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**RE: DRAFT IHSS Provider Enrollment Form – SOC 426 (REV. 12.08)**

Dear Brad:

The CDSS Adult Services Branch is in the processing of revising the IHSS Provider Enrollment Form (SOC 426) and is soliciting comments and suggestions from stakeholders to the last draft that was released in December 2008. As you know, the United Domestic Workers of America (UDW) did not receive a copy of the draft IHSS Provider Enrollment Form from CDSS until mid-February 2009 and the CDSS requested that comments be submitted to you by February 26, 2009. Immediately after receiving the draft IHSS Provider Enrollment form, the UDW requested additional time to review the draft in order to prepare our comments.

The current IHSS Provider Enrollment Form is a very simple, one-page document that requires caregivers to provide the following information: name, social security number, address, telephone number, date of birth, gender, ethnic origin, relationship to the recipient, and the date of the first day on the job. The draft Provider Enrollment Form is seven pages long and overly complicated with terms and language that is too legal in nature, particularly the disclosure statements. This form will may be very difficult for the target reader to understand.

**General comments:**

- **Verification of identification** documents – The draft IHSS Provider Enrollment Form requires every current and potential IHSS provider to physically bring their identification documents into a county welfare office for the verifications required in Part III – which may be difficult for many IHSS providers. Most county welfare offices are not open at night or over the weekend when it might be most convenient for current or prospective IHSS providers to bring in the provider enrollment form. We note that the regular Medi-Cal application (DHCS 6210 rev 2/08) does not require on-site verification; it only requires that a legible copies of identification documents be attached to the application.
- **Provider Rights** – The draft enrollment form does not include anything about a provider rights to appeal a decision by the county to exclude/prohibit them from being a provider if there is any problem with the information on the form. The form should also include information about privacy rights, particularly the information about how to protect the social security number of the provider as outlined in the FAQs.
- **Provider questions** – The regular Medi-Cal application form (DHCS 6210 rev 2/08) has a phone number and email address for questions. We believe that the IHSS Provider Enrollment Form should provide similar information.
- **How to submit the form** – The regular Medi-Cal application/enrollment form is mailed in. Why can't the IHSS provider enrollment form be mailed in along with copies of the required identification forms?

**The following outlines our concerns and questions with the draft SOC 426 IHSS Provider Enrollment Form.**

- **The form must be completed for each IHSS provider/recipient relationship** (page 1, first bullet) – this seems overly burdensome and the UDW recommends that the CDSS establish a simplified form

for providers to use when new client relationships are established with existing caregivers so that the providers do not have to travel to a county welfare office for their identification documents (drivers license, etc) to be verified by county staff. For example, may counties obtain the provider's the completed SOC 426 once, and use this for multiple recipients? (This may require separating the recipient's signature and information out).

- **Requirement to inform the county of changes from the information submitted on the original form within 35 days** (page 2, bullet six) – Will the provider be required to complete the entire SOC 426 and take the completed form to a county welfare office for verification of identification documents? This also seems overly burdensome to both IHSS providers and to county staff. The UDW recommends that CDSS develop a simplified form for providers to submit updated information, such as a change of address or telephone number that could be mailed into the county welfare office. We do not believe it is necessary for IHSS providers to submit a form with these simple changes in person to the county welfare office.
- **Provider Disclosure of Child Abuse and/or Elder Abuse Convictions** (page 2, question 12) – While it is helpful that the definitions of Section 273a and Section 368 of the Penal Code are included in the draft form on page 6, this question would be clearer if the question specifically included the simple terms for these crimes, as follows:

***12. Within the past ten years of the date of this statement***, have you been convicted of felony Child Abuse/Endangerment for a violation of under subdivision (a) of Section 273a of the Penal Code or felony Elder Abuse under Section 368 of the Penal Code, or similar violations in another jurisdiction? See definitions of Penal Codes on Pages 5 and 6.

- **Provider Disclosure of Fraud or Abuse involving a government program in any civil proceeding** (page 2, question 13) – It is not clear what information is being solicited or what types of fraud or abuse against government programs could be covered in this question. Welfare and Institutions Code § 12305.81 prohibits any person from being an IHSS provider for 10 years following the conviction for, or incarceration following conviction for fraud against a government health care or supportive services program. There is no authority in existing law to prohibit any person from working as an IHSS provider if they have been liable for fraud or abuse involving other government programs. Why is this question on the draft form? What is the statutory authority to request this information?
- **Provider Disclosure of a legal settlement in place of a conviction for fraud or abuse involving a government program** (page 2, question 14) – Prior to the enactment of Welfare and Institutions Code § 12305.81 in SB 1104, there was no prohibition in state law for any individual to work as an IHSS provider. That section of law limits the prohibition to individuals who have been convicted for, or incarcerated following the conviction, of fraud against government health care or supportive services programs. The statutes do not include any reference to legal settlements in place of a conviction – nor so the statutes that bar people from serving as an IHSS provider that have been found guilty of fraud or abuse against government programs outside of the health or supportive services arenas. Why is this question on the draft form? What is the statutory authority to request this information?
- **Provider disclosure questions regarding current or past status as a provider in Medi-Cal or another state's Medicaid program** (page 2, question 15, 16 and 17, and page 3, question 18) – Welfare and Institutions Code § 12305.81(a) established the authority of CDSS to develop an updated provider enrollment form with the following provisions:

(1) A person who, in the last 10 years, has been convicted for, or incarcerated following conviction for, fraud against a government health care or supportive services program is not eligible to be enrolled as a provider or to receive payment for providing supportive services.

(2) An individual who, in the last 10 years, has been convicted for, or incarcerated following conviction for, a violation of subdivision (a) of Section 273a of the Penal Code or Section 368 of

the Penal Code, or similar violations in another jurisdiction, is not eligible to be enrolled as a provider or to receive payment for providing supportive services.

(3) A statement declaring that the person has not, in the last 10 years, been convicted or incarcerated following conviction for a crime involving fraud against a government health care or supportive services program.

(4) A statement declaring that he or she has not, in the last 10 years, been convicted for, or incarcerated following conviction for, a violation of subdivision (a) of Section 273a of the Penal Code or Section 368 of the Penal Code, or similar violations in another jurisdiction.

(5) The person agrees to reimburse the state for any overpayment paid to the person as determined in accordance with Section 12305.83, and that the amount of any overpayment, individually or in the aggregate, may be deducted from any future warrant to that person for services provided to any recipient of supportive services, as authorized in Section 12305.83.

These subsections of Welfare and Institutions Code 12305.81(a) do not contain any authority for CDSS to require IHSS providers to provide information about their current or previous status as a Medi-Cal or Medicaid providers. Moreover, this seems irrelevant to any person's ability or authority to serve as an IHSS provider. Even if an IHSS provider had been suspended from the Medi-Cal program or had lost/surrendered a professional health care license that would not prohibit that person from working as an IHSS caregiver. Likewise, if a person had been disciplined by a licensing health care authority, that disciplinary action would not affect the legal right of a person to be compensated for providing care under the IHSS program. There is no licensure requirement for any person to be compensated as an IHSS provider. There is no statutory authorization to bar any person from serving as an IHSS provider unless there has been a conviction of fraud against a government health care or supportive services program. **We believe that questions 15, 16, 17, and 18 should be deleted from the draft SOC 426.**

#### **Concerns with the "Answers to Frequently Asked Questions About the Provider Enrollment Statement Form" –**

- ❖ **Question #5: "What happens if I have been convicted of fraud or abuse within the last ten years?** If you have been convicted of any crime listed on the SOC 426 within the last ten years, you will be ineligible to be an IHSS- provider and to receive payment for providing supportive services."
  - See above comments on questions 15 through 18; this could be confusing by implying that there are prohibitions against being compensated for working as an IHSS caregiver due to suspension from the Medi-Cal or Medicaid program, due to a disciplinary action by a licensed health care authority, or if a person has lost or surrendered a professional health care license. Both the provider enrollment form and the FAQs should be more clear about the reasons that a person may be prohibited from being compensated as an IHSS provider – and that those prohibitions are limited to individuals who have been convicted for, or incarcerated following the conviction, of fraud against government health care or supportive services programs.
- ❖ **Question # 8: "Can I appeal if my name is on the suspended and ineligible list and i'm found ineligible to provide services?"** You may contact the California Department of Health Care Services and ask for an informal hearing."
  - This section in the FAQs should provide more information about how to contact the California Department of Health Services, including the ability to use a toll-free phone number, what the specific procedures are to file an appeal, and how the appeal is processed (including normal timelines between an appeal, the informal hearing and when decisions are rendered).

The UDW has valued our ability to work with CDSS on important changes to the IHSS program in the past few years. The work to implement the Quality Assurance Initiative has been improved, in our view, by stakeholder input on the development of Hourly Task Guidelines and other aspects of the QA project. The work by CDSS to revise the IHSS Provider Enrollment is extremely significant to IHSS consumers

and providers. We would welcome the opportunity to participate if further opportunities arise for comments and input on changes to the IHSS Provider Enrollment Form.

Sincerely,

Jovan Agee, Political & Legislative Director  
United Domestic Workers of America/AFSCME

cc: Eva Lopez  
Eileen Carroll  
Nicole Vasquez  
Eileen Cubanski  
Gail Gronert