



CDSS

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DEPARTMENT OF SOCIAL SERVICES

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EDMUND G. BROWN JR.
GOVERNOR

ALL-COUNTY LETTER NO. 16-XX

TO: ALL COUNTY WELFARE DIRECTORS
IHSS PROGRAM MANAGERS

SUBJECT: **IMPLEMENTATION OF IN-HOME SUPPORTIVE SERVICES (IHSS)
PROVIDER ENROLLMENT REGULATIONS**

REFERENCE: SENATE BILL (SB) 1104 (2004); ASSEMBLY BILL, FOURTH
EXTRAORDINARY LEGISLATIVE SESSION (ABX4) 19 (2009);
ASSEMBLY BILL (AB) 1612 (2010); SB 878 (2014); ALL-COUNTY
LETTER (ACL) 09-52 (OCTOBER 1, 2009); ACL 11-12 (JANUARY 26,
2011); ACL 12-19 (APRIL 11, 2012); ACL 14-102 (DECEMBER 31,
2014)

This ACL provides counties with information regarding newly enacted regulations within the California Department of Social Services' (CDSS) Manual of Policies and Procedures (MPP) concerning In-Home Supportive Services (IHSS) provider enrollment. These newly enacted regulations amended MPP Section 30-701(a)(4) through MPP Section 701(t)(3), amended Sections 30-776, et. seq., and added MPP Sections 30-777, et. seq., to the MPP. These regulations are available for viewing at <http://www.dss.cahwnet.gov/ord/PG310.htm>.

This ACL also transmits new and revised forms and notices relating to the IHSS provider enrollment process.

IMPLEMENTATION DATE

The CDSS understands the need for counties to have system support available to facilitate the transition to the new provider enrollment requirements. The CDSS anticipates the modifications to CMIPS, to assist in the implementation of these new provider enrollment requirements, will become operative in early 2017.

REASON FOR THIS TRANSMITTAL

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

BACKGROUND

These regulatory changes were initiated due to the enactment of SB 1104 (Chapter 229, Statutes of 2004), ABX4 19 (Chapter 17, Statutes of 2009), AB 1612 (Chapter 725, Statutes of 2010), and SB 878 (Chapter 689, Statutes of 2014). ABX4 19 established the four-step provider enrollment process. SB 1104 and AB 1612 identified the categories of criminal offense convictions for which an applicant provider could be declared ineligible for enrollment as an IHSS provider and the methods by which an applicant provider could be granted an exception (either through a personal waiver or general exception) in order to enroll as an IHSS provider. SB 878 clarified the provider orientation process by specifying that it must be an in-person orientation and that certain key material must be presented to the applicant providers during the orientation (including information on minimum wage and overtime requirements and presentations by labor organizations). Prior to the enactment of these regulations, these requirements were initially implemented via the ACL process.

Modifications to CMIPS will be made to assist in tracking and supporting the provider enrollment activities. An upcoming ACL will provide details on these modifications.

This ACL addresses in summary each section of the newly adopted regulations as they are set forth within the MPP.

Special Definitions

(MPP Section 30-701(a)(4) through MPP Section 30-701(t)(3))

These regulation sections provide the definitions of Applicant Provider, County (only for purposes of the provider enrollment requirements, as specified in MPP Section 30-776), Prospective Provider, and Tier-1 and Tier-2 disqualifying crimes within the regulations.

Tier 1 crimes are specified in Welfare and Institutions Code (WIC) section 12305.81 and relate to either the specified abuse of a child (under Penal Code (PC) section 273a(a)), abuse of an elder or dependent adult (under PC section 368), fraud against a government health care or supportive services program; and similar violations in other jurisdictions. Tier 2 crimes are specified in WIC section 12305.87 and include serious or violent felonies, as specified in PC sections 667.5(c) and 1192.7(c); felony offenses for which a person is required to register as a sex offender, pursuant to PC section 290(c), and felony offenses for fraud against a public social services program, as defined in WIC sections 10980(c)(2) and 10980(g)(2).

**Time Limit for Completion of Provider Enrollment Process
(MPP Section 30-776.1 through MPP Section 30-776.34)**

These regulation sections require the applicant provider to complete the entire provider enrollment process within 90 calendar days of initiating the process. Provisions within this section allow counties some flexibility to extend the provider enrollment period for an additional 45 calendar days for “good cause.” If certain conditions are met, the regulations also allow individuals who began providing authorized services to an IHSS recipient prior to completion of the enrollment requirements to be eligible for retroactive payment for 90 calendar days prior to the date of completion of the provider enrollment requirements.

**Completion and Submission of Provider Enrollment Application Form
(MPP Section 30-776.4 through MPP Section 30-776.416)**

These regulation sections provide information on the completion and submission of the “IHSS Program Provider Enrollment Form” (SOC 426). These sections detail the information that must be provided to the applicant provider on the enrollment form, what information must be provided by the applicant provider on the enrollment form, and what forms of personal identification (photographic identification and social security card) must be presented to the county upon submission of the enrollment form to provide proof of the applicant provider’s identity.

**Attendance at the In-Person Provider Orientation
(MPP Section 30-776.42 through MPP Section 30-776.423)**

These regulation sections provide information on the requirement of attendance at an in-person provider orientation. These sections also detail the information the county must provide to prospective providers during the provider orientation, including, but not limited to, the translation of any oral and written materials presented at the orientation into all languages spoken by a substantial number of the public (five percent or greater) served by the IHSS program in that county.

**Signing and Submission of the Provider Enrollment Agreement
(MPP Section 30-776.43 through MPP Section 30-776.433)**

These regulation sections provide information on the signing and submission of the “IHSS Program Provider Enrollment Agreement” (SOC 846). This document is provided to the prospective provider at the conclusion of the provider orientation and is required to be signed by the prospective provider to acknowledge that he/she has attended the provider orientation and understands the rules and procedures of the IHSS program presented to him/her at the orientation.

**Submission of Fingerprints for State-Level Criminal Background Check
(MPP Section 30-776.44 through MPP Section 30-776.45)**

These regulation sections provide information on the submission of fingerprints to the California Department of Justice (DOJ) for the purpose of a State-level criminal background check. The criminal background check establishes if the prospective provider has been convicted, or incarcerated following a conviction for, any Tier 1 or Tier 2 crime(s) within the previous ten years which would disqualify him or her from working as an IHSS provider and being paid by the IHSS program.

**Consequence for Refusal or Failure to Complete Provider Enrollment
Requirements Within 90-Day Timeframe
(MPP Section 30-776.45)**

This regulation section states that a prospective provider that refuses or fails to complete any of the provider enrollment requirements within the 90 calendar day timeframe shall be deemed ineligible to be an IHSS provider.

**Transfer of IHSS Provider Eligibility Between Counties
(MPP Section 30-776.46 through MPP Section 30-776.463(a)(4)(A)(1))**

These regulation sections state that an enrolled provider shall not be required to complete the provider enrollment requirements more than once, provided he/she remains active and continuously enrolled as a provider. If the enrolled provider chooses to provide services to an IHSS recipient in a new county, the originating county is responsible for providing the new county (known as the receiving county) with copies of the provider's enrollment form and provider enrollment agreement. The receiving county cannot require a currently enrolled and active provider to obtain a new criminal background check. The originating county is responsible for providing the receiving county with information regarding the provider's criminal background check clearance, and the receiving county is responsible for accepting that clearance as documentation of the provider's eligibility to continue providing services to IHSS recipients in the receiving county. The originating county will continue to receive updated information from the DOJ regarding the provider. If the provider is determined to be ineligible due to a subsequent conviction for a disqualifying Tier 1 or Tier 2 crime, the originating county must immediately inform the receiving county of this information in order to begin the process of terminating the provider's eligibility. Therefore, the originating county should not request a "No Longer Interested" status with the DOJ even if the provider no longer provides services to an IHSS recipient in that county.

If an individual was determined ineligible to be a provider on the basis of a Tier 2 disqualifying conviction, but his/her exclusion as a provider has been waived by a recipient using an individual waiver, this individual waiver does not constitute a criminal background clearance; therefore, this individual must obtain another criminal background check in the receiving county and must obtain an individual waiver based on the findings of that criminal background check if necessary that is filed in the receiving county IHSS office or Public Authority as provided in MPP Section 30-776.7.

If a provider with a Tier 2 conviction is no longer providing services to an IHSS recipient in the originating county, that county may request a “No Longer Interested” status with the DOJ once the receiving county has received the provider’s Criminal Offender Record Information (CORI) from the DOJ in response to the second criminal background clearance. Because the receiving county obtained a second criminal background check, it will now receive any subsequent arrest and/or conviction notifications from the DOJ for the provider, and the originating county will no longer be responsible for providing this information to the receiving county.

If the provider is providing services in both the originating and receiving county, each county will receive any subsequent arrest and/or conviction notifications from the DOJ for the provider. If such notification is received, the two counties should coordinate their efforts in regards to the sending of the “IHSS Program Notice to Provider of Provider Ineligibility Tier 1 Crimes Ineligibility—Subsequent Conviction (Welfare and Institutions Code 12305.81)” (SOC 858A) or the “IHSS Program Notice to Provider of Provider Ineligibility Tier 2 Crimes Ineligibility –Subsequent Conviction (Welfare and Institutions Code 12305.87)” (SOC 858B) to the provider and the “IHSS Program Notice to Recipient of Provider Ineligibility Tier 1 Crimes Ineligibility—Subsequent Conviction (Welfare and Institutions Code 12305.81)” (SOC 859A) or the “IHSS Program Notice to Recipient of Provider Ineligibility Tier 2 Crimes Ineligibility –Subsequent Conviction (Welfare and Institutions Code 12305.87)” (SOC 859B) to the recipient in order to avoid causing confusion through the sending of duplicate notices.

**Procedures for Provider Enrollment Criminal Background Check
(MPP Section 30-776.5 through MPP Section 30-776.59)**

These regulation sections detail the requirements and procedures for the required provider criminal background check. Each applicant or prospective provider must submit his/her fingerprints to the DOJ via the LiveScan system for a criminal background check to determine if he/she has ever been convicted of a disqualifying felony (Tier 1 or Tier 2) or incarcerated following a conviction for a disqualifying crime within the previous ten years. The DOJ then sends the results of the criminal background check, in the form of a CORI document, to the county IHSS or Public Authority. The county will either approve or deny the applicant or prospective provider’s

eligibility to serve as an IHSS provider based on the results of the criminal background check and will send both the applicant or prospective provider and the recipient who has designated him/her as a provider a notification of the decision. The regulation sections also specify that a county can deny an applicant or prospective provider's eligibility to work as an IHSS provider based on any verifiable documentation that indicates the individual has been convicted, or incarcerated following the conviction, of a Tier 1 crime in another jurisdiction outside California.

**Providing Notice of Prospective Provider Eligibility or Ineligibility to be Enrolled as a Provider
(MPP Section 30-776.6 through MPP Section 30-776.633)**

These regulation sections detail the ways in which the county must provide notice of an individual's eligibility or ineligibility to be enrolled as an IHSS provider. The notice to the prospective provider or enrolled provider must detail the specific reason he/she was deemed ineligible; if the provider was previously eligible, the date on which he/she will become ineligible to receive payment for providing IHSS services; and any actions that the individual may take to be deemed eligible, if appropriate. If the individual is found ineligible due to a conviction, or incarceration following a conviction, for a disqualifying crime, the county must send the prospective provider or enrolled provider a copy of his/her CORI, showing the conviction or incarceration information used to determine his/her ineligibility, and information on how the individual may contest the accuracy and completeness of, or refute any erroneous or inaccurate information in, the CORI document. If a recipient has designated the prospective provider or applicant provider as his/her provider of choice, that recipient will also receive a notice stating that the chosen individual is not eligible to be an IHSS provider and specific information on the disqualifying conviction(s) which caused the prospective provider to be declared ineligible.

**Individual Waivers for Disqualifying Convictions
(MPP Section 30-776.7 through MPP Section 30-776.77)**

These regulation sections specify the policies and procedures for individual waivers of disqualifying convictions. A recipient may allow an individual who is ineligible due to a disqualifying conviction, or incarceration following a conviction, of a Tier 2 crime to work as his/her provider and be paid through the IHSS program if the recipient signs an individual waiver stating that he/she wishes the individual to work as his/her IHSS provider despite the disqualifying conviction. These sections set forth the required content of the individual waiver form, how it should be signed and submitted by the IHSS recipient, and the length of time the document must be stored/filed in the county IHSS office or Public Authority. The sections also state that only IHSS recipients or

their authorized representatives can sign the individual waiver form. The provider cannot sign the individual waiver except under specific circumstances (parents, guardians, or persons having legal custody of a minor recipient or conservators, spouses, or registered domestic partners of adult recipients). The sections also specify the specific limitations imposed on a provider with a Tier 2 conviction who is able to work as an IHSS provider under an individual waiver, namely that the provider may only provide services for the IHSS recipient who signed and submitted the individual waiver and only within the county in which the individual waiver was filed.

**Eligibility Due to Lapsing of Ten-Year Time Period Following Tier 2 Crime Conviction or Incarceration
(MPP Section 30-776.8 through MPP Section 30-776.82)**

These regulation sections state that an enrolled provider who has been working under an individual waiver may become eligible to work as a provider with no limits due to the lapsing of the ten-year time period following the conviction, or incarceration following a conviction, of a Tier 2 crime. These sections detail the conditions that must be met to allow the enrolled provider to become a full provider with no limits, including the requirement that the provider must be sent an “IHSS Program Lapse of Ten-Year Timeframe for Tier 2 Crime” (SOC 848A) notice once the provider’s change in his/her eligibility status has been updated.

**Subsequent Arrest and/or Conviction Notification
(MPP Section 30-776.9 through MPP Section 30-776.932)**

These regulation sections specify the procedures counties must follow when they receive notification of an enrolled provider’s subsequent arrest and/or conviction for a disqualifying crime, including what steps the county must take once they receive the information from the DOJ. This section also details the situations in which the county should notify the DOJ to terminate sending subsequent arrest notifications for specified enrolled providers who have become ineligible due to one-year inactivity as an IHSS provider or subsequent conviction of a Tier 1 or Tier 2 crime.

**Determination of Legal Authority to Work in the United States
(MPP Section 30-777.1 through MPP Section 30-777.12)**

These regulation sections specify the methods the county must employ to determine an applicant or prospective provider’s legal authority to work in the United States, including the completing, signing, and retaining of U.S. Citizenship and Immigration Services’ (USCIS) Employment Eligibility Verification form (Form I-9).

New and Revised Forms and Notices

As a result of the new regulations, twelve existing forms and notices that were initially adopted for use and released via ACL 11-12 have been revised with new language to reflect the changes in policy as a result of the newly adopted regulations. Three new notices (SOC 848A, SOC 851A, SOC 857B) to applicants/prospective providers and recipients have also been developed as a result of the newly adopted regulations. The following forms and notices have been newly developed or modified:

- IHSS Program Provider Enrollment Form (SOC 426, rev. 5/16): This form is completed by the applicant provider to enroll in the IHSS program to work and be paid as an IHSS provider. The form has been modified to include information informing the applicant provider of the 90-day timeframe for completing the provider enrollment process. It has also been updated to include the applicant provider's e-mail address (if any) as required under MPP section 30-776.441(h) of the newly adopted regulations.
- Important Information for Prospective Providers About the IHSS Program Provider Enrollment Process (SOC 847, rev. 5/16): This informational document informs the prospective provider about the four-step provider enrollment process and the actions the prospective provider needs to take at each step in order to ensure that he/she completes the provider enrollment process within 90 days from the date he/she began the process. This notice has been modified to inform the prospective provider about the new 90-day timeframe to complete the process, about the new regulation (MPP section 30-776.414(a)) which allows for the submission of a photo identification card issued by a federally-recognized Native American or Alaskan Native tribal organization as proof of identity, and about the recommendation to those prospective providers who may have been arrested and/or convicted of a crime within the previous ten years to begin the process of the criminal background check as early as possible since it may take longer for the DOJ to review that individual's criminal history and provide the county with his/her CORI.
- IHSS Program Notice of Provider Eligibility (SOC 848, rev. 5/16): This notice informs the provider that he/she has been officially enrolled as an IHSS provider. The notice has been modified to include information to the provider notifying him/her that he/she may be eligible to receive retroactive payments for any authorized services provided for 90 days before the date of the notice.

- IHSS Program Lapse of Ten-Year Timeframe for Tier 2 Crime (SOC 848A, 5/16): This notice informs the provider that, due to the lapsing of the ten-year timeframe following the conviction, or incarceration following a conviction, of a Tier 2 crime, he/she is now enrolled as an IHSS provider with no limits to his/her ability to work for multiple providers or in another county within the State as long as he/she receives no subsequent convictions for any disqualifying felony.
- IHSS Program Notice to Applicant Provider of Provider Ineligibility Incomplete Provider Process (SOC 851, rev. 5/16): This notice informs the applicant provider that he/she has been denied eligibility due to a failure to complete the four required steps of the IHSS provider enrollment process within the 90-day timeframe from the initial date of initiating the process. It also informs the applicant provider which of the steps he/she failed to complete and provides contact information if the applicant provider believes he/she has completed all of the required steps or wishes to request an extension to the 90-day timeframe for “good cause.”
- IHSS Program Notice to Applicant Provider of Incomplete Provider Process 15-Day Notification (SOC 851A, 5/16): This notice will be sent out to an applicant provider who has not completed the four required provider enrollment requirements within 75 days of the date when he/she first initiated the enrollment process. This notice will inform the applicant provider that he/she has 15 days to complete the enrollment process or he/she will be determined to be ineligible. It also informs the applicant provider which of the steps he/she failed to complete and provides contact information if the applicant provider believes he/she has completed the required step(s) documented or wishes to request an extension to the 90-day timeframe for “good cause.”
- IHSS Program Notice to Applicant Provider of Provider Ineligibility Tier 2 Crimes (Serious/Violent Felonies; Sex Offender Felonies; Fraud Against Government Agencies (Welfare & Institutions Code 12305.87)) (SOC 852A, rev. 5/16): This notice informs the applicant provider that he/she has been denied eligibility to be an IHSS provider due to a conviction for a Tier 2 crime. The notice has been modified to inform the applicant provider that if his/her recipient chooses to complete and submit an individual waiver to allow him/her to work and be paid as an IHSS provider that the waiver will be effective only in the county in which it is filed.

- IHSS Program Notice to Recipient of Provider Ineligibility Due to Incomplete Provider Process (SOC 855, rev. 5/16): This notice informs the recipient of his/her provider applicant's denial of eligibility to be an IHSS provider due to the fact that the provider failed to complete one or more of the required provider enrollment process steps within the 90-day time frame from the initial date of initiating the process. The notice informs the recipient which of the steps the provider failed complete and indicates that the recipient must choose a different individual to provide IHSS services to him/her or bear the responsibility for paying the ineligible individual if he/she continues to receive services from him/her.
- IHSS Program Notice to Recipient of Provider Ineligibility Tier 2 Crimes (Serious/Violent Felonies; Sex Offender Felonies; Fraud Against Government Agencies (Welfare & Institutions Code 12305.87)) (SOC 855B, rev. 5/16): This notice informs the recipient of his/her applicant provider's denial of eligibility to be an IHSS provider due to a conviction for a Tier 2 crime. The notice has been modified to inform the recipient that if he/she chooses to complete and submit an individual waiver to allow the applicant provider to work and be paid as his/her IHSS provider that the waiver will be effective only in the county in which it is filed.
- IHSS Program Notice to Recipient of Provider Eligibility Acknowledgement of Receipt of Waiver (SOC 857, rev. 5/16): This notice informs the recipient who has submitted a waiver for his/her provider that the waiver has been received and processed by the IHSS county office or Public Authority. It also informs him/her that the chosen individual has been approved to work and receive payment from the IHSS program as his/her provider. This notice reiterates that the recipient has approved the individual to be his/her provider with full knowledge of the individual's criminal conviction(s) and that neither the State nor the county are liable for any actions the individual takes while in the recipient's employ as an IHSS provider. The notice also informs the recipient that if he/she moves to a new county and wishes the individual to continue to work as his/her provider, the individual must submit to another criminal background check through the DOJ to be used in the new county and that the recipient must complete and submit another IHSS Program Recipient Request for Provider Waiver (SOC 862) in the new county.

- IHSS Program Notice to Provider of Provider Ineligibility Criminal Background Check Needed (SOC 857B, 5/16): This notice informs an IHSS provider working under an individual waiver in one county must submit to another criminal background check through the DOJ in order to work as an IHSS provider in another county. Once the criminal background check information has been processed and the CORI documentation has been sent to the new county, the recipient for whom the ineligible provider wishes to work may submit an SOC 862 to the new county to allow the individual to work as an IHSS provider in the new county.
- IHSS Program Notice to Provider of Provider Ineligibility Tier 2 Crimes Ineligibility –Subsequent Conviction (Welfare and Institutions Code 12305.87) (SOC 858B, rev. 5/16): This notice informs the provider that his/her eligibility to work and be paid as an IHSS provider has been terminated due to a subsequent conviction for a Tier 2 crime. The notice has been modified to inform the provider that if his/her recipient chooses to complete and submit an individual waiver to allow him/her to continue to work and be paid as the recipient's IHSS provider that the waiver will be effective only in the county in which it is filed.
- IHSS Program Notice to Recipient of Provider Ineligibility Tier 2 Crime Ineligibility –Subsequent Conviction (Welfare and Institutions Code 12305.87) (SOC 859B, rev. 5/16): This notice informs a recipient that his/her provider's eligibility to work and be paid as an IHSS provider has been terminated due to a subsequent conviction for a Tier 2 crime. The notice has been modified to inform the recipient that if he/she chooses to complete and submit an individual waiver to allow the provider to continue to work and be paid as his/her IHSS provider that the waiver will be effective only in the county in which it is filed.
- IHSS Program Recipient Request for Provider Waiver (SOC 862, rev. 5/16): This form is completed and signed by the recipient to allow an individual who was determined to be ineligible to serve as an IHSS provider due to a Tier 2 criminal conviction to work and be paid by the IHSS program as an IHSS provider only for the recipient signing the form. The form has been modified to inform the recipient that the waiver only applies to the county to which it is being sent. If he/she moves to a different county and wishes the provider to continue working for him/her, the provider would have to undergo another criminal background check in the new county and another waiver request form would have to be completed, signed, and submitted to the IHSS office in the new county.

- IHSS Program Notice to Provider of Provider Eligibility Acknowledgement of Receipt of Waiver (SOC 870, rev. 5/16): This notice informs the provider who was determined to be ineligible due to a Tier 2 criminal conviction that the waiver the recipient for whom he/she wishes to work has been received and processed by the IHSS county office or Public Authority. It also informs him/her that he/she has been approved to work and receive payment from the IHSS program as the IHSS provider for the recipient who submitted the waiver. This notice also informs the individual that he/she is only eligible to work for the recipient who submitted the waiver and if he/she wishes to work for any other IHSS recipient, that recipient will need to submit an SOC 862 as well. The notice also informs the provider that if his/her recipient moves to a new county and he/she wishes to remain working as that recipient's provider or if he/she wishes to work as an IHSS provider for a recipient in a different county, he/she will need to submit another criminal background check through the DOJ to be used in the new county and that each recipient for whom he/she works in the new county will need to complete and submit an SOC 862 in the new county.

AVAILABILITY OF FORMS AND NOTICES

Counties must begin using the new and revised forms as of the date of this ACL. The new and revised forms, which are designated as "Required – No Substitutes Permitted," are available in camera-ready format on the CDSS Forms/Brochures web page at:

<http://www.dss.cahwnet.gov/cdssweb/PG183.htm>

Upon completion of translations, CDSS will post Armenian, Chinese and Spanish versions of the forms on the Translated Forms and Publications web page at:

http://www.dss.cahwnet.gov/cdssweb/FormsandPu_274.htm

The designated Forms Coordinator for your county must distribute translated forms to each program and location. Each county shall provide bilingual/interpretive services and written translations to non-English or limited-English proficient populations, as required by the Dymally-Alatorre Bilingual Services Act (California Government Code section 7290 et seq.) and by state regulation (California Department of Social Services Manual of Policies and Procedures Division 21, Civil Rights Nondiscrimination, section 115).

Questions about accessing the forms may be directed to the Forms Management Unit at fmudss@dss.ca.gov. Questions about translations may be directed to the Language Services Unit at LTS@dss.ca.gov.

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Questions or requests for clarification regarding the information in this letter should be directed 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

Attachments

c: CWDA