

## IHSS FAIR HEARING AND SELF-ASSESSMENT PACKET

### Introduction

This information packet is intended to help you represent yourself and others in fair hearings when there is a dispute about the number of In-Home Supportive Services (IHSS) or Medi-Cal personal care services (PCS) hours you need. This information packet will also help you prepare for the County IHSS worker's initial intake assessment or the annual review. References to IHSS in this packet usually refer to *both* IHSS and the Medi-Cal PCS Programs.

Doing a self assessment will help you figure out how many hours you think you need and what to point out to the worker who does the assessment. This guide does not cover everything about how the IHSS program works. For more information about the IHSS program, call Disability Rights California and ask for *What About IHSS?*, Disability Rights California Publication number 5168.01. Please feel free to call us if you have questions about other areas this guide does not cover: relationship between Veteran's Aid and Attendance and IHSS, unmet needs, respite care, "overpayments", etc.

There are four parts to the packet.

1. The first part explains how to prepare for an assessment, how to ask for and prepare for a hearing, and what to expect at a hearing.
2. The second part is a collection of reasons IHSS recipients have used to explain why they need more IHSS time.
3. The third part contains fact sheets on specific IHSS services: IHSS for children, Protective Supervision, Paramedical Services, and IHSS for people with psychiatric disabilities.
4. The fourth part is a worksheet for figuring out the hours you need.

**NOTE:** This document is updated regularly. Please be sure you have the most recent version. **NOTE ALSO:** This document is not complete without the October 2006 update (see following 8 pages), which includes changes in the IHSS program since June of 2002.

**Disability Rights California encourages reproduction of this document.**

## IHSS Changes You Should Know About

This is a summary of the changes in the IHSS program since the IHSS Packet was last updated in 2002. In some of the sections below we refer to Department of Health Services All County Letters (DHS ACLs). These can be found here: <http://www.dhs.ca.gov/mcs/mcpd/MEB/ACLs/> We also refer to Department of Social Services All County Letters (DSS ACLs) and All-County Information Notices (DSS ACINs). Those can be found here: <http://www.dss.cahwnet.gov/lettersnotices/default.htm> and then click on “ACLs” or “ACINs” and then the year. The IHSS regulations at 30-700 through 30-776 are found here: [http://www.dss.cahwnet.gov/ord/CDSSManual\\_240.htm](http://www.dss.cahwnet.gov/ord/CDSSManual_240.htm)

## **Background**

Changes have been made in how IHSS is funded. Most IHSS services were part of the Medi-Cal program with half paid by the federal government and half with State and county funds. However some services and cases were only State and county funded. The recent changes brought under Medi-Cal most of the services and cases that before were only funded by State and County funds under the original residual IHSS program. Now half of the costs for those services and cases are federally funded. There are now *three* IHSS programs: (1) The original residual Program (very few people remaining under this program); (2) The Independence Plus Waiver (Welf. & Inst. Code § 14132.951); (3) Medi-Cal Personal Care Services Program (Welf. & Inst. Code § 14132.95).

## **Protective Supervision Services and Cases Where Only Domestic and Related Services are Authorized are Now Covered Under Medi-Cal.**

The change is retroactive to May of 2004. Before cases where only domestic and related services were authorized were covered under the original residual IHSS program. Before hours authorized for protective supervision were only covered under the original residual IHSS program.

The Medi-Cal program distinguishes between severely and nonseverely impaired (Packet at page 6) when authorizing protective supervision hours. If you are nonseverely impaired, you cannot be authorized more than 195 protective supervision hours in a month. The total maximum hours you can receive for all services is 283 hours in a month whether you are severely or nonseverely impaired. If you are nonseverely impaired, you will be authorized 195 hours for protective supervision plus the other hours authorized or the difference between your other hours authorized and 283, whichever is less. DHS ACL 05-21, DSS ACL 96-13, DSS ACIN 1-14-05.

*Example:* The county determines you need protective supervision. The county authorizes 70 hours for services other than protective supervision and determines that you are nonseverely impaired. You would be authorized a total of 265 hours – 70 hours plus 195 protective supervision hours. If you instead had been authorized 100 hours for services

other than protective supervision, then the total hours you would be authorized is 283 because that is the maximum number of hours that can be authorized in a month.

### **New Share of Cost Rules**

For IHSS recipients whose countable income after allowable deductions is above the Aged & Disabled Federal Poverty Level (A&D FPL) ceiling<sup>1</sup> and who therefore qualify for Medi-Cal under the Aged-Blind-Disabled Medically Needy (ABD MN) program, the State pays part of the share of cost so that IHSS recipients pay down to the SSI/SSP grant level rather than down to the lower maintenance need allowance (\$600 for individuals and \$934 for couples) under the ABD MN program. Before the State would pay for part of the share of cost only if you met your share of cost by paying your IHSS providers. That has changed so that now you can pay (or incur an obligation to pay) for any needed service including health plan premiums and services that may not be available under Medi-Cal (like extra physical therapy). At the time the provider is to be paid for the first half of the month, your records will be checked so that any unused share of cost will be counted then. Both you and the provider will get a notice about that month's share of cost, if any. DSS ACL 06-13; DHS ACL 05-21.

### **The Independence Plus Demonstration Waiver (IPW) Approved**

Before there were certain IHSS cases that could not be covered by Medi-Cal because of federal Medicaid rules. Those were cases where the provider was the parent of a child under age 18 or the spouse, where there was advance pay, or where someone got a meal allowance instead of time authorized for meal preparation and food shopping. These cases are now covered by Medi-Cal under the Demonstration Waiver.

All of the rules that apply to the original residual program also apply under the demonstration waiver. However some program rules changed because of the switch to Medi-Cal:

- (1) Some who paid a share of cost for IHSS no longer do so: Persons who qualify for Medi-Cal with no share of cost under the A&D FPL Program; children who qualify for Medi-Cal with no share of cost because the income of a stepparent is not counted under Medi-Cal as it was under the original residual IHSS program; persons who qualify for Medi-Cal without a share of cost under the Pickle program for persons who used to receive SSI but are not eligible now because their Social Security disability or retirement income went up faster than the SSI grant.
- (2) Children and spouses who qualify for Medi-Cal through institutional deeming under a home and community based waiver (like the waiver administered by

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<sup>1</sup> That ceiling in 2006 is \$1047 and goes up in April of each year. For more information about the A&D FPL program: <http://www.pai-ca.org/pubs/545001.pdf>

regional centers) also can qualify for IHSS services provided by a parent or spouse, including protective supervision services where authorized.

In addition, the provider income received by the spouse or parent will not count under any Medi-Cal program. The parent's provider income remains Medi-Cal exempt until the child reaches age 21. However, there are no longer split cases because of requirements under the demonstration waiver. That means that no more than 195 hours a month total can be authorized for a nonseverely impaired IHSS recipient who receives services from both a spouse and someone else or from both the parent of a minor and someone else. DHS ACLs 05-21, 05-26, 05-29, 06-04, 06-19; DSS ACLs 05-05, 05-05E; DSS ACIN 1-28-06.

### Medi-Cal No Longer Comes Automatically When You Qualify For IHSS; Separate Medi-Cal Applications Required

Before when you applied for IHSS and were found eligible under the original residual program, you automatically were found eligible for Medi-Cal. Now if you are one of the few people only eligible for IHSS under the original residual IHSS program, you will separately apply for Medi-Cal. The application will be handled by a County Medi-Cal eligibility worker, not by a County IHSS social worker.

Before if you applied for IHSS covered by Medi-Cal and you were not already a Medi-Cal recipient, the County IHSS social worker would handle both your application for IHSS and your application for Medi-Cal. Now Medi-Cal applications are only handled by County Medi-Cal eligibility workers.

Before if you qualified for IHSS with a share of cost you received only one notice of action about your share of cost under the IHSS program. Now you will receive two notices of action: one notice of action will come from the Medi-Cal program to tell you your share of cost under the Medi-Cal ABD MN program; another notice of action will come from the IHSS program to tell you your share of cost as a recipient of IHSS. The IHSS share of cost is the amount you have to pay (or incur an obligation to pay) after the state pays the difference between the Medi-Cal maintenance need level and the higher applicable SSI/SSP grant level. DHS ACL 05-21; DSS ACL 05-05.

### **Expanded Time-for-Task Guidelines & Role of Functional Assessments**

New regulations effective September 1, 2006, establish guideline ranges of time that may be authorized for personal care tasks and for meal preparation and cleanup unless there is a reason for authorizing more – or less – and the reason is documented in the file. Prior to these regulations, county IHSS social workers did a home visit and determined how many hours a person needed for meal preparation and clean-up and for personal care tasks. Most counties used to use some sort of guidelines for determining the number of hours to authorize for meal preparation and clean up and for personal care tasks even though those

guidelines were illegal. Now the county social workers will be using the regulation guidelines and how you are ranked in the functional assessment as a guide when determining the number of hours to authorize for particular tasks. Now if a county social worker determines you need more – or fewer – hours than those listed in the guideline range, the county social worker is instructed to reevaluate his or her assessment of time needed. If the hours are still outside the range, the social worker must document in the case file why the consumer needs hours outside the range.

Because county IHSS social workers generally have caseloads of 300-500 consumers (depending on the county), the incentive is not to find an IHSS recipient needs more time than that provided in the guideline regulations. It is therefore extremely important that the consumers and their providers write down in detail the care provided for at least two weeks if possible before the county IHSS social worker comes to make an initial assessment or a reassessment. With the diary log setting out in detail your daily care needs, you will be able to identify any task where you need more time than that provided in the guidelines and you will be prepared to explain why. If the next visit by the county IHSS social worker is for a reassessment, review the number of hours currently authorized for particular tasks. If the time authorized is outside the range for any task, be prepared to explain your need. Further, some of the time authorized in a particular category may be time that should be assigned to another category. For instance, the time for assistance to and from the bathroom should be included under ambulation but may have been included under “bowel and bladder care.”

The guideline ranges vary by how the person is ranked in terms of the functional assessment. *See* Attach. B to DSS ACL 06-34E. The guideline range is not expressed in minutes but 10ths of an hour – see page 3 of the Packet - with 30 minutes shown as .50 of an hour. The guideline ranges cover a week so to get the daily amount allowed, divide by 7.

The existing guidelines for domestic services, laundry services, food shopping and other errands are unchanged (though regulation numbers changed) except that the task of wheelchair cleaning and battery recharging was added to “miscellaneous domestic.”

Guideline ranges were adopted for the following services:

- (1) Meal Preparation – 3.02 to 7.00, MPP 30-757.131.
- (2) Meal Cleanup – 1.17 to 3.50, MPP 30-757.132. Meal cleanup does not include general cleaning of the refrigerator, stove, oven, counters, sink which is covered under “domestic services.”
- (3) Bowel and bladder care - .58 to 8.00, MPP 30-757.14(a). Help getting to and from the bathroom is covered under ambulation; to and from commode in same room covered under transfer; enemas, catheters, suppositories, digital stimulation, colostomy and similar tasks are covered under paramedical.

- (4) Feeding - .70 to 9.33, MPP 30-757.14(c). Cutting up or pureeing food is covered under meal preparation.
- (5) Routine bed baths - .50 to 3.50, MPP 30-757.14(d).
- (6) Bathing, oral hygiene and grooming - .50 to 5.10, MPP 30-757.14(e).
- (7) Dressing & undressing - .56 to 3.50, MPP 30-757.14(f).
- (8) Repositioning & rubbing of skin including turning in bed - .75 to 2.80, MPP 30-757.14(g). Excludes care for pressure sores (decubiti) which is covered under paramedical services.
- (9) Transfer including help going from standing, sitting, prone to another position or to or from bed, chair/stairglide/walker, couch, etc., in the same room - .50 to 3.50, MPP 30-757.14(h). Help on or off commode is covered under “bowel and bladder.”
- (10) Care of and assistance with prosthetic devices (brace, hearing aid, glasses) and assistance with self-administration of medications - .47 to 1.12, MPP 30-757.14(i).
- (11) Routine menstrual care - .28 to .80, MPP 30-757.14(j).
- (12) Ambulation including moving from place to place within home, moving or retrieving assistive devices like a walker, cane, wheelchair, assistance from front door to vehicle and from vehicle to medical appointment or alternative resource - .58 to 3.50, MPP.30-757.14(k).

DSS ACLs 06-34, 06-34E (use updated Attach. B, C, D from 06-34E).

### **Quality Assurance, Quality Improvement, Fraud Detection**

State law requires that the State and county take steps to monitor quality of services including through home visits to see if the services authorized are being provided, if any of the services authorized are not needed, if there are needs for which hours were not authorized. *See* DSS ACL 06-35, the new quality assurance regulations at Attachment A; DSS ACL 06-35E, the IHSS Quality Assurance/Quality Improvement Manual at Attachment C. Among the things the County will be doing to detect fraud is reviewing Medi-Cal charges to see if providers were paid for days the IHSS recipient was in a hospital or nursing facility. (While you are not eligible for IHSS – except for waiver personal care services authorized under a nursing facility waiver - for days you are in a medical facility, some time should be authorized for the day you go in and the day you come out.)

The Manual at page 37 suggests **targeting providers working more than 300 hours a month** when providing services to more than one IHSS recipient to see whether the provider is working all the hours authorized, whether claiming the same hours for two

IHSS recipients, and whether the quality of the services is compromised in light of the total number of hours worked. The Manual acknowledges that working over 300 hours a month – not uncommon for a live-in provider with two or more IHSS recipients – is not illegal. Once it has been established that there is no fraud, that the IHSS recipients' needs are fully and appropriately met, that the hours authorized are being delivered, and that there is no duplication in the hours authorized, then the county should move on to someone else.

### **Additional IHSS Hours May Be Authorized Under a Home & Community Based Waiver for Persons Who Would Otherwise Qualify for Care in a Nursing Facility or Subacute Nursing Facility.**

For more information about qualifying for supplemental waiver personal care services, go here: <http://www.disabilityrightsca.org/pubs/539201.htm>. If you are temporarily in a hospital or nursing facility, your providers of supplemental waiver services will be paid for up to 7 days.

### **Paramedical Forms**

Request for Order and Consent – Paramedical Services  
<http://www.dss.cahwnet.gov/pdf/SOC321.pdf>

Assessment of Need for Protective Supervision for  
In-Home Supportive Services Program  
<http://www.dss.cahwnet.gov/pdf/SOC821>

Protective Supervision 24-Hours-A-Day Coverage Plan  
<http://www.dss.cahwnet.gov/pdf/SOC823.pdf>

All IHSS forms can be found at  
[http://www.dss.cahwnet.gov/cdssweb/FormsandPu\\_271.htm](http://www.dss.cahwnet.gov/cdssweb/FormsandPu_271.htm).

The forms can be filled out on line and then printed even though the filled-in version cannot be saved on line.

When your doctor's office fills out paramedical form SOC 321 (11/99), make certain the time allowed includes preparation, cleanup and compliance with universal precautions. Universal precautions include the hand washing and/or use of gloves or mask whenever you touch bodily fluids and waste (urine, feces, blood, vaginal secretions, semen, pus, saliva) or handle laundry or clothing or other things soiled with bodily fluids or waste, See Packet at pages 3 and 13 and MPP 30-757.1(a)(1)(A)1.

### **Protective Supervision Forms**

Attached SOC 821 (3/06) is to be filled out by the doctor or psychologist or therapist to verify need for protective supervision and that the need for protective supervision is

because of a mental impairment. See Packet at pages 15-20. The explanation after the address block is confusing so make certain the doctor is not confused: Re (1), the risk of injury may be related to a physical condition such as hemiplegia from a stroke but the need for protective supervision is because the mental impairment means the IHSS recipient does not understand what he can or cannot do. Without protective supervision the recipient would be at risk of injury from trying to do things beyond his capabilities. Re (3), an IHSS recipient may need protective supervision because of a medical condition (Alzheimer Syndrome, stroke, brain injury), and is entitled to get it unless the intervention is medical – i.e., something that would be done only by a nurse if in a medical facility.

Also attached is SOC 825 (6/06) the form to be filled out to show how the around-the-clock protective supervision will be provided. Note that the regulations say protective supervision may be met in part by a “reassurance phone service when feasible and appropriate.” See Packet at page 19. DSS ACIN 1-21-06.



## I. THE ASSESSMENT AND FAIR HEARING PROCESS

### A. The assessment

When you first apply for IHSS, at least once per year, and any time you request it, you will have a county assessment. The county worker will come to your home and determine which IHSS services you are eligible for and how many hours you will receive per month. The county should do the assessment within 30 days of your request.

#### 1. How to Measure IHSS Need

##### a. Statutory and Regulatory Standard

The general standard for measuring individual need for IHSS services (assuming the person with a disability is unable to perform the needed services because of his or her disability)<sup>2</sup> is set out in Welfare and Institutions Code Section 12300. The person with a disability is entitled to receive the services needed to enable him or her (1) to remain safely in his or her own home or in the abode of his or her own choosing, and/or (2) to establish and maintain an independent living arrangement. The time that will be authorized is based on the time it takes your provider to do the tasks authorized. No time will be authorized for services that are solely for the "comfort" of the IHSS recipient. The maximum number of hours is 283 per month.

##### b. State Time-for-Task Guidelines

There are certain state "time-for-task" guidelines:

- i. domestic services, 6 hours a month;
- ii. laundry if facilities are in the building, 1 hour per week;
- iii. laundry if you have to go outside the building, 1-1/2 hours per week;
- iv. grocery shopping, 1 hour per week;
- v. other errands, 30 minutes per week.

Typically, the time-for-task guideline will be reduced if there is more than one person in the household. For instance, in a family of four the disabled person's pro rata share of the domestic services would be 1.5 hours per month.

***The regulations recognize that time-for-task guidelines may be used only if appropriate for meeting a recipient's individual circumstance.*** Part II of this packet provides illustrations about when the guidelines are not appropriate because of individual circumstances.

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<sup>2</sup> You are unable to perform the needed services if the performance causes pain.

c. Diary Log

A key part of preparing for a fair hearing or for an evaluation by the County IHSS worker is a diary log of just what is done each day and how long each task takes. We find that people often do not realize all the tasks involved in care and the length of time the tasks take. For instance, if there are bathroom accidents, the clean-up time (which is part of bowel and bladder care) is not just the time for cleaning, but also the time it takes to take out the cleaning supplies and put them away again. If bodily fluids or bowel movements are involved, you need to include the extra time involved in complying with universal precautions. Further, the time involved in certain tasks may vary from day to day. For instance, it may take twice as long one day to dress a person with spastic quadriplegia cerebral palsy as it does the next day because of differences in limb flexibility. The IHSS authorization will be based on an average time, so it is important to know the range of time a task may take.

## 2. Doing Your Own Assessment

Before the hearing, complete the IHSS worksheet in section IV. The worksheet, like the County assessment form, is based on a one-week period except for the entry for domestic services which is for a month. Hours are calculated in 10ths:

.05 =	03 minutes	.40 =	24 minutes	.80 =	48 minutes
.08 =	05 minutes	.42 =	25 minutes	.83 =	50 minutes
.10 =	06 minutes	.45 =	27 minutes	.85 =	51 minutes
.15 =	09 minutes	.50 =	30 minutes	.90 =	54 minutes
.17 =	10 minutes	.55 =	33 minutes	.92 =	55 minutes
.20 =	12 minutes	.58 =	35 minutes	.95 =	57 minutes
.25 =	15 minutes	.60 =	36 minutes	1.00 =	60 minutes
.30 =	18 minutes	.65 =	39 minutes	2.00 =	120 minutes
.33 =	20 minutes	.70 =	42 minutes	3.00 =	180 minutes
.35 =	21 minutes	.75 =	45 minutes	4.00 =	240 minutes
				5.00 =	300 minutes

We find it easier to do the calculations if you count by minutes and then translate the hours and minutes into tenths. For instance, if the time assisting on and off the commode and holding while on the commode to prevent falls, plus related tasks such as hand washing, averages 6 minutes each time, and the usual frequency is 5 times a day on weekdays when away at school or at training program and 7 times a day on weekends,

the weekly time would be  $(5 \times 6 \text{ min.} \times 5 \text{ days}) + (7 \times 6 \text{ min.} \times 2 \text{ days}) = 234 \text{ minutes} = 3 \text{ hours } 54 \text{ minutes} = 3.9 \text{ hours}$ .

Finally, on a separate piece of paper you need to write down the reasons why you believe you need more IHSS time. To help you, section II of this packet is a listing of "Reasons Why More IHSS Time Is Needed" that we have seen in individual cases. Some of these reasons may apply in your case.

### **3. Getting Ready for the County Assessment**

The County worker's purpose for the home visit is to determine what an IHSS recipient or applicant can or cannot do for himself or herself and, therefore, what services are needed and the time necessary to perform those services. Your job is to help the County worker understand all your care problems and special care needs and what they mean in terms of time. It is important to be frank and open. Do not minimize your disability problems and care needs because you may end up not getting the hours you need. Even though you may feel embarrassed doing so, it is important to explain things fully so that the County worker understands your situation.

Before the County IHSS worker arrives, we recommend that you fill in the IHSS worksheet in section IV with the hours you think you need. (Remember, the County is going to authorize only what you really need and will not allow extra time for "comfort" services. An example of a comfort service is extra dusting to make things look nice.) You should be prepared to explain your worksheet hours: what tasks are performed, how you determined the time each takes, what special factors need to be taken into consideration, and, if relevant, why the state time-for-task guidelines are not appropriate for your circumstances. You may wish to make a list so that you will not forget anything.

You should be prepared to explain how you determined the hours needed, particularly if there are differences between what the County authorized before and what you believe you need now.

As part of the County's evaluation process, your treating physician will be sent a form asking for information about your capacity for self-care, your functional abilities/disabilities, and — relevant to a determination of the need for protective supervision — your mental condition. If you need paramedical services, a paramedical form will be sent to the treating physician. You should alert the clinic or physician's office that it is coming so that you can participate in the form completion.

### **4. Documenting Special Needs**

Get documentation verifying special needs — for instance, a note from your physician explaining that you need a dust-free environment because of allergies or pulmonary/respiratory problems, a note verifying bowel and bladder problems, or a need to have bed linens changed more than twice a month. If you need range-of-motion

exercises or other physical therapy, or shots, or catheterization, or suctioning, etc., get the forms from your County IHSS worker for doctor/therapist verification of need and authorization for **paramedical** services.

## **5. IHSS versus Medi-Cal Personal Care Services Program (PCSP)**

IHSS and PCSP operate as a single program. The Medi-Cal statute that covers Medi-Cal personal care services says that IHSS rules are to be followed when authorizing services. Welf. & Inst. Code § 14132.95(i). When people say “IHSS” they usually mean both IHSS and the Medi-Cal PCSP. Most people’s services are covered by the Medi-Cal PCSP where the federal government pays for half the cost of services – just as the federal government pays for half the cost of other Medi-Cal services. If the services are being provided by the spouse or the parent of a minor, or if there is advance pay, the services are covered under just IHSS because of federal Medicaid rules. Protective supervision services are also covered only under IHSS. There is a difference only in limited circumstances: If someone has income too high to qualify for SSI but can qualify for Medi-Cal with no share of cost under the Aged & Disabled Federal Poverty Level Program or as a “Pickle”, that person probably would have a share of cost if he or she elected to receive advance pay. If someone qualified for Medi-Cal under one of the Nursing Facility Waivers or under the Waiver for Persons with Developmental Disabilities, that person would not qualify for services provided by a spouse or, if a minor, a parent.

## **6. When the Person with a Disability Is Married**

If the person with a disability is living with a spouse, the spouse or anyone else may be the paid IHSS provider of non-medical personal services (see category 4 on the enclosed worksheet form) and paramedical services. If the spouse leaves full-time employment or is prevented from obtaining full-time employment because no other suitable provider is available and, as a result, there is a risk of inappropriate, out-of-home placement or inadequate care, the spouse also may be paid to provide protective supervision and to accompany the disabled recipient as necessary to medical appointments. If the spouse is not able or available, these and the other IHSS services may be provided by others. "Not available" includes time when the spouse is out of the home because of work or for other necessary reasons, or when the spouse is sleeping or meeting the needs of other family members.

## **7. "Severely Impaired"**

To determine whether you qualify as a "severely impaired" recipient, add up the "essential" service categories labeled on the worksheet with an asterisk (\*). If they total

20 hours or more a week (including services not provided through IHSS)<sup>3</sup> you qualify as severely impaired.

If you are severely impaired, you are entitled to (a) secure your own IHSS or Medi-Cal Personal Care Services provider even in contract agency counties and (b) advance payment so that you may pay your workers rather than waiting for the state computer to pay them afterwards.

If you have been determined to need protective supervision, how many protective supervision hours you receive will depend on whether or not you are “severely impaired.”

If you are determined *not* to be severely impaired and you receive Medi-Cal personal care services, you will receive up to 195 hours of protective supervision a month provided your protective supervision hours and your Medi-Cal personal care services hours do not exceed 283. If they do, your protective supervision hours will be reduced so the total is not more than 283 hours. If you are not eligible for any Medi-Cal personal care hours but only IHSS hours because your provider is your spouse or your parent if you are a minor or you receive advance pay, then your total hours cannot exceed 195 hours a month.

If you are determined to be severely impaired, then your protective supervision hours will be the difference between your other hours (whether or not under Medi-Cal or the residual IHSS program) and 283 hours.

## **B. The fair hearing process**

### **1. How to Ask for a Hearing**

If you are challenging a reduction in hours or a termination of services, you must request a fair hearing within 10 days of the date on the cutback notice, or before the reduction goes into effect, in order to continue receiving all your hours until the hearing is over.

If you believe you have not been allowed enough hours, you may challenge the county’s decision at any time. However, the Administrative Law Judge or ALJ may only give you an increase in hours for up to the three months prior to your hearing request. If you ask for a hearing April 15, the ALJ can go back to January 1. (You always have the right to ask your worker to reassess you to see if he or she agrees you need more hours. If your worker agrees, then you do not need to go to a hearing.)

To request a hearing:

Fill out the back of the notice of action form and send to the address indicated, or

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<sup>3</sup> A proper assessment identifies services provided through alternate resources — such as assistance with bowel and bladder care provided at a day program. To determine whether or not someone qualifies as severely impaired, you count both the service hours to be paid through IHSS and service hours provided at no cost to the IHSS program.

Send a letter to:

IHSS Fair Hearing  
State Hearings Division  
Department of Social Services  
744 P Street, Mail Stop 37-19  
Sacramento, CA 95814

Give your name and state identification number and say that you want a fair hearing because you do not believe you have been allowed the hours you need. If you need the hearing to be held in your home, include that in your request. If you need an interpreter or if you need an interpreter for someone who will be testifying (such as your IHSS worker), include that also in your request.

You can fax the letter (in addition to mailing it) to 916-229-4110.

OR

Call the toll free number at 800-743-8525 to request a fair hearing.

## **2. Information You Need to Get Started**

Get together information about how the County IHSS worker determined the hours you were authorized.

- a. Ask your worker for a copy of the latest needs assessment forms. These county forms will include notes about why hours were or were not authorized. Also ask for a copy of the most recent SOC 293 form. The SOC 293 forms include information on the functional ranking about what you can and cannot do. If you are challenging a reduction, ask for copies of both your new and your old county assessment forms and your new and old SOC 293 forms.
- b. Ask for a copy of the sheets in your file where notes were made about contacts and visits with you over the last year.
- c. Ask your IHSS worker for a copy of the County's time-for-task guidelines. Remember, time-for-task guidelines may not be used for personal care tasks.
- d. Ask your worker for copies of any doctor or medical reports in your file and for copies of any paramedical forms.



*Note:* Welf. & Inst. Code § 10850(c) authorizes DSS to issue regulations concerning access to case files, including access to case files by applicants and recipients. The DSS regulations are in the Manual of Policies and Procedures. These regulations are in Divisions 19 (confidentiality) and 22 (state hearings) and are available on the internet at [www.dss.cahwnet.gov/ord/CDSSManual\\_240.htm](http://www.dss.cahwnet.gov/ord/CDSSManual_240.htm) These regulations also apply when the services you receive or seek are covered under the Medi-Cal personal care services program. Welf. & Inst. Code § 14100.2; Cal. Code Regs., tit. 22 § 50111. The state access regulations supersede any more restrictive County regulations. Welf. & Inst. Code §§ 10850(c) and 14100.2(f). If you run into problems accessing your case file, call Protection & Advocacy.

Manual of Policy & Procedures DSS Manual § 19-005.1 says any recipient or applicant, or his or her authorized representative, may review the file “made or kept by the county welfare department in connection with the administration of the public assistance program.” You can review medical records in your file. DSS Manual § 19-006 note. The only records you cannot see are those covered by a specific “privilege” such as the lawyer-client privilege that does not belong to you. DSS Manual § 19-006. See, also, the state hearing regulations at DSS Manual § 22-051. The county welfare department must copy for you any statutes, policy materials, or regulations needed to prepare for a hearing. DSS Manual § 22-051.3.



- e. If IHSS reduced your hours, ask your IHSS worker for copies of the regulations listed on your reduction notice.
- f. The IHSS regulations are in the Department of Social Services’ Manual of Policy and Procedures. If you have access to the Internet, you can find the IHSS regulations at [www.dss.cahwnet.gov/ord/CDSSManual\\_240.htm](http://www.dss.cahwnet.gov/ord/CDSSManual_240.htm). There are four entries for the Division 30 regulations. Skip the first entry. The IHSS regulations start about 5 pages into the second entry, continues through the third entry, and finishes up in the fourth entry. You also can get the All-County letters at [www.dss.cahwnet.gov/lettersnotices/AllCountyL\\_542.htm](http://www.dss.cahwnet.gov/lettersnotices/AllCountyL_542.htm). All-county letters are directives the state Department of Social Services sends to the counties. The letters cover a lot of programs; only a few of the letters will be about IHSS.

### **3. County Appeals Worker**

After you file an appeal, you will receive from the state information about your hearing rights and telling you the address and phone number of the County appeals worker, the person who will represent the County at the hearing. Your IHSS file is in that office.

Many appeals workers try to resolve a dispute without a hearing. The appeals workers are often more experienced and knowledgeable than the people you've dealt with in the local office. The appeals worker may call you about a "conditional withdrawal" so that a new assessment can be done. If you agree to a conditional withdrawal of your appeal, you have a right to have the hearing rescheduled if you disagree with the new assessment or a decision not to authorize retroactive benefits.

#### **4. County Statement of Position**

You are entitled to the County's statement of position two business days before the hearing. If your hearing is on Friday, you are entitled to the position statement Wednesday morning. (You are entitled to look at your file at any time whether or not you have a hearing pending. See the note above under paragraph 2.)

The County's statement of position will help you identify other evidence and witnesses you may need. If you do not get a copy until just before the hearing, you can ask to have the record left open to submit additional evidence (such as letters or statements) to respond to any statement in the County's position paper. Even if you get the County's statement of position in time, you may still ask to have the hearing record left open so that you may submit additional evidence.

#### **5. At the Hearing**

The County goes first and says why your hours were cut or why you should not have the additional hours you believe are needed.

The hearing will involve the presentation of evidence (testimony by witnesses, letters, diary log, medical reports) about your needs in the service category areas where you and the county disagree. The evidence should explain what you need, how long it takes to provide the service, the reason you need more time than that set out in the assessment or the County guidelines, and what risks you may be exposed to if you do not receive the level of services requested. IHSS fair hearings are informal. The important thing is to explain why more time is needed. The best evidence is from the people who provide you care and who kept a diary record of the time it takes.

Witnesses may include — in addition to the IHSS recipient — past and present IHSS providers, regional center counselor, friends and family, etc. For each witness, list the points you want that witness to make and cross off each point as it is made.

For more information about the hearing process, visit the website of the State Hearings Division at [www.dss.cahwnet.gov/shd/default.htm](http://www.dss.cahwnet.gov/shd/default.htm)

#### **6. Getting Help with the Hearing**

For more help, call the regional center (if the IHSS recipient is a client), an independent living center, a legal aid program, senior advocacy program, the Disability Rights



California toll free number (800) 776-5746, or the Western Law Center for Disability Rights (213) 736-1031. To find out the telephone number of the senior advocacy program in your area, call your county office on aging or the State Department of Aging at (800) 510-2020.

If the county is seeking to reduce your hours or to eliminate a service (such as protective supervision), the county has the burden of showing how you have improved or how changed living circumstances mean you need fewer hours. Call Disability Rights California to receive a copy of a memo describing the county's burden.

## II. FACTORS OR REASONS INDICATING WHY MORE IHSS HOURS ARE NEEDED

### 1. Domestic services (see page 1 of the worksheet in section IV)

State regulations generally allow only 6 hours per month **per household** for domestic services. When the regulations were issued, the state explained that the 6 hours per month allowance was based on receiving domestic services twice a month.

If 4 people live in the home, the total IHSS hours allowed for the recipient will be 1.5 hours per month. (If a recipient's roommate lives there only as a live-in attendant, domestic services should not be pro-rated.) The county should pro-rate hours only for common areas of the home - the recipient's own room and/or bathroom should be authorized separately. If the recipient needs more time for domestic services in order to remain safely at home, the county should allow an exception to the 6 hours per month time-for-task guideline. For instance:

- g. Allergy or pulmonary respiration problem indicates a need for a dust-free environment and a need for frequent dusting and vacuuming.
- h. Trash needs to be removed daily, or more frequently than twice a month, because of roach or other vermin problems.
- i. Because the IHSS recipient spills things, frequent cleaning is required, particularly if there are roach or vermin problems.
- j. Incontinence results in a need to spot clean floor, furniture, etc., frequently.
- k. Trash bin is located through a couple of double locked doors at the rear of the building and it takes 10 minutes to get there and back.
- l. Recipient eats in bed. Bed must be vacuumed and remade three times a day to remove crumbs. Bed linens must be changed more frequently because of spills.
- m. Because of recipient's incontinence/accidents, bed linen must be changed more often than twice a month (daily, three times a week, once a week, etc.)
- n. Because of recipient's skin fragility and risk of bed sores or decubiti, sheets need to be kept smooth to prevent the development of hot spots; need to insure that nothing in the bedding rubs or irritates the skin.
- o. Because IHSS recipient drops things, more picking up is required.
- p. Since seal on refrigerator worn out, more time is needed for cleaning and defrosting refrigerator.
- q. Because IHSS recipient spends most of his/her time in bed or because of sweating, sheets need to be changed more frequently than twice a month.
- r. Building-wide roach spraying requires, on a one-time basis, that everything be

removed from kitchen and shelves washed and, after spraying, returned. (Time for this is justifiable not only for health and safety, reasons, but also as necessary for establishing and maintaining an independent living situation since failure to comply may put the recipient at risk of eviction.)

## **2. Personal care services**

Personal care services must be assessed on an individual basis. Be sure to count the time for the entire task, from beginning to end.

- s. Bathroom is inaccessible to a wheelchair. This means additional time is required in bathing and other personal care/grooming activities.
- t. Accidents in bathroom requiring extra clean-up in bowel and bladder care.
- u. Recipient is sensitive to pain — even combing hair is very painful. Personal care services have to be performed slowly and carefully.
- v. Recipient eats and chews slowly and has to be coaxed or the jaw manually manipulated. Each meal may take up to 45 minutes for feeding.
- w. Although recipient can feed self, needs attendant available to help lift things, and because of choking problems.
- x. Need to be bathed more than twice per week because of spilling, incontinence, skin problems.
- y. Skin fragile and vulnerable to hot spots which can become bedsores or decubiti; need to insure that nothing is rubbing or irritating skin such as clothing, how placed in wheelchair, etc.
- z. Need to be shampooed more than once a week due to dandruff, getting food, etc., in hair.
- aa. Need for extra time for communication with IHSS provider (as for a person with cerebral palsy, who must use word and alphabet board).
- bb. Susceptible to respiratory infections so hair must be dried after shampoo.

## **3. Related services**

- cc. Extra time needed in meal preparation and/or menu planning because:
  - i. Recipient needs a special diet — i.e., a diet excluding salt and sugar or requiring fresh foods;
  - ii. Recipient needs to have food cut up or pureed;
  - iii. IHSS recipient needs between-meal liquids and/or snacks.

- iv. Diet and eating patterns differ from rest of family so meals are prepared separately.
- dd. Recipient needs two to three times as much food because of cerebral palsy with spasticity and therefore needs more time for meal preparation, menu planning and clean-up, shopping and feeding.
- ee. Extra time in meal clean-up to clean table, wheelchair, and floor due to spilling.
- ff. Extra time is needed for laundry because:
  - i. Extra bed linen and clothing changes are necessary due to incontinence, spilling and the need to rinse before washing.
  - ii. Extra time needed to comply with universal precautions when bodily fluids involved (urine, feces, blood, saliva, mucous, vomit) - i.e.: rinsing, separating from other laundry and washing separately.
  - iii. Need to stay with laundry during wash and dry because of theft.
  - iv. Need to put clothing through an extra rinse cycle because of skin sensitivity.
- gg. Extra time is needed for shopping, errands, because of:
  - i. Distance to primary market.
  - ii. Need to go to market more frequently or to go to more than one place because of special diet, need for fresh food.
  - iii. Frequent need to get medication because of Medi-Cal limitations on prescription size, because all medication needs cannot be met at one place.
  - iv. Living in a low-income area, markets are fewer and more crowded meaning a longer wait in line.
  - v. Need to use public transportation and taxis.

**4. Time was assessed (and guidelines based on) county contract IHSS providers who do not provide services over the weekend; client needs and is entitled to receive services over the weekend regardless of what it says in the contract between the county and the attendant/homemaker chore agency.**

Thanks to Jennifer Pittam of C.H.O.I.C.E.S.S. for compiling many of these factors.

### III. SPECIFIC IHSS SERVICES

#### IHSS FOR CHILDREN

#### **1. Which IHSS services may children receive?**

- hh. Personal care services (bathing, toileting, dressing, feeding, assistance with ambulation, etc.).
- ii. Related services (meal preparation, planning and cleanup, laundry, food shopping).
- jj. Paramedical services (if prescribed by a doctor (injections, catheters, tube feeding, suctioning)).
- kk. Protective Supervision (24-hour monitoring and supervision to prevent injury).
  - Not routine child care or supervision.
  - Must show difference between disabled child and other children of same age.
- ll. No Domestic Services
- mm. Theoretically, if the parents are not IHSS providers, they can be authorized at least 8 hours per week of respite when parents are shopping, doing errands, or doing other things for the family.

#### **2. When may children receive IHSS?**

- nn. When disabled and low-income (receipt of SSI means automatic eligibility)
- oo. If income too high for SSI, may qualify with share of cost.
- pp. If parents are out of the house working, school, training.
- qq. If parents are unable to provide care due to disability or illness.
- rr. If parents are sleeping or caring for other family members.

#### **3. When can a parent be paid as an IHSS provider?**

- ss. If the parent quit job or can't get a job because he or she must care for the disabled child, AND
- tt. If no other suitable care provider is available (willing and able), AND
- uu. If the child is at risk of out-of-home placement or inadequate care.
- vv. If both the parents live in the home, one parent may get paid when the other parent is working, in school, sleeping, or disabled.
- ww. Payments will not affect child's SSI, but will affect family's welfare grant or Medi-Cal eligibility.

## **4. Can I get IHSS and still get respite from the regional center?**

Yes. Respite services from the regional center are different from IHSS. You should be able to receive IHSS, including protective supervision, without losing any respite hours. Call Disability Rights California if the regional center tries to cut your respite because you receive IHSS.

### **IHSS PROTECTIVE SUPERVISION**

#### **1. What is protective supervision?**

Protective supervision is watching people with severe mental impairments so they don't hurt themselves living at home. An IHSS provider may be paid to watch a disabled child or adult to prevent injuries or accidents, when the person needs 24-hour supervision and can remain safely at home if it is provided.

#### **2. Why is protective supervision important?**

People eligible for protective supervision are always given the maximum number of monthly hours - at least 195 for non-severely impaired individuals and 283 for people who are "severely impaired." They get the maximum even if a county cuts their hours for some other IHSS service.

#### **3. What are the eligibility conditions?**

- xx. A person shows some severe mental impairment; poor judgment (making bad decisions about health or safety), confusion/disorientation (wandering off, getting lost, mixing up people, days or times) or bad memory (forgetting to start or finish something). Such impairments may occur with mental retardation, autism, Alzheimers and dementias, psychiatric disabilities . *Tip: The best way to show severe impairment is by examples of what the person does that may cause injuries. Get supporting statements from anyone who looks after the person.*
- yy. A person may get hurt if left home alone (i.e., wandering out of the house, letting strangers in, turning gas on a stove, lighting fires, leaving water running, eating wrong foods or inedible things, head banging, self-biting, scratching, using knives or other sharp household objects. *Tip: Keep a log to describe all the potential accidents that would happen if the person were not supervised.*
- zz. A person must be supervised 24-hours a day (friends or relatives living at home, teachers in school or day program, and drivers of car or bus). *Tip: Keeping a daily log will show that the dangerous behaviors can occur at any time of day or night. It will also show when the caregiver provided protective supervision to prevent injuries or accidents.*
- aaa. Protective supervision is not available:

bbb. For friendly visiting or social activities.

ccc. When the need is caused by a medical condition *and* the person needs medical supervision.

ddd. In anticipation of a medical emergency.

eee. To control anti-social or aggressive behavior.

#### **4. Can children get protective supervision?**

Yes, but the child must need supervision due to his or her disability, not routine childcare. The child must need closer supervision than other children of the same age.

#### **5. How can I show that a person needs protective supervision?**

fff. Make a list of every accident or near accident in the past six months.

ggg. Keep a log for two weeks that describes every action the person takes that might cause injury, and how often it happens (i.e., walks into the street without looking, turns on the stove, and forgets to turn it off).

hhh. Get doctors' letters and help from the regional center to discuss the person's age and equivalent functioning level, and describe how the person has poor memory, judgment, confusion, or disorientation.

iii. Show how the house can't be made completely safe for a person.

## 6. County excuses and how to answer them.

Counties come up with many common excuses for telling someone they are not eligible. Here is a list and some ways to refute them.

County excuse	Some responses
<b>Is there a severe mental impairment?</b>	
Severe mental impairments not observed on home visit.	Your daily log, doctor's statement, regional center records; home visit too short, observed behavior and didn't answer guidelines questions; Form SOC 293, Line H shows 5 for one mental impairment.
Needs protective supervision because of physical impairment, not mental impairment.	Because of mental impairment does not understand physical impairments, does not understand or appreciate consequences of actions on physical impairments - i.e., tries to get up or walk without assistance when cannot do so without risk of injury, will eat sweets even though risks injury because of diabetes, will try to remove bandage or tubing or brace because it hurts or is irritating, etc.
Physical impairments cause dangerous behavior.	Mental impairments also cause it; not required to show mental is only cause.
<b>Is there dangerous behavior at home?</b>	
Formal diagnosis of mental condition doesn't prove need.	Doctor's statement of typical behavior for person with that diagnosis.
No injuries in the recent past.	Recipient was well supervised.
No evidence of dangerous behavior on county worker's worker's home visit.	Frequency not hourly; missed day before and after; can't generalize from one hour to 24 hours in a day.
"Complete" physical paralysis prevents recipient from doing anything	Any purposeful action that is dangerous, pulling out catheter, G-tube, etc.



County excuse	Some responses
dangerous.	
Aggressive and antisocial if hits someone or destroys property.	<p>In adults: self-injurious acts like biting oneself, head banging, destroying property causes self-injury, are common for psychiatric or mental condition.</p> <p>In children: normal behavior is often aggressive and anti-social.</p>
<b>Is 24-hour supervision needed and received?</b>	
Doesn't need 24 hours because unsupervised - like on the bus, in a car.	Always supervised, bus/car are controlled settings with adult driver.
Recipient is sometimes left alone so not supervised 24 hours.	Can't afford it, someone looking in, lucky no accidents, recipient's condition has worsened.
Needs physical redirection, not just watching or verbal command.	Supervision includes redirection, some intervention.
Family discourages independence overprotective of mildly retarded.	More independence caused injuries or nearaccidents in the past; others (regional center doctor) recommend 24-hour supervision.
Change environment to remove risks: knobs off stove, lock up tools; brace wheelchair, strapping in wheelchair; knobs off hot water; higher bed rails against night wandering; bolt down furniture.	Can't make all changes; others turn home into a nursing home or jail cell; the older the recipient, the less change possible without losing distinctive features of home.
Child plays outside with no adult supervision.	Fenced in yard; can't climb out; no hazards in yard.
Children always need to be supervised by an adult.	Parents not always physically within sight of children without mental disability; child needs much more supervision than child of same age. The younger the child, the more severe the behavior must be. Most difficult

<b>County excuse</b>	<b>Some responses</b>
	for children under 2.
Go to a behavior parenting class.	Won't solve underlying behavior, have gone and unsuccessful, will go but need it until proven.
<b>Other Issues</b> <b>Is the recipient no longer eligible?</b>	
County improperly granted protective supervision; reassessment shows no eligibility termination notice.	No change in SOC 293, Line H, on mental function rankings; no change in recipient's home or physical condition, appeal immediately to keep IHSS until decision.
<b>Is the parent eligible as a provider (able and available)?</b>	
Parent can work full time (40 hrs/wk) by putting child in after school daycare (able and available parent rule).	No suitable day care, can't hire baby-sitter for minimum wage, child needs special stimulation from parent.
Parent works less than 40 hours but can work full time.	Frequent trips to doctor, other emergencies, stress, prevent full time work, lost prior full time jobs.

# Department of Social Services' Manual – SS – Division 30

## 30-757 PROGRAM CONTENT

.17 Protective Supervision consisting of observing recipient behavior in order to safeguard the recipient against injury, hazard or accident.

.171 This service is available for monitoring the behavior of nonself-directing, confused, mentally impaired, or mentally ill persons, with the following exceptions:

- (a) Protective supervision does not include friendly visiting or other social activities.
- (b) Supervision is not available when the need is caused by a medical condition and the form of the supervision required is medical.
- (c) Supervision is not available in anticipation of a medical emergency.
- (d) Supervision is not available to prevent or control anti-social or aggressive recipient behavior.

.172 Protective supervision is available under the following conditions:

- (a) Social service staff have determined that a twenty-four hour need exists for protective supervision and that the recipient can remain at home safely if protective supervision is provided.
- (b) Services staff determine that the entire twenty-four hour need for protective supervision can be met through any of the following, or combination of the following:
  - (1) IHSS
  - (2) Alternate resources.
  - (3) A reassurance phone service when feasible and appropriate.

.173 Services staff shall discuss with the recipient, or the recipient's guardian or conservator, the appropriateness of out-of-home care as an alternative to protective supervision.

## **IHSS PARAMEDICAL SERVICES**

### **1. What are paramedical services?**

Paramedical services are prescribed by a doctor for a person's health and require some training and judgment to perform. Common services are injections, colostomy irrigation, catheter insertion/care, suctioning, G and NG tube feeding, ventilator and oxygen care, fecal impaction, range of motion to improve function, wound/decubitus ulcer care and other services requiring sterile procedures. *Biggest problem:* Providers don't ask for enough time to complete the entire service, from preparation to clean up. Providers don't ask for the extra time that may be required for record keeping – such as for diabetes testing and administration of injections.

### **2. Why are paramedical services important?**

People who need complex medical care can stay at home instead of going into nursing homes. Only doctors decide what services the county must provide and how many hours it must pay for. The county can't cut the services hours ordered by the doctor. Providers don't need any special license to perform the services.

### **3. What are the eligibility conditions?**

- jjj. The doctor completes and signs an order for services with hours required: The recipient's doctor decides on all the eligibility conditions by signing the order prescribing the services and hours.
- kkk. The person can't perform the service at all: Some mental or physical impairment prevents the person from doing the service, like giving an injection or changing a catheter.
- lll. The service requires training and judgment to perform: The provider gets training from the doctor or other health professional in what steps to take and how to do each one to complete the service. The steps require careful observation of the recipient to avoid mistakes.

### **4. How should I apply for paramedical services?**

First talk with the treating doctor or the health professionals that work with the doctor about what services are needed and each and every step to perform them properly. Then keep a daily log for a week about how often each service is performed and how long it takes to complete, from the preparation through cleanup. Give the hours information to the doctor to complete Form SOC 321.

### **5. County tactics and how to respond to them.**

Counties use several tactics to deny or change the services doctors have authorized. There are ways to stop them from working.

<b>County tactics</b>	<b>How to respond</b>
County tells you that some service may not be allowed as a paramedical service.	Discuss the service with doctor. Explain that any service billed as skilled nursing under Medi-Cal/Medicare qualifies. Doctors generally know what these are.
County tries to persuade doctor to change the order for services or hours.	Consult with doctor first and get approval of hours based on your log, discuss your conditions and the need to preserve the doctor-patient relationship from outside interference. Explain that the doctor's decision on a signed Form 321 is final and the county must comply.
County nurse observes one day and bases lower hours on her observations and calls doctor.	Log shows that time varies; average time greater than day of observation.
Home health agency will provide, apply there first.	Not alternate resource since home health agency provides time-limited services.
Range of motion is a personal care service for which county decides eligibility and hours.	When the doctor prescribes range of motion to also improve and maintain function at the same time, it is a paramedical service.
County denies monitoring for providing some specific paramedical service.	Doctor prescribes monitoring in order to provide the service. To date the state has never allowed monitoring (continuous skilled observation) as a paramedical service. For help, call Disability Rights California for its 12/30/94 memo on the subject. If the interventions to provide the service are frequent, the total hours may equal the maximum hours (283).

## **Welfare & Institutions Code § 12300.1 “Supportive Services”**

As used in Section 12300 and in this article, “supportive services” includes those necessary paramedical services that are ordered by a licensed health care professional who is lawfully authorized to do so, which persons could provide for themselves but for their functional limitations. Paramedical services include the administration of medications, puncturing the skin or inserting a medical device into a body orifice, activities requiring sterile procedures, or other activities requiring judgment based on training given by a licensed health care professional. These necessary services shall be rendered by a provider under the direction of a licensed health care professional subject to the informed consent of the recipient obtained as part of the order for services. Any and all references to Section 12300 heretofore or hereafter enacted shall be deemed to be references to this section. All statutory references to the supportive services specified in Section 12300 shall be deemed to include paramedical services.

## **IHSS FOR PEOPLE WITH PSYCHIATRIC DISABILITIES**

### **1. Can people with psychiatric disabilities get IHSS?**

Yes. IHSS is not just for people with physical or developmental disabilities. People with psychiatric disabilities may also qualify if they need help in order to live in their own home<sup>1</sup> or in the home of a relative.

### **2. How can I show that IHSS is needed?**

Here are some of the reasons why a person with a disability may need help through IHSS or personal care services in order to live in their own home or in the home of a relative or friend:

- mmm. Need for “prompts”<sup>2</sup> to get up in the morning and go through tasks such as bathing, grooming, dressing, taking medication, eating. Prompts and assistance in sequencing are terms to describe the help people need in starting a task and in going from one step to another. Because of a person’s disability or the side effects of medication, the person may not be able to do that consistently without someone present to step them through the process.
- nnn. Similarly, “prompts” may be needed to assist the person in going through the various tasks leading to going to bed at night.
- ooo. Preparation of meals which a person may not be able to do consistently and safely alone.
- ppp. Reminders to eat and drink water.
- qqq. Shopping, cleaning, laundry, menu planning.
- rrr. Need for monitoring and intervention as “protective supervision” because

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<sup>1</sup> “Home” may include an apartment you share with other people or a hotel room. You are not eligible for IHSS or personal care services if you live in a board and care or residential facility. *However*, these services may help you move from a board and care to your own apartment or hotel room.

<sup>2</sup> “Prompts” and “Cuing” and “sequencing” are physical and verbal interventions to overcome a disability barrier to beginning a task, to going through the steps necessary to complete a task, to following the correct sequence in completing tasks or a task. Functional limitations that provides a basis for finding a mental impairment for purposes of qualifying for SSI include “[d]eficiencies of concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner. . . .” This is from one of the “B” criteria under mental impairment listings 12.01, Appendix 1, Subpart P, 20 CFR Part 404. Other “B” criteria include “[m]arked restriction of activities of daily living” and “...deterioration of adaptive behaviors.”

a person may see a harmless, benign situation as one which is personally threatening and one which the person believes requires a response which could cause self injury. In such a case the person may need his attention diverted or redirected, help to see there is no threat, or action to prevent injury.

### **3. How can I document the need for IHSS?**

Workers from the County Welfare Department who process applications for IHSS or personal care services work primarily with people with physical disabilities (in a wheelchair or can't do things because of severe arthritis) or cognitive disabilities (mental retardation or a senior with Alzheimer's). They are not used to applications from people with psychiatric disabilities. That means the county worker will need more help from you and the people helping you in order to understand why you need attendant care help in your home. You will need a letter from your psychiatrist or the social worker at the clinic you go to or the psychologist you see or your case manager -- or anyone else who helps you and knows your needs. The letter should explain the following:

- sss. The things you need help with and the kind of help you need.
- ttt. Why you need that help because of your disability. For instance, the psychiatrist or social worker or psychologist you see can explain that your medications plus your disability make it hard for you to get up on time and go through the other morning steps without help.
- uuu. How not getting the help you need could mean you are not able to continue living on your own in your own home or hotel room or apartment.
- vvv. How not getting the help you need could make your condition worse. For instance, without help in getting up regularly every day and in keeping your apartment in order, your day-to-day life could feel chaotic and lead you into a crisis. Without help in providing structure and order in your life, you are at risk of a crisis which could even mean a visit to the emergency room.

### **4. Where can I go for help getting IHSS?**

If you or the people helping you run into problems getting the attendant care services you need, call Protection & Advocacy at 1-800-776-5746. Ask for an appointment with an Advocate. The right of people with psychiatric disabilities to get the IHSS or personal care services they need to live in their own home is a priority with us.



SERVICES	DAYS							WEEKLY TOTAL
<p>* Domestic Services: For adults only. Children are not eligible to receive domestic service hours. Domestic services are usually limited to 6 hours per month per household and divided by the number of people in the household. If you need more hours of domestic services because of the recipient's disability (e.g., more frequent bathroom cleaning due to incontinence, frequent dusting due to asthma, etc.), then mark the time needed in the columns below. See section II of the Fair Hearing and Self-Assessment Packet for more information.</p>	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY	
	<b><u>1. DOMESTIC SERVICES</u></b>							
a. Sweeping and Vacuuming								
b. Washing kitchen counters								
c. Cleaning oven and stove								
d. Cleaning and defrosting refrigerator								
e. Cleaning bathroom								
f. Storing food and supplies								
g. Taking out garbage								
h. Dusting and picking up								
i. Bringing in fuel for heating or cooking purposes from a fuel bin in yard, miscellaneous								
j. Changing bed linens								
k. Miscellaneous								
<b>Total Domestic Services</b>								
SERVICES	DAYS							WEEKLY



SERVICES	DAYS							WEEKLY TOTAL
	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY	
<b><u>3. HEAVY CLEANING</u></b>								
<b><u>4. NONMEDICAL PERSONAL SERVICES</u></b>								
a. Respiration								
b. Bowel/bladder care (including help on/off commode) *								
c. Feeding and drinking *								
d. Bed baths *								
e. Dressing *								
f. Menstrual care *								
g. Ambulation *								
h. Moving into and out of bed *								
i. Grooming, bathing, hair care, teeth and fingernails *								
j. Rubbing skin to aid circulation, turning in bed, repositioning in wheelchair, help in and out of vehicles *								
k. Care and help with prosthesis (including wheelchair) *								
<b>Total Personal Care Services</b>								

SERVICES	DAYS							WEEKLY TOTAL
	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY	
<b><u>5. MEDICAL TRANSPORTATION</u></b>								
a. To medical appointments								
b. To alternative resources								
<b><u>6. YARD HAZARD ABATEMENT</u></b>								
<b><u>7. PROTECTIVE SUPERVISION</u></b>								
<b><u>8. TEACHING AND DEMONSTRATION</u></b>								
<b><u>9. PARAMEDICAL SERVICES</u></b> * (i.e., catheterization, injections, range of motion exercises, etc., specify)								
a.								
b.								
<b>Total Weekly Services</b> ( <i>Everything except Domestic Services</i> )								
Multiply by 4.33 to get monthly total								
Plus Domestic Services (6 hours per month maximum unless more needed hours can be shown on page 1 above)								
<b>TOTAL MONTHLY SERVICES</b>								

\* If asterisked hours equal 20 or more hours a week, recipient qualifies as “severely impaired.”

\*\* Meal clean-up hours are included in determining whether severely impaired if IHSS assistance with meal preparation and consumption are necessary.

IHSS will pay for transportation time to get you there and back but usually not the time while at the doctor’s office or clinic. When IHSS does not cover wait time, then IHSS should cover the transportation time for 4 trips: there and back to drop off; there and back to pick up.