



In-Home Supportive Services: Changes in 2009

*Anna Rich & Katharine Hsiao
National Senior Citizens Law Center*

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IHSS Basics: Purpose

To “provide in every county ... those supportive services identified in this section to aged, blind, or disabled persons ... who are unable to perform the services themselves and who cannot **safely remain in their homes** or abodes of their own choosing unless these services are provided.” --W & I Code § 12300(a)

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IHSS Basics: Who?

Recipients must be:

- 65 or older; or
- Blind; or
- Meet Social Security definition of disabled.

Recipients must be California residents living “at home.”

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IHSS Basics: Who?

Demographics:

- > 430,000 recipients statewide.
- Majority are seniors.
- Two-thirds are women.
- Majority are from communities of color; almost ½ limited English proficient.

Increasingly important as Californians age.

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IHSS Basics: Financial Eligibility

- Full scope Medi-Cal = IHSS is free.
- Medi-Cal with Share of Cost (SOC) = IHSS services count toward SOC.

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IHSS Basics: Services

- **Paramedical Services:**
For example, administration of medications, tube feedings, injections, other activities requiring judgment based on training by licensed health professional.
- **Domestic services:**
For example, cleaning floors, kitchen, bathroom, garbage, changing bed.

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IHSS Basics: Services

- **Related Services:**

For example, meal preparation, laundry, food shopping.

- **Heavy cleaning.**

- **Personal services:**

For example, respiration assistance, bowel and bladder care, feeding, bathing, dressing, repositioning, ambulation.

- **Accompaniment services.**

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IHSS Basics: Services

- **Protective supervision** to prevent people with a mental impairment or mental illness from hurting themselves or others.

- Supervision must be needed 24/7.

- **Yard hazard abatement.**

- **Teaching/demonstration.**

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IHSS Basics: Assessment

Preparation for needs assessment is important.

- Keep a daily diary with start and end times.
- Show bad days as well as good days.
- Break down activities into steps to show need.
- Support person(s) should attend to communicate need.
- Get doctors and other health professionals to fill out forms ahead of time if paramedical services are needed.
- Disability Rights California has great self-assessment tool, available in multiple languages.

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IHSS Basics: Notice

- Applicant will receive notice regarding eligibility.
- NOA must be sent ten days prior to intended denial or change in coverage.
- NOA must explain reasons and regulations supporting change, right to appeal, and circumstances under which benefits will continue.

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IHSS Basics: Reassessment

- Recipient, family member or care provider can request additional hours.
 - Additional hours can be requested for short time period.
- IHSS can initiate reassessment.
 - County has the burden to show that reduction is justified by changed circumstances or medical improvement.

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IHSS Basics: Appeals

- Appeals Representative represents the county at the hearing. Many times problems can be resolved without a need for a hearing.
- County has burden of proof to show medical improvement and/or what information was relied on to make their decision about functional limitations.
 - Examples of information the county may rely on include social worker observations, interviews and notes, information provided by a doctor (such as reports and or completed forms), information provided by family, care givers and others.

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IHSS Basics: Appeals

Information about how to request a hearing (i.e. appeal) is on the back of NOA. Options:

- Fill in the back of the notice.
- Ask for a hearing by phone by calling 1-800-743-8525. Push 1, 1, 1 and, 3 to get through telephone tree.
- Write a letter.
- Send in a fax (preferred).

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IHSS Basics: Appeals

- Beneficiary has the right to hearing with ALJ.
 - Right to home hearing.
 - Right to interpreter.
 - Unfavorable hearing decision can be appealed to Superior Court by writ of administrative mandamus.
- Beneficiary can represent him/herself or appoint an authorized representative.

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IHSS Basics: Appeals

Timeline for appeals:

- Deadline to appeal to ALJ is 90 days from date of NOA.
- Deadline to receive Aid Paid Pending appeal is before NOA effective date or within ten days of date of NOA, whichever is later.

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Summary of IHSS Cuts and Changes in 2009

1. Cuts based on Functional Index (FI) ranks and score.
2. Eliminate “buy-out” payments for those with Medi-Cal with a Share of Cost (SOC).
3. New requirements for IHSS providers.
4. New requirements for IHSS consumers.
5. Rate cut for provider wages.

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What is “Functional Index” Rank?

The functional index rank is supposed to measure the type or degree of help a person needs with a particular function or activity of daily living.

- For example, domestic services, laundry, meal prep, ambulation, bathing, dressing/prosthetic devices, bowel & bladder care, eating, respiration, memory, orientation and judgment.

A number called a functional index rank between 1-5 is assigned for each function.

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What is “Functional Index” Rank?

Rank 1: Independent, no assistance needed.

Rank 2: Needs verbal assistance, such as reminding, guidance or encouragement.

Rank 3: Needs some human assistance, including but not limited to direct physical assistance.

Rank 4: Needs substantial human assistance.

Rank 5: Cannot perform function, with or without human assistance.

(Rank 6: Paramedical services needed.)

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What is “Functional Index” Rank?

- SW assigns functional index (FI) ranking and Hourly Task Guidelines (HTG) when assessing needs and awarding hours.
 - FI and HTG do not determine need.
 - SW will follow HTG unless consumer shows and supports need for more services.
 - SW must document exceptions to HTG.
- See Hourly Task Guidelines Quick Reference.

<http://www.cdss.ca.gov/agedblinddisabled/res/pdf/HTGQuickReferenceTool.pdf>

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Budget Cut – Domestic and Related Services (Stopped by Court)

According to AB X4 4, those with a functional index rank below a “4” (a rank of 3 or lower) in any of the functions listed below would not receive IHSS hours for that particular service.

- Domestic (housekeeping)
- Laundry
- Shopping & Other Errands
- Meal Preparation & Meal Clean up

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What is “Functional Index” Score?

- A functional index score is a mathematical calculation based on an individual's functional index ranks.
- Score is a weighted average, some ranks weighted more heavily than others. Some ranks are not included in score.
- See ACL-88-118, <http://www.dss.cahwnet.gov/lettersnotices/entres/getinfo/acl88/88-118.pdf>. Or Disability Rights California materials.


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Budget Cut-- Eliminate IHSS for Recipients with FI Score below 2.0 (Stopped by Court)

According to AB x4 4, those with a functional index score below “2” (1.99 or lower) would lose all IHSS services.

- All-or-nothing: will lose all IHSS services regardless of need for a particular service.
- Exceptions for individuals who receive protective supervision or paramedical services.

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Are Functional Index ranks and score appealable?

- Yes – However, the score is based on a mathematical calculation made by the computer. The calculation is probably correct. However, if the Functional Index ranks are not correct, the Functional Index score will not be correct.
- Focus on your Functional Index ranks because score is based on ranks.

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Functional Index Related Cuts

- Cuts originally planned for Nov. 1, 2009.
- Disability Rights California, NSCLC, IHSS provider unions, and others filed a lawsuit, *V.L. v. Wagner*, challenging the legality of cuts relating to Functional Index ranks and score.
- Good news! Federal district court found plaintiffs were likely to succeed, and issued preliminary injunction.
 - State has appealed to the Ninth Circuit.

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Functional Index Related Cuts & Language Access

- DSS originally planned to send notices in English only.
- Court said that failure to translate violated due process.
- Contact NSCLC if your LEP clients have problems understanding notices, or to be part of language access advocacy for IHSS consumers.

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Functional Index Related Cuts

- Those who would have been cut got “don’t worry” notice.

Notice says: A federal court has stopped cuts to In-Home Supportive Services (IHSS) that were supposed to happen on November 1, 2009. These cuts were based on something called a **functional index**. The court order means that you will keep getting the same number of IHSS hours that you get now.

The federal court order applies **only** to people who were going to lose some or all of their IHSS hours because of their functional index. If you get a Notice of Action about **other** changes in your IHSS benefits or hours, those changes will still happen unless you file an appeal.


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Functional Index Related Cuts

- Some providers' time sheets were not fixed in time for November.
 - Judge ordered a special notice sent in late November to IHSS providers who may have received wrong timesheets. Can make up extra hours in December if needed.

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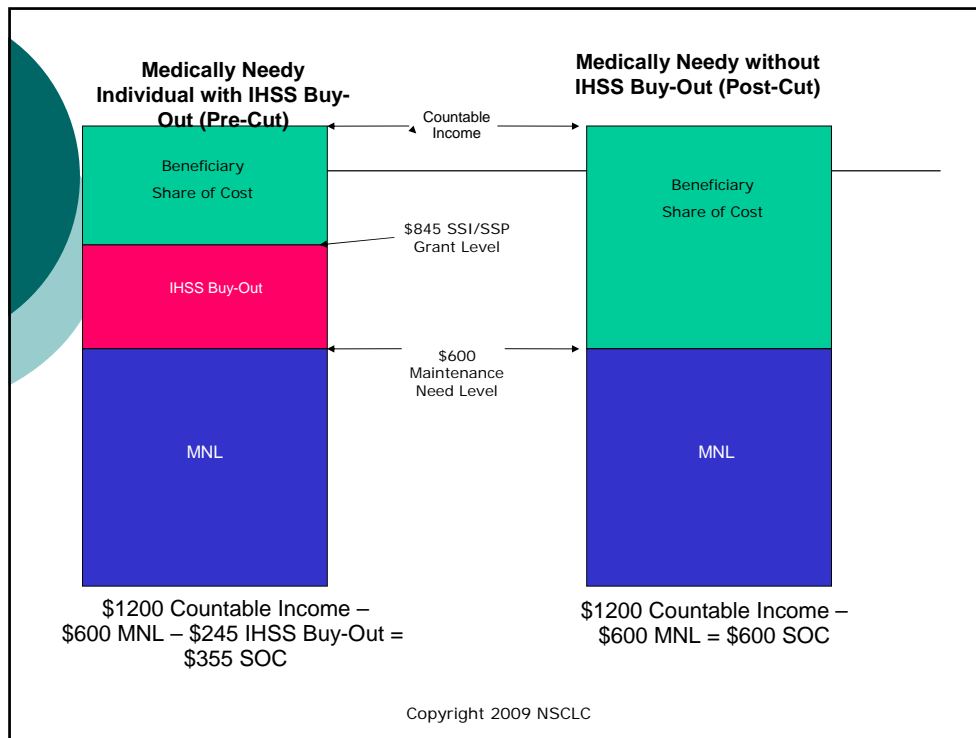


Elimination of Buy-Out Payments

Elimination of the state share of cost (SOC) buy out program for all Medi-Cal recipients with a share of cost.

- Individuals will be required to spend down any income in excess of the Medi-Cal maintenance need level of \$600 per month.
- Does not apply to those on Medi-Cal program with zero SOC and a higher income cap: Aged and Disabled Federal Poverty Level Program; Medi-Cal's Pickle Program or Disabled Adult Child Program; 250% Working Disabled Medi-Cal Program.


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Elimination of Buy-Out Payments

- Effective October 1, 2009 for all.
- Effective July 1, 2009 for new IHSS recipients.
 - For period between July 1-Oct. 2009, those with continuing eligibility should receive buy-out.
- See All-County Letter No. 09-47.

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Elimination of Buy-Out Payments

- Lawsuit filed challenging this cut, but the state court denied temporary restraining order, so cut continues.
- Contact Disability Rights California or Legal Aid Foundation of Los Angeles.

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Advice for Clients re Loss of Buy-Out

- Make sure Medi-Cal Share of Cost calculation is accurate.
 - Request a hearing if it is not.
 - LAFLA has sample form; <http://www.nsclc.org/areas/long-term-care/At-Home-Care/IHSS>.
- See if client could qualify for a different Medi-Cal program with zero Share of Cost.
 - For instance, health insurance premiums are deductible and decrease countable income for Medi-Cal Aged & Disabled FPL program.
 - Disability Rights California published detailed guide.

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New Provider “Anti-Fraud” Requirements

- Revised provider enrollment form (with new “never convicted of a felony or serious misdemeanor” language) used 11/1/09 – 11/24 (SOC 426, 426B)
- Usage of new forms temporarily stopped, All-County Letter 09-78
 - TRO originally granted through hearing on 1/29/10
 - [Note: state asked appellate court to stop TRO, and case is still being litigated]
 - Old form SOC 426 now back in use
 - *Beckwith, Ellis vs. Wagner, Alameda County*

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New Provider “Anti-Fraud” Requirements

- New form is being revised – providers will likely need to declare, under penalty of perjury, that within 10 years have not been convicted or incarcerated for:
 - Crime involving fraud against government health care or supportive services program;
 - Crime of elder or child abuseAuthority for this has been in existence for some time, but no declaration required before.

After 1/29/10 hearing, more information about revised form will be available.

All County Letters are available here:

<http://www.dss.cahwnet.gov/lettersnotices/PG1880.htm> See 09-78, -52, -66 , -69, -70



New Provider “Anti-Fraud” Requirements

- Submit fingerprints and get background check by California Department of Justice.
 - Provider must pay costs.
 - Provider has right to receive DOJ report.
 - Provider has right to contest report with DOJ.
 - Provider can request waiver of fee when contesting DOJ report.
- Attend provider orientation meeting and sign an agreement swearing to understand and agree to rules and responsibilities.


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New Provider “Anti-Fraud” Requirements

- Requirements apply to new providers starting November 2009; current providers starting summer 2010.
- Current providers means anyone in CMIPS as of January 2001.

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New Consumer “Anti-Fraud” Requirements

- Legislation allows counties to make unannounced home visits on IHSS recipients in order to verify that they are receiving services.
- IHSS consumers will be fingerprinted in their homes by county workers.
 - Begins no sooner than April 1, 2010.

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New “Anti-Fraud” Requirements on Timesheets

- Effective July 1, 2011, timesheets will require fingerprint of consumer and provider.
- Consumers and providers must verify that timesheet is true and correct, subject to civil penalties.

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Provider Rate Cuts

- Spring 2009 budget cuts reduced state contributions to IHSS provider wages.
 - Fresno County also reduced provider wages.
- *Martinez v. Schwarzenegger*, lawsuit filed by unions.
 - Court prohibited state and Fresno rate cuts, state has appealed to Ninth Circuit.

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Additional IHSS Resources

- Laws:
 - PCS and IPW programs: California Welfare & Institutions Code § § 14132.95, 14132.951.
 - Residual program: California Welfare & Institutions Code § 12300 et seq.
 - www.leginfo.ca.gov/calaw.html.

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Additional IHSS Resources

- IHSS Manual of Policies and Procedures (MPP)
 - Department of Social Services regulations § 30-700 et seq.
 - § 30-756 is Time-for-Task guidelines, description of ranks.
 - <http://www.dss.cahwnet.gov/ord/PG310.htm>.
- Medi-Cal Regulations.
 - California Code of Regulations, Title 22, §§ 51015.2, 51145.1, 51183, 51350 .
 - www.oal.ca.gov.

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Additional IHSS Resources

- All-County Letters
 - ACL-88-118, establishing FI Score formula.
 - ACL 06-34E2, Hourly Task Guidelines Regulations, Annotated Assessment Criteria.
 - ACL 09-47, Share of Cost Buyout Elimination (Cut #3).
 - ACL 09-56, Functional Index Cuts (Cut #1 and #2).
 - ACL 09-78, Stop Using New Provider Enrollment Forms
 - Online at <http://www.dss.cahwnet.gov/lettersnotices/PG931.htm>.

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Additional IHSS Resources

- Disability Rights California materials.
 - Functional Limitation Self-Assessment Packet.
 - http://www.disabilityrightsca.org/issues/inhome_pubs.html.

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- Network members will be kept informed of NSCLC's advocacy efforts and will receive substantive information and alerts on the various issues we cover – Health, Income and Federal Rights.
- Join online at <http://www.nsclc.org/front-page/join-or-donate-to-nsclc>.
- Contact Katharine or Anna if your LEP clients have problems understanding notices, or to be part of language access advocacy for IHSS consumers.

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Contact Information

- **Anna Rich, Katharine Hsiao**
 - (510) 663-1055, ext. 305 or 306
 - arich@nsclc.org; khsiao@nsclc.org
 - www.nsclc.org (keyword: IHSS)

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