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Regulation Package No. 0113-01

CDSS MANUAL LETTER NO. SS-15-01

TO: HOLDERS OF THE SOCIAL SERVICE STANDARDS MANUAL, DIVISION 30

Regulation Package #0113-01

Effective 01/01/15

Section 30-763

This manual letter has been posted on the Office of Regulations Development website at <http://www.cdss.ca.gov/ord/PG610.htm>.

The revisions in this manual letter resolve a discrepancy between regulation Section 30-763.453 and Welfare and Institutions Code section 12300(e). The current regulation limits when a parent provider can receive payment for providing In-Home Supportive Services (IHSS) to their minor child with whom they reside.

Current statute allows for parents meeting specific criteria to be paid parent-providers, with no restrictions for two-parent households. In the revised regulations, time is not automatically deducted from a parent-provider's IHSS hours when the non-provider parent is in the home. The revised regulations provide clarity and consistent direction to counties that is consistent with statute. Also, Sections 30-763.44 and 30-763.45 have been revised for clarity.

These regulations were considered at the Department's public hearings held on December 4, 2013.

FILING INSTRUCTIONS

Revisions to all manuals are indicated by a vertical line in the left margin. The attached pages are to be entered in your copy of the Manual of Policies and Procedures. The latest prior manual letter containing Social Service Standards Manual regulation changes was SS-09-01.

Page(s)

Replace(s) Page(s)

87 through 92

87 through 92

Attachments

EV

30-763**SERVICE AUTHORIZATION (Continued)****30-763**

- .44 When the recipient is under eighteen years of age and is living with the recipient's parent(s), who has a legal duty pursuant to the Family Code to provide for the care of his/her child, IHSS may be purchased from a provider other than the parent(s) when no parent is able and available to provide the IHSS services for any of the following reasons, and services must be provided during the inability or unavailability of the parent(s):
- .441 When the parent(s) is unavailable because of employment or is enrolled in an educational or vocational training program.
 - .442 If the parent(s) is physically or mentally unable to provide the needed IHSS services.
 - .443 When the parent is unavailable because of on-going medical, dental or other health-related treatment.
 - .444 When the parent(s) must be unavailable to perform shopping and errands essential to the family, search for employment, or for essential purposes related to the care of the recipient's minor siblings, IHSS may be purchased from a provider other than the parent(s) for up to eight hours per week to perform IHSS tasks necessary during the unavailability of the parent(s).
- .45 When the recipient is under eighteen years of age and is living with the recipient's parent(s), who has a legal duty under the Family Code to provide for the care of his/her child, the IHSS specified in Section 30-763.456 may be purchased from a parent under the following condition:
- .451 The parent has left full-time employment or is prevented from obtaining full-time employment because no other suitable provider is available and the inability of the parent to perform supportive services may result in inappropriate placement or inadequate care.
 - (a) For the purposes of this section, full-time employment means working an average of 40 or more hours per week regardless of worksite location. A parent providing IHSS-funded care to his/her own child is not full-time employment.
 - .452 For the purposes of Section 30-763.451, a suitable provider is any person who is willing, able, and available to provide the needed IHSS. A suitable provider who is a person having a duty pursuant to the Family Code need only be able and available to provide the needed IHSS; the person is only considered to be unavailable if that unavailability occurs during a time the recipient must receive a specific service, for the following reasons: employment, enrollment in an educational or vocational training program, or employment searches.

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- .453 Example: Both parents are employed full-time. Their minor child is eligible to receive IHSS. One parent leaves his full-time job in order to provide IHSS to the child; the other parent retains full-time employment. If the other requirements in Section 30-763.451 are met, IHSS may be purchased from the parent who left his job since he left full-time employment to provide IHSS to the child.
- .454 Example: When one parent is employed full-time and the other parent, who has never been employed, is at home, able and available to provide IHSS.
- (a) When the employed parent left his/her job to provide IHSS to his/her child, IHSS could not be purchased from that parent since the conditions pursuant to Section 30-763.451 are not met because the other parent is a suitable provider.
 - (b) When the employed parent did not leave full-time employment, the non-working parent may qualify as a paid provider only if that parent is prevented from obtaining full-time employment in order to provide IHSS to the child and other requirements pursuant to Section 30-763.451 are met. When the non-working parent cannot be employed full-time for reasons other than the need to provide IHSS to the child, the non-working parent does not qualify as a paid provider.

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- .455 A parent provider who meets the requirements in Section 30-763.451 shall be paid for performing authorized services regardless of the presence of the other parent in the home, including non-work hours, weekends, and holidays.
- .456 The IHSS provided shall be limited to:
- (a) Related services, as specified in Section 30-757.13.
 - (b) Personal care services, as specified in Section 30-757.14.
 - (c) Accompaniment when needed during necessary travel to health-related appointments or to alternative resource sites, as specified in Section 30-757.15.
 - (d) Protective supervision, as specified in Section 30-757.17, limited to protective supervision needed because of the functional limitations of the recipient. This service shall not include routine child care or supervision.
 - (e) Paramedical services, as specified in Section 30-757.19.

30-763 **SERVICE AUTHORIZATION (Continued)** **30-763**

- .457 A recipient's parent(s) is not eligible to be an IHSS provider to his/her minor child under the Personal Care Services Program pursuant to Welfare and Institutions Code section 14132.95(f).
- .46 When the recipient is a parent living with his/her child(ren) who is under fourteen years of age and who is not eligible or does not need IHSS.
 - .461 The recipient's need for domestic and heavy cleaning services in common living areas, and for related services shall be assessed as if the child(ren) did not live in the home.
 - .462 The child(ren)'s needs shall not be considered when assessing the need for services, including domestic or heavy cleaning in areas used solely by the child(ren).
- .47 Live-in Providers:
 - .471 Domestic and heavy cleaning services shall not be provided in areas used solely by the provider. The need for related services may be prorated between the provider and the recipient, if the provider and the recipient agree. All other services shall be assessed based on the recipient's individual need, except as provided in Sections 30-763.33 and .34.
- .5 Having estimated the need according to Sections 30-763.1 and .2, and after making the adjustments identified in Sections 30-763.3 and .4 as appropriate, the remaining list of services and hours per service is the total need for IHSS services.
- .6 Identification of Available Alternative Resources
 - .61 Social services staff shall explore alternative in-home services supportive services which may be available from other agencies or programs to meet the needs of the recipient as assessed in accordance with Section 30-761.26.
 - .611 Social services staff shall arrange for the delivery of such alternative resources as necessary in lieu of IHSS program-funded services when they are available and result in no cost to the IHSS program or the recipient except as provided in Section 30-763.613.

SOCIAL SERVICES STANDARDS

30-763 (Cont.)

SERVICE PROGRAM NO. 7: IN-HOME SUPPORT SERVICES

Regulations

30-763

SERVICE AUTHORIZATION (Continued)

30-763

- .612 The IHSS program shall not deliver services which have been made available to the recipient through such alternative resources, except as provided in Section 30-763.613.
 - .613 In no event shall an alternative resource be used at the financial expense of the recipient, except:
 - (a) At the recipient's option; or
 - (b) When the recipient has a share of cost obligation which shall be reduced by the amount necessary for the purchase of the alternative resource.
 - .62 Social services staff shall explore with the recipient the willingness of relatives, housemates, friends or other appropriate persons to provide voluntarily some or all of the services required by the recipient.
 - .621 Social services staff shall obtain from the recipient a signed statement authorizing discussion of the case with any persons specified in Section 30-763.62.
 - .622 Social services staff shall not compel any such volunteer to provide services.
 - .63 Social services staff shall document on the needs assessment form the total need for a specific service, which shall then be reduced by any service available from an alternative resource. The remaining need for IHSS is the adjusted need.
 - .64 Social Services staff shall obtain a signed statement from the provider(s) of record or any other person(s) who agrees to provide any IHSS/PCSP compensable service voluntarily. The statement [Form SOC 450 (10/98)] shall indicate that the provider(s) knows of the right to compensated services, but voluntarily chooses not to accept any payment, or reduced payment, for the provision of services. (See MPP Section 30-757.176 for information regarding the voluntary services certification form).
- .7 The Determination of Services Which Shall be Purchased by IHSS
- .71 Services shall be authorized to meet all of the adjusted need for IHSS up to the appropriate service maximum identified in Section 30- 765.
 - .72 These services shall not be authorized concurrently with the SSI/SSP nonmedical out-of-home care living arrangement.
- .8 Notice of Action

30-763 **SERVICE AUTHORIZATION (Continued)** **30-763**

- .81 Whenever an IHSS needs assessment is completed the recipient shall be sent a notice of action in accordance with the requirements of MPP 10-116 and 30-759.7. In addition to the information required in 10- 116, the notice shall include:
- .811 a description of each task for which need is assessed.
 - .812 the number of hours authorized for the completion of the task.
 - .813 identification of hours for tasks increased or decreased and the difference from previous hours authorized.
- .9 Miller vs. Woods and Community Service Center for the Disabled vs. Woods.

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.91 Background

On October 21, 1983 the Court of Appeal, Fourth Appellate District, issued a decision in the consolidated case of Miller vs. Woods and Community Service Center for the Disabled vs. Woods. The court declared invalid MPP 30-463.233c (now 30-763.233c) which provided that no need for protective supervision may be assessed when a housemate is in the home.

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.92 Case Review Procedures

- .921 The county shall identify no later than June 30, 1984 all open IHSS cases with recipients living with a housemate where a need for protective supervision as defined in 30-757.17 may exist.
- .922 The county shall determine through recipient contact whether a need for protective supervision exists unless the case record provides conclusive evidence which indicates that no need exists.

.93 Authorization and Notification

- .931 The county shall complete a new Needs Assessment form to authorize protective supervision. The authorization shall be effective as of May 1, 1984.

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.932 The county shall send a Notice of Action to all affected recipients which shall state: "Hours for protective supervision are authorized based on the Miller vs. Woods and Community Service Center for the Disabled vs. Woods court action."

.94 Recordkeeping

.941 The county shall maintain a listing of those recipients who were previously not authorized to receive protective supervision because of the presence of a housemate.

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.942 DSS will provide each county with a computer generated listing which identifies any recipient whose address matches the address of an Individual Provider. The listing should be used as an aid and cross-check in the case review process; the listing is not a substitute for the case review.

.943 For those recipients with an Individual Provider, the listing in Section 30-763.941 will be generated through use of a special reason code indicating increased hours due to the Miller vs. Woods court decision.

HANDBOOK ENDS HERE

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code; and Assembly Bill 1773, Chapter 939, Statutes of 1992. Reference: Sections 12300, 12309, and 14132.95, Welfare and Institutions Code; the State Plan Amendment, approved pursuant to Section 14132.95(b), Welfare and Institutions Code; and Miller v. Woods/Community Services for the Disabled v. Woods, (1983) 148 Cal.App.3d. 862.