

JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW



California's New IHSS Backup Provider System: What You Need to Know

Hagar Dickman, Senior Attorney, Justice in Aging
Lizzette Gomez, Staff Attorney, Disability Rights California
Crystal Padilla, Senior Advocate, Disability Rights California

December 14, 2022

JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

Justice in Aging is a national organization that uses the power of law to fight senior poverty by securing access to affordable health care, economic security, and the courts for older adults with limited resources.

Since 1972 we've focused our efforts primarily on fighting for people who have been marginalized and excluded from justice, such as women, people of color, LGBTQ individuals, and people with limited English proficiency.

Justice in Aging's Commitment to Advancing Equity

To achieve Justice in Aging, we must:

- Advance equity for low-income older adults in economic security, health care, housing, and elder justice initiatives.
- Address the enduring harms and inequities caused by systemic racism and other forms of discrimination that uniquely impact low-income older adults in marginalized communities.
- Recruit, support, and retain a diverse staff and board, including race, ethnicity, gender, gender identity and presentation, sexual orientation, disability, age, and economic class.



Disability Rights California (DRC) is a nonprofit agency. We are the largest disability rights group in the nation. Federal law established us to protect and advocate for the rights of people with disabilities. We are the protection and advocacy agency for California.

Housekeeping

- All on mute. Use Questions function for substantive questions and for technical concerns.
- Problems with getting on to the webinar? Send an email to trainings@justiceinaging.org.
- Find materials for this training and past trainings by searching the [Resource Library](https://justiceinaging.org/resource-library), justiceinaging.org/resource-library. A recording will be posted to [Justice in Aging's Vimeo page](https://Justice%20in%20Aging's%20Vimeo%20page) at the conclusion of the presentation, vimeo.com/justiceinaging.
- Enable closed captioning by selecting "CC" from the Zoom control panel.

Agenda

1. In Home Supports and Services (IHSS) Basics
2. What is the IHSS Backup Provider System?
3. Who Can Access the BUPS and How?
4. Who Can Enroll as a Provider?

IHSS Basics

What is IHSS? (1 of 2)

Statewide Medi-Cal program to help people with disabilities remain in their own homes

- Provides basic services to individuals who cannot safely perform the tasks themselves
- Administered by each County under the direction of the California Department of Social Services (CDSS)
- Alternative to out-of-home placement

What is IHSS? (2 of 2)

Any California resident is eligible for IHSS if they:

- Are blind, disabled, or 65 years of age or older
- Are SSI/SSP or Medi-Cal eligible
- Are living in their own home (but not a hospital, nursing home, assisted living, or licensed care facility)
- Cannot live safely at home without assistance

IHSS Services Available

- Domestic
- Heavy cleaning
- Related services
- Personal care
- Accompaniment to medical appointments
- Yard hazard abatement
- Teaching and demonstration
- Paramedical services
- Protective supervision

IHSS Eligibility (1 of 2)

Any California resident is eligible if they are:

1. Blind, disabled, or age 65 or older
2. SSI/SSP or Medi-Cal eligible*
3. Live in their **own home** (excludes hospital, nursing home, assisted living, or licensed care facility)

IHSS Eligibility (2 of 2)

Otherwise eligible if:

- Living in an institution and wants to live on their own
- Can safely live at home with receipt of IHSS services
- Demonstrated need for IHSS services
- Severely impaired: entitled to up to 283 hours/month if have 20 hours or more in personal care services listed in MPP 30-757.14 meal preparation, meal clean-up, and/or paramedical services
- Non-Severely Impaired are entitled to a maximum of 195 hours a month.

*Due to the recent Medi-Cal Expansion, eligibility is irrespective of immigration status

** Authorized when meal preparation and feeding is needed

Alternative Living Arrangements

IHSS Services may be provided in:

1. Recreational Vehicle (RV)
 - a. Utilities needed to provide services in a safe manner (running water, electricity/gas, restrooms, and appliances for food/meal storage & prep)
 - b. Can be in a single location for a “period of time,” sufficient for the county to assess needs and provider to deliver them
2. Temporary Shelter if:
 - a. Management of the shelter allows recipient to remain there for a specified “period of time” and
 - b. Allows IHSS staff to enter shelter to perform IHSS assessment and, and provider to provide the needed services
3. The home of a family member or friend if it the allows the recipient to remain in the home for a specified “period of time.

*ACIN I-19-20

Back-Up Provider System (BUPS)

Backup Provider System (BUPS): Background

- Originally California created the emergency backup provider system for relief needed due to COVID-19 (ACL 20-29)
- AB 135 & SB 187 established a permanent backup system, codified under WIC §12300.5-.6 and ACL 22-65
- Currently funded through California's 2023 fiscal year

What is the BUPPS?

- Counties or Public Authorities must keep a list of eligible backup providers
- System will pay for temporary IHSS or waiver personal care backup provider
- Operate the system at a minimum during normal operating hours Monday through Friday, excluding holidays

BUPS: Available Assistance

- **Non-Severely Impaired:** Maximum of 80 hours each FY (July 1 to June 30)
- **Severely Impaired:** Allowed up to 160 hours of BUPS services each FY, if available in the state budget.
- **Recipients with 2+ providers:** Without county permission, a recipient may assign the hours to their other provider. A provider backing up another is not exempt from the provider workweek limitations without county permission
 - All County Letters (ACLs) 22-65 and 16-01

BUPS Eligibility

BUPS: Eligibility

Recipient is eligible for services from a backup provider if they demonstrate an Urgent Need:

- a) For back-up supportive services related to personal care services that existing provider cannot meet, OR
- b) Because the recipient is transitioning from an Institution into the Community and no provider has been identified

Urgent Needs

- Urgent Need Definition (ACL 22-65 & 16-01)
 - Immediate and cannot be postponed until the provider is available to provide the need,
 - Has a direct impact on the IHSS recipient,
 - Delaying the need would potentially threaten the health and/or safety of the IHSS recipient and
 - May result in the need for emergency services and/or out-of-home placement.
 - Need cannot be met by existing provider

Urgent Needs: Hypothetical #1

- Alan lives alone in his home. Alan's regular IHSS provider calls in sick and tells Alan that he is unavailable to care for him for the next few days. Alan cannot independently get out of bed to use the restroom, bathe, or dress himself. He also requires assistance with cooking his meals.

Urgent Needs: Hypothetical #2

- Cecilia, an HCBA waiver recipient, is being discharged from a rehabilitation center to her home in 2 days. She uses a ventilator and needs total assistance with activities of living. The day before her discharge, her IHSS/WPCS provider calls and explains to her that she cannot start until the day after Cecilia's discharge. The HCBA waiver agency does not have anyone available to care for Cecilia at home on the day of her discharge.

Urgent Needs: Hypothetical #3

- A month later Cecilia hired a 2nd provider. Cecilia's 1st provider tells her that they must end their shift two hours early because they need to pick up their son from the sitter. Cecilia's 2nd provider has two clients, Cecilia and Thomas. Cecilia's 2nd provider cannot work more than 66 hours during the week, but the 2nd provider can cover the 2 hours that the 1st provider was scheduled to work. Cecilia can schedule the 2nd provider to cover the other provider's shift after contacting the County to request and receive an exception from the provider work week limitations and allows the 2nd provider to be paid to provide BUPS.

BUPS County Administration

JUSTICE IN AGING
FIGHTING SENIOR POVERTY THROUGH LAW

50 ADVANCING EQUITY
BUILDING JUSTICE
years

drc Disability
Rights
California

Community Transitions

Counties or Public Authorities should determine:

- How much urgent care the recipient would need upon transition
- Whether the use of the BUPS would be appropriate and safe taking into account the other resources and services that are in place
- Whether the recipient would have difficulty managing a provider from the BUPS
- Because services are temporary, may need the direct support of friends and/or family, until finding a permanent provider

County or Public Authority Administration of the BUPS

- Make reasonable efforts to make and keep a list of eligible available IHSS or WPCS providers
- Determine eligibility for BUPS services and “appropriateness” of services by institutionalized recipients
- Refer recipients to 1+ possible providers
- Work with recipients to establish a permanent provider as soon as possible
- If recipient does not use or terminates the back-up provider, the recipient will have to find and hire a non-BUPS provider

BUPS Providers

BUPS: Provider Eligibility

- Eligible to be an IHSS Provider
 1. Not convicted of any Tier 1 or 2 crime in the last 10 years
 2. Legally allowed to work in the U.S.
- Enrolled provider within the IHSS program in the county in which the recipient resides.
- Backup providers receive a \$2 wage differential
 - Backup providers may qualify for overtime

Accessing the BUPPS

- **How Can IHSS Recipients Access BUPPS?**
 - Contact local County/Public Authority Offices
- **How can Providers Enroll?**
 1. Enrollment form (SOC 426); provider orientation; provider enrollment agreement (SOC 846); fingerprints for criminal background check
 2. Through County or Public Authority

IHSS Provider Workweek Limits

- There are limits on the number of hours an IHSS or WPCS provider can work in a workweek:
 - A provider who works for only one recipient cannot work more than 70 hours and 45 minutes per week for IHSS and/or WPCS combined
 - A provider who works for more than one recipient cannot work more than 66 hours per week for IHSS and/or WPCS combined

Workweek Exemptions

- There are 2 types of exemptions from work week limits
- An exemption allows providers to work for 2 or more recipients and up to 12 hours per day, or 90 hours per workweek, not to exceed 360 hours per month

Exemption 1

- Providers must have met ALL of the following conditions on or before January 31, 2016:
 - Provide services to 2 or more IHSS recipients, and
 - Live in the same home as all of the recipients for whom they provide services, and
 - Are related biologically, by adoption, or as a foster caregiver, legal guardian, or conservator, to all of the recipients for whom he or she provides services as the recipients' parent, stepparent, foster or adoptive parent, grandparent, legal guardian, or conservator

ACL 16-07

Exemption 2

- Providers who work for 2 or more IHSS recipients are eligible if each recipient has at least ONE of the following circumstances that puts the recipient at serious risk of placement in out-of-home care if the services could not be provided by that provider:
 - **Criteria A:** Has complex medical and/or behavioral needs that must be met by a provider who lives in the same home as the recipient; OR
 - **Criteria B:** Lives in a rural or remote area where available providers are limited, and as a result, the recipient is unable to hire another provider; OR
 - **Criteria C:** Is unable to hire another provider who speaks the same language as the recipient, and as a result, the recipient is unable to direct his or her own care

ACL's 16-22, 18-31, & 18-54

Workweek Exemption Requests

- Contact the Public Authority or County about the need for temporary Workweek Exemption from workweek limits as soon as possible
- If a violation is incurred as a result of a being unable to reach the county or make a request ahead of time, the provider should contact the county to have incurred violations removed

ACL 18-54

Advocacy Tips

Community Transitions:

- Doctor-approved discharge plan authorizing discharge & necessary services you need support BUPS eligibility
- Use the Backup Provider System for all institutional transitions into the community, including out of incarceration
- The BUPS program cannot require your friends and family volunteer to help you in place of BUPS services

BUPS Access Denials:

- Ask facility/coordinating agency to notify the County or local Public Authority administering the BUPS program that you can be safely discharged with the assistance of a backup provider
- File a grievance with the Public Authority & call DRC's Intake Line

Making BUPS Work:

- Contact your local County Board of Supervisors Office about the lack of backup providers on the County's BUPS registry list

Want to receive Justice in Aging trainings and materials?

Join Our Network!

Go to justiceinaging.org and hit **“Sign up”** or send an email to info@justiceinaging.org.

Need Help?

- Call DRC at 1-800-776-5746 or for TTY Call 1-800-719-5798 from 9:00am - 4:00pm Monday through Friday
- Go to the DRC website: <https://www.disabilityrightsca.org/contact-us/how-to-get-help> and click on the “Short Term Assistance Form

Questions?

hdickman@justiceinaging.org

lizzette.gomez@disabilityrightsca.org

crystal.padilla@disabilityrightsca.org

[@justiceinaging](https://www.instagram.com/justiceinaging)

[@disabilityca](https://www.instagram.com/disabilityca)

JUSTICE IN AGING
FIGHTING SENIOR POVERTY THROUGH LAW

50
ADVANCING EQUITY
BUILDING JUSTICE
years

drc Disability
Rights
California

