



**United Domestic Workers of America  
AFSCME Local 3930 /AFL-CIO**

UDW EXECUTIVE BOARD

September 24, 2009

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Adult Programs Policy Bureau  
California Department of Social Services  
Via E-mail: [Brad.Elftmann@dss.ca.gov](mailto:Brad.Elftmann@dss.ca.gov)

Rose Nguyen, Secretary/Treasurer

Rosalina Flores, Vice President

**RE: DRAFT All-County Letter – Implementation of ABX4 4: Service  
Reductions in the IHSS Program**

Russell Jones, Butte County - Addus

Dear Randy:

Amy Day, El Dorado County

The UDW Homecare Providers Union/AFSCME has carefully reviewed the draft All-County Letter which would implement deep and harmful cuts to approximately 130,000 consumers of IHSS. Before we comment on the specific components of the draft ACL, we are compelled to remind the Administration that we believe that the IHSS eligibility reductions that were enacted with ABX4 4 (Chapter 4, Statutes of 2009) are unlawful.

Margarita Jaramillo, Kern County

Edward Huddleston, Merced County

Christine Nguyen, Orange County

The IHSS program efficiently serves its purpose: it allows approximately 450,000 Californians who are people with disabilities or seniors to remain safely in their own homes. Because of IHSS, these Californians – and the state of California – avoid more costly and less desired placement in facilities such as nursing homes. The Americans with Disabilities Act (ADA) provides that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in, or denied the benefits of, services, programs or activities, or be subjected to discrimination by any such entity. In 1999, the US Supreme Court, in the ruling which has come to be called the *Olmstead* decision, told the states that unnecessary placement of people with disabilities in institutions is unlawful as a violation of the Americans with Disabilities Act.

William Reed, Placer County

Martha Martinez, Riverside County

Rosa Ramirez, Riverside County - Addus

Editha Adams, San Diego County

Gerald Ashby, San Diego County

Paula Fisk, San Luis Obispo County

Feel Good, Santa Barbara County

The IHSS program is, by the state's admission, the foundation of California's compliance with the *Olmstead* decision. Thus, reductions to the threshold levels based on Functional Index Scores and Ranks for authorization of services in the IHSS program is an erosion of California's legal obligations to comply with *Olmstead* and violates federal laws.

Elva Munoz, Santa Barbara County - Addus

Roxann Chakos, Stanislaus County

**UDW Comments and Suggestions on the draft ACL**

Doug Moore, Executive Director

- **Inappropriate use of descriptive adjectives:** On page one, paragraph two, the draft letter states, "In addition, ABX4 4 mandates that *ancillary* [emphasis added] Domestic and Related Services will be authorized only to those individuals with a substantial need for that specific service based on a FI Rank of at least 4 in that functional area." On page one, paragraph four, the draft letter states, "The primary goal of the IHSS program is to provide *essential* [emphasis added] personal

care services to aged blind and disabled individuals who are most at risk and allow them to remain safely in their homes and avoid institutionalization.”

We object to the use of the words “ancillary” in describing Domestic and Related Services which implies Domestic and Related services are somehow less crucial than other IHSS services. In fact, the list of Domestic and Related services confirms that these services are essential: Meal preparation and clean-up, housekeeping, laundry, food shopping, shopping and errands.

- **Exemptions:** On page 3, the draft ACL indicates the Administration will be seeking guidance from CMS on whether the retention of exemptions for consumers who receive Paramedical and Protective Supervision will jeopardize federal financial participation in the IHSS program. We believe the ACL should contain information about what would happen if CMS were to determine that FFP is in jeopardy; specifically the ACL should indicate if consumers or providers are at risk of reimbursing the state and counties if a determination is made by CMS that these exemptions are unlawful.
- **CMIPS Functionality and Data Entry:** On page four, first bullet, the draft states, “Based on the identified criteria, CMIPS will identify and **auto-terminate** both the recipient and any Eligible (“E” Status) or Leave (“L” Status) providers associated with the case effective November 1, 2009.

The UDW believes the ACL should contain information about safeguards to prevent the automatic termination of any provider who is linked to multiple consumers. In other words, the draft ACL should indicate the auto-termination of consumers and providers for the cases tied to an overall FI Score of 1.99 or less, and retention of providers linked to consumers with FI Scores above 2.0.

- **Domestic and Related Eligibility Threshold**

- On page five, sentence one in the first paragraph, the word “assessed or” should be deleted as follows: “Enactment of ABX4 4 also established a threshold of need that must be met before Domestic and Related Services may be ~~assessed or~~ authorized.” We believe this change is necessary because consumers will still be assessed for the need for Domestic and Related Services but may not receive them based on their Functional Index Rank(s).
- On page five, paragraph five (which is paragraph two under “Exemptions), we suggest the following change, “Therefore the requirement for Domestic and Related Services thresholds of FI Rank 4 or above will not be applied to recipients with an assessed need for Protective Supervision or Paramedical Services.”
- On page six, the second bullet states, “If a reduction in hours changes the recipient from severely impaired to (SI) to non-severely impaired (NSI), CMIPS will make any necessary adjustments to reflect the appropriate statutory maximums.”

We believe that additional information is needed to understand how the use of weighted scoring affects the SI/NSI designation and what the impact would be on consumers who are determined to be NSI due to implementation of these reductions.

- **Requests for Reassessments**

On page seven, paragraph three, the draft ACL states, “Recipients who believe they need more authorized hours may request additional hours through a county reassessment. For the 12-month period following the date of this ACL, recipients who seek a county reassessment of their authorized hours sooner than their next schedule reassessment **must provide**

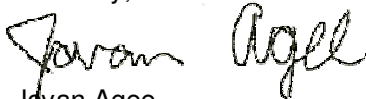
**documentation from the recipient's physician of a change in their functional ability that would significantly affect one or more of their functional rankings.**

**This is clearly unlawful** because there is no statutory authorization for the state and/or counties to require the submission of a physician form as a condition of approving a request from a consumer to be reassessed. Consumers have a clear right to request a reassessment at any time pursuant to Welfare & Institutions Code 12301.1 (d), as follows:

WIC 12301.1 (d) A county shall assess a recipient's need for supportive services **any time that the recipient notifies the county of a need to adjust the supportive services hours authorized**, or when there are other indications or expectations of a change in circumstances affecting the recipient's need for supportive services.

We appreciate this opportunity to provide comments to this draft All-County Letter. Given the short timeframe, we have done our best to submit meaningful suggestions and questions by your deadline of September 24, 2009. However, we may find it necessary to submit additional comments after further review of the CDSS draft and related documents.

Sincerely,



Jovan Agee,  
Political & Legislative Director

cc: Myesha Jackson, Office of the President Pro Tempore  
Gail Gronert, Special Assistant, Assemblywoman Speaker Bass  
Nicole Vazquez, Consultant, Assembly Budget Committee  
Jennifer Troia, Consultant, Senate Budget Committee