

IHSS ISSUES - PROTECTIVE SUPERVISION

(Revised January 2000)

What is protective supervision?

Protective supervision means watching people with severe mental impairments so they don't hurt themselves while living at home. **Biggest problem:** Counties use flimsy excuses to deny many people the service when they should get it.

Why is protective supervision important?

People eligible for protective supervision always get the maximum number of monthly hours - 195 for nonseverely impaired and 283 for severely impaired. They get the maximum even if a county cuts their hours for some other IHSS service.

What are the eligibility conditions?

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, Alzheimer's and dementia.

A person may get hurt if left home alone: wandering out of the house, letting strangers in, turning gas on in 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.

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.

How should a person apply?

You (the care provider) apply to the county welfare department. Make a list of all accidents that have happened or might happen to the person if left alone. The county may use many excuses to deny protective supervision. For more

information on how to qualify, read PAI's *IHSS ADVOCACY GUIDE - GETTING PROTECTIVE SUPERVISION* (January 2000, attached).

Do you need more help?

Call the local regional center, area board, welfare rights organization, legal aid society, or Protection & Advocacy, Inc. (PAI). You may appeal the county's denial and get a state hearing.

LOS ANGELES LEGAL OFFICE 3580 Wilshire Boulevard, Suite 902, Los Angeles, CA 90010-2512 Telephone: (213) 427-8747 Fax: (213) 427-8767 Toll Free/TTY/TDD: (800) 776-5746
--

IN-HOME SUPPORTIVE SERVICES ADVOCACY GUIDE - GETTING PROTECTIVE SUPERVISION (Revised January 2000)

1. BACKGROUND

- ***1.1 Why should you read this IHSS Guide?***

Counties use flimsy excuses to deny protective supervision to many IHSS recipients who need it. Only 10% of all people who get IHSS protective supervision. Many more should qualify. This IHSS guide tells you (who probably live with the recipient and provide the supervision) what to do before you apply to the county for protective supervision.

- ***1.2 What rules should you know?***

Counties must follow two sets of state welfare rules when someone applies for protective supervision. The IHSS regulations describe the criteria for getting protective supervision. The Uniformity Guidelines tell counties how to decide whether a person has a severe mental impairment.

Some counties also use their own rules. These rules may tell how the county will evaluate a request and they often have common reasons for denying the service. Get the rules. (*Tip: You have a right to get them under state*

regulations and the California Public Records Act. Don't take "no" for an answer.)

2. THREE BASIC ELIGIBILITY CONDITIONS

- **2.1 How to show the person has a severe mental impairment**

Use the Uniformity Guidelines to list examples in Rank 5 for memory, orientation and judgment. *(Tip: The best way to show such an impairment is by examples of what the person does that may cause injury).* Get supporting statements from anyone who looks after the person.

For persons already getting IHSS (recipients), look at Form SOC 293, Line H in the

IHSS file. If any box under Memory, Orientation and Judgment has a "5" (which refers to the Uniformity Guidelines), the county should grant protective supervision. *(Tip: Ask the county worker why the recipient didn't get it on the last annual assessment. You may learn last year's excuse and argue against it. See Section 3 below.)*

- **2.2 How to show the person will get injured at home**

First, look around your home for all the potential hazards. Every room in every house is full of hazards to someone with poor judgment, confusion/disorientation or bad memory. *(Tip: Walk through the recipient's home and imagine what trouble an unsupervised five-year-old child would get into in every room. Whatever can't be child-proofed is a hazard.)*

Second, make a list of every accident or near accident that has happened in past six months. *(Tip: Remember to identify how the recipient would be injured like "turned on gas stove but didn't turn it off.")*

Third, keep a daily log for at least two weeks about every action the person takes that might cause injury and how many times a day it happens. Describe the behavior and the potential hazard (for example, "starts to walk out the front door into a busy street without looking"). *(Tip: You probably forget everything the recipient does and everything you do to stop them in time.)*

- **2.3 How to show the recipient needs and gets 24-hour supervision**

The daily log will show that the dangerous behaviors occur most days and at any time of day or night. It will also show that you provided the supervision to stop the recipient from getting hurt.

3. 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 of excuses and some ways to argue against them.

County excuse

Some responses

Is there a severe mental impairment?

Severe mental impairments not observed on home visit.

- Your daily log, doctor's statement, regional center records;
- The home visit was too short, observed behavior and didn't answer guideline 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 the person does not understand physical impairments, does not understand or appreciate consequences of actions on physical impairments - for example:

- She tries to get up or walk without assistance but cannot do so without risk of injury;
- He eats sweets even though he risks injury because of diabetes;
- She tries to remove bandage or tubing or brace because it hurts or is irritating, etc.

Physical impairments cause dangerous behavior.

- Mental impairments also cause it; you do not have to show that

mental is the only cause.

Is there dangerous behavior at home?

Formal diagnosis of mental condition doesn't prove need.

- Doctor's statement of typical behavior for a person with that diagnosis.

No injuries in the recent past.

- Recipient was well supervised.

No evidence of dangerous behavior on county worker's home visit.

- Frequency is not hourly; missed the day before and after; can't generalize from one hour to 24 hours a day.

"Complete" physical paralysis prevents recipient from doing anything dangerous.

- Any purposeful action that is dangerous, such as pulling a out catheter or G-tube, etc.

Aggressive and antisocial if hits someone or destroys property.

- In adults: self-injurious acts like biting oneself, head banging, or destroying property cause self-injury, are common for psychiatric or mental condition.
- In children: normal behavior is often aggressive and anti-social.

Is 24-hour supervision needed and received?

Doesn't need 24 hours because unsupervised - like on the bus, in a car.

- Always supervised, bus/car are controlled settings with an adult driver.

Recipient is sometimes left alone so not supervised 24 hours.

- Can't afford it, someone looks in, you are lucky there have been 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 near accidents 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.
- Some changes turn home into a nursing room or jail cell.
- The older the recipient, the less change possible without losing distinctive features of home.

Child plays outside with no adult supervision.

- You have a fenced-in yard.
- The child can't climb out.
- There are no hazards in the yard.

Children always need to be supervised by an adult.

- Parents are not always physically within sight of children without mental disability.
- Your child needs much more supervision than another child of the same age.
- The younger the child, the more severe the behavior must be.
- Most difficult for children under age two.

Go to a behavior parenting class.

- **Parenting** won't solve the underlying behavior.
- You have tried and were unsuccessful.

- Your will go but need supervision until effectiveness is proven.

Other Issues

Is the recipient no longer eligible?

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.

Is the parent eligible as a provider (able and available)?

Parent can work full time (40 hrs/wk) by putting child in after school daycare (able and available parent rule).

- There is no suitable day care.
- You can't hire a baby-sitter for minimum wage.
- Your child needs special stimulation from a parent.

Parent works less than 40 hours but can work full time.

- Frequent trips to doctor, other emergencies, stress prevent full-time work, you lost prior full time jobs.

4. APPEALS AND ALTERNATIVES WHEN COUNTY DENIES REQUEST

Appeal by asking for a hearing with the California Department of Social Services. Try alternatives: medical monitoring as an IHSS paramedical service (see IHSS Guide - Getting Paramedical Services), independent living program through regional center.

30-757

.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 for protective supervision can be met through any of the following, or combination of the following:

- (1) IHSS
- (2) Alternative 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.

3580 Wilshire Boulevard, Suite 902, Los Angeles, CA 90010-2512
Telephone: (213) 427-8747 Fax: (213) 427-8767
Toll Free/TTY/TDD: (800) 776-5746