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STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF SOCIAL SERVICES
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EDMUND G. BROWN JR.
GOVERNOR

December 1, 2015

ALL COUNTY LETTER 15-97

REASON FOR THIS TRANSMITTAL

- State Law Change
- Federal Law or Regulation Change
- Court Order
- Clarification Requested by One or More Counties
- Initiated by CDSS

TO: ALL COUNTY WELFARE DIRECTORS
IN-HOME SUPPORTIVE SERVICES PROGRAM MANAGERS
PUBLIC AUTHORITY EXECUTIVE DIRECTORS

SUBJECT: IMPLEMENTATION OF PROVISIONS OF SENATE BILLS 855
AND 873 (CHAPTERS 29 AND 685, STATUTES OF 2014)
RELATING TO THE IHSS AND WAIVER PERSONAL CARE
SERVICES PROGRAMS

REFERENCE: SB 855; SB 873; ACL 14-76; ACL 14-35; ACL 13-66; ACL 12-19;
ACL 12-55.

This All County Letter (ACL) notifies counties of the upcoming implementation of provisions that establish limits on the number of authorized hours providers in the In-Home Supportive Services (IHSS) and Waiver Personal Care Services (WPCS) programs are permitted to work in a workweek. This ACL also serves to notify counties of the responsibility to implement the overtime and travel compensation requirements effective February 1, 2016.

Background

On October 1, 2013, the United States Department of Labor (DOL) published the Final Rule on the Application of the Fair Labor Standards Act (FLSA) to Domestic Service (RIN 1235-AA05). The Final Rule extends the protections of the FLSA to these workers by effectively removing “third party” agencies from claiming an exemption for personal care workers from minimum wage and overtime pay as providers of “companionship services” or as live-in providers. The final rules additionally narrows the definition of “companionship services” to strictly “fellowship and protection” that may include

provision of care (i.e., assistance with Activities of Daily Living and Instrumental Activities of Daily Living only if the care is provided as part of the fellowship and protection and does not exceed twenty percent of the total hours worked per person and per workweek).”

Current requirements under FLSA remain the same and are now applicable to IHSS providers’ travel time compensation when IHSS providers travel between recipients and wait time during medical accompaniment.

Senate Bill (SB) 855 added section 12300.4 to the Welfare and Institutions Code to specify that IHSS and/or WPCS providers are limited to working no more than a specified maximum number of hours in a workweek. This section also limits providers to travel no more than 7 hours each week when travel is utilized for providing services for multiple recipients on the same day. The term “workweek” is defined in statute as the period beginning at 12.00 a.m., on Sunday and including the next consecutive 168 hours terminating at 11:59 p.m., the following Saturday. SB 855 also requires that each recipient’s monthly hours be divided into a weekly authorized number of hours.

State Responsibilities

Beginning December 5, 2015, the California Department of Social Services (CDSS) will send out informational notifications, instructions and applicable forms to all IHSS recipients and providers to inform them of the overtime and travel time requirements. CDSS will also provide copies of samples of these documents to counties and provide guidance and instruction regarding the changes made to policies governing overtime and travel time via an All County Letter to be released in December. Funding has been made available for counties to support the hiring of additional staff for the implementation activities related to these new program requirements.

County Responsibilities

It is imperative that counties are equipped with the necessary resources to ensure success of FLSA implementation. Counties will be responsible for implementing and enforcing the overtime requirements, travel time and wait time compensation limits. Counties will be required to hire additional staff to support all operational/administrative activities to effectively implement the new statute, including but not limited to:

- Familiarizing IHSS county staff with updated procedures and revised forms,
- Providing outreach and additional assistance to IHSS recipients to ensure that they understand the implications of the new requirements and that they take all the necessary steps to successfully comply with statutes,

- Ensuring IHSS providers understand their obligations under the workweek limitations, and
- Developing a process to assist recipients and providers in preparing the necessary forms.

The workweek limitation will represent a significant change for recipients, especially those accustomed to having all of their authorized services provided by a single individual, such as a relative provider, and who may now require multiple providers in order to remain within the new provider workweek limitations. Counties are expected to work with their public authorities to facilitate and complete outreach activities for the purpose of increasing the provider registries and hiring additional providers.

Counties are expected to destroy previously collected overtime forms and workweek agreements in a manner which protects the confidentiality of the information contained on the documents. Data which had been entered into the Case Management, Information and Payrolling System (CMIPS) pertaining to this information will be deleted.

Should you need further information, please direct all questions or requests for clarification regarding this notice to the Policy and Operations Bureau, Adult Programs Division at (916) 651-5350.

Sincerely,

Original Document Signed By:

EILEEN CARROLL
Deputy Director
Adult Programs Division