



September 24, 2009

Via electronic mail and U.S. Mail

Marti Tosta (Marti.Tosta@dss.ca.gov)  
California Department of Social Services  
744 P Street  
Sacramento, California 95814

Re: Comments to draft DSS All County Letter related to Implementation of ABX 4 4 (Service Reductions)

Dear Ms. Tosta:

SEIU offers comments to the Department of Social Services on the draft All County Letter (ACL) pertaining to implementation of ABX4 4, which restricts eligibility for IHSS services on the basis of Functional Index Scores and Functional Index Ranks.

We begin by noting that the ACL was released less than a week ago, and is quite lengthy. It was accompanied by a separate and lengthy draft ACL on provider enrollment procedures, about which we are providing comments in a separate letter. We point out that the shortness of time dictates that not all issues that could possibly be raised are raised in this letter.

We have grave concerns with several parts of the ACL because the department lacks statutory authority for numerous elements of the ACL or because the ACL lacks clarity. In addition, we have significant substantive, policy concerns that we bring to the attention of the Department.

Functional Index Scores - The FI Score was never designed to determine eligibility or need, has never been used for those purposes, and is an exceedingly poor measure of need. FI Scores are calculated based on average weights, not individual need, and offer particularly poor measures of the needs of individuals with cognitive or psychiatric disabilities, individuals with high need in a few categories, children, visually impaired individuals, and other groups of IHSS recipients. We believe its use to disqualify IHSS recipients from eligibility violates federal law.

ADL Rankings - We believe that the ADL rankings may signify the nature of recipient need (that is, whether need is for verbal or physical assistance) but not the depth or importance of an individual's need, and are particularly poor measures of the needs of individuals with cognitive or psychiatric disabilities. We therefore believe the elimination of domestic and related services for some people based on this ranking violates federal law.

Exemptions - We appreciate that at this time DSS is not waiving the exemptions related to protective supervision and paramedical services. We do not see waiver of any of the exemptions as necessary to maintain federal financial participation; in fact, we believe the opposite to be true. SEIU especially supports provision of IHSS services including domestic and related services to individuals who need protective supervision or paramedical services, whose FI Scores and Ranks are particularly poor measures of their need.

Notice of Action; FI Scores - The ACL lacks clarity as to whether consumers who are facing a reduction in services, either because hours are being cut on the basis of the domestic and related services reduction or because their Functional Index Score falls below 2.0, will receive enough information to adequately understand what is happening to them and to understand their right to appeal where appropriate. In particular, consumers who will be cut off entirely based on their FI Scores should be told all of their individual ADL ranks. These issues are very difficult to understand and without the necessary information these notices will not fulfill the minimum notice and adequate opportunity for hearing requirements of federal law.

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Notice of Action; Functional Ranks – Consumers who are being cut off entirely, and those cut off from domestic and related services, should be concisely and clearly informed what the functional ranks mean, both in general and in relation to the particular ADL at issue. (As noted above these are very complex issues and federal law requires that consumers be provided with adequate notice and hearing rights.)

Provider Notice – To protect consumers' due process rights and to avoid situations where providers keep working without understanding they will not be paid, it is imperative that a system of provider notification be established. We understand the privacy concerns that dictate the dissemination of certain information to consumers only, but notice to providers of authorized hours can be provided without violating consumer privacy.

Reassessments – The ACL states that reassessments require a physician's documentation. This requirement lacks statutory authority. Further, existing law provides that reassessments may be sought by a client whenever there is an adjustment in condition. Therefore, this change violates existing statutes.

NOA Languages – Federal law requires that notice be provided in threshold languages. Medi-Cal managed care information is provided in 13 threshold languages. Further, the Americans with Disabilities Act requires that communication be made in a manner that a person with a physical limitation, such as lack of sight or impaired hearing, can understand. Failure to provide Notice of Action in multiple languages (more than just Spanish and English) and in Braille would be inconsistent with federal law governing Medicaid as well as the Americans with Disabilities Act.

Inaccurate Descriptive Terminology The ACL is replete with descriptive terminology which lacks statutory basis and which suggests public policy implications not supported by current law. Among instances of inaccurate descriptive terminology, the ACL on page one refers to "ancillary" domestic and related services, even though in some instances it is precisely the provision of domestic and related services that allows a consumer to remain safely in their home. For example, lack of meal preparation can lead to malnutrition while lack of laundry can lead to avoidable decubitus. We believe that language in the letter may not reflect accurately the legislative intent of the program and therefore may be interpreted to disqualify individuals who are otherwise qualified under the statute. Another inaccuracy in the draft ACL is its description of an FI Rank of 3 signifying a need for "minimal human assistance" while the applicable statute defines this as showing a need for "some human assistance."

We understand that this is the beginning of the implementation process with respect to ABx4 4 and we will be supplementing our comments as more issues become apparent to us. We urge you to make the changes suggested in order to comply with the law and not invite the confusion that will make the ACL invalid if its contents cannot be reasonably understood.

Sincerely,



Allen Davenport  
Director, Government Relations