such a manner as to protect the provider's confidential information, including but not limited to his/her social security number, address and telephone number.

.112 A copy of the completed Form I-9 shall also be retained by the county on behalf of the recipient. This copy shall also be retained in such a manner as to protect the provider's confidential information, including, but not limited to, his/her social security number, address, and telephone number.

.12 Information about Form I-9 requirements may be accessed on USCIS' web site at: http://www.uscis.gov/I-9.

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Authority cited: Sections 10553 and 10554, Welfare and Institutions Code

Reference: Immigration Reform and Control Act of 1986, Public Law 99-603 (8 United States Code 1324a).