

New Rules for IHSS: Elimination of Proration of Protective Supervision Services

Dec 14, 2020 | 7163.01

Elimination of Proration of Protective Supervision

Protective supervision is an IHSS service for people who, due to a mental impairment or mental illness, need to be observed 24 hours per day to protect them from injuries, hazards or accidents. An IHSS provider may be paid to observe and monitor a disabled child or adult when the person can remain safely at home if 24 hour supervision is provided.¹ Prior to July 1, 2020, when two or more protective supervision recipients live in the same home, the need for protective supervision was considered to be met in common and the hours were automatically prorated.² Effective July 1, 2020, the protective supervision hours of multiple recipients living in the same home can no longer be prorated.³

Change of Services

Counties are required to stop prorating IHSS protective supervision services as soon as possible.⁴ For existing cases, counties must stop prorating protective supervision services no later than the next scheduled reassessment.⁵ If recipients (or their authorized representative) request that protective supervision proration be stopped in their case, counties must do so immediately.⁶

IHSS protective supervision recipients or their authorized representative can contact the county if their services are still being prorated. A directory of county social services offices can be found here: <https://www.cdss.ca.gov/county-offices>

Workweek Limitations

The elimination of protective supervision proration may result in an increase in IHSS hours. There are limitations to the number of hours an IHSS provider can work per week. A provider who works for only one recipient cannot work more than 70 hours and 45 minutes per week.⁷ A provider who works for two or more recipients cannot work more than 66 hours per week.⁸ For households with multiple recipients of protective supervision services, additional care providers may be needed for the increase in hours.

IHSS providers meeting certain requirements may apply for a workweek exemption, allowing them to work more hours. With an exemption, providers can work up to 90 hours a week, not exceeding 360 hours per month.⁹ More information about workweek exemptions for IHSS providers can be found here: <https://www.disabilityrightsca.org/publications/recent-changes-to-in-home-supportive-services-ihss-and-waiver-personal-care-services>.

Retroactive Benefits

Recipients of IHSS protective supervision services whose hours were prorated may receive a retroactive benefits payment once their hours are adjusted for services provided after July 1, 2020. The method of payment for retroactive benefits may vary by county. Some counties may issue a check directly to the recipient for these additional hours. Other counties may issue additional timesheets for providers. A recipient can make a request with their county if they prefer payment go directly to their provider.

IHSS recipients who receive government benefits and are issued a retroactive check may need to report the payment to the agency administering their government benefits. Medi-Cal recipients must report the payment to the county welfare department within 10 days after it is received.¹⁰ Supplemental Security Income (SSI) recipients must report the payment to the Social Security Administration as soon as it is received, but no later than the 10th day of the month following the month the payment is received.¹¹

To report a lump sum payment for retroactive IHSS benefits, recipients should send a letter to their County Medi-Cal office (and to the SSA office if they receive SSI) explaining:

- who received the payment and for how much
- that the money is owed for retroactive IHSS provider wages, paid pursuant to ACL 20-111
- which provider the money was used to pay
- why the payment is exempt (if applicable), such as:

In-Home Supportive Services (chore, attendant, homemaker) payments are medical or

social services and are not income when paid directly to an eligible individual to pay for the services (POMS. SI 00815.050)). The money is also not income or a resource because it is repayment of a loan of services already provided (“Money you borrow...is not income.” 20 C.F.R. § 416.1103(f)).

Additional information about lump-sum payments and Medi-Cal eligibility can be found here: <https://www.disabilityrightsca.org/publications/lump-sum-payments-and-medi-cal-eligibility>.

Information about lump-sum payments and Supplemental Security Income (SSI) eligibility can be found here: <https://www.disabilityrightsca.org/publications/lump-sum-payments-and-ssi-eligibility>.

To find your local Medi-Cal office, please visit: <https://www.dhcs.ca.gov/services/medi-cal/Pages/CountyOffices.aspx>

To find your local Social Security Administration office, please visit: <https://www.ssa.gov/locator/>

Please contact DRC at (800) 776-5746 if you have any questions about the elimination of IHSS protective supervision proration.

¹ California Department of Social Services Manual of Policies and Procedures (“MPP”) § 30-757.17. – ([Return to main document](#))

² MPP § 30-763.331; All-County Letter No. 20-111 (“ACL 20-111”), available at <https://www.cdss.ca.gov/Portals/9/Additional-Resources/Letters-and-Notices/ACLs/2020/20-111.pdf> – ([Return to main document](#))

³ ACL 20-111 at 1. – ([Return to main document](#))

⁴ ACL 20-111 at 2. – ([Return to main document](#))

⁵ ACL 20-111 at 2. – ([Return to main document](#))

⁶ ACL 20-111 at 2. – ([Return to main document](#))

⁷ Welf. & Inst. Code §§ 12300.4, 12301.1. – ([Return to main document](#))

⁸ Welf. & Inst. Code §§ 12300.4, 12301.1 – ([Return to main document](#))

⁹ All-County Letter No. 16-07, (“ACL 16-07”), available at <http://www.cdss.ca.gov/lettersnotices/entres/getinfo/acl/2016/16-07.pdf>. – ([Return to main document](#))

¹⁰ Welf. & Inst. Code 14005.37(h); 22 C.C.R § 50185(a)(4) – ([Return to main document](#))

¹¹ 20 C.F.R § 416.714(a) – ([Return to main document](#))