

DEPARTMENT OF HEALTH SERVICES

714/744 P STREET
SACRAMENTO, CA 95814

July 8, 1985

To: All County Welfare Directors
County Administrative Officers

Letter No. 85- 51

IMPLEMENTATION OF AB 3398: THE COST OF "IN-HOME SERVICES" AS AN INCOME
DEDUCTION FOR CERTAIN ABD-MNs

Enclosed is an advance copy of the emergency regulations (effective May 30, 1985) implementing the subject legislation (copy also enclosed) which extends the "cost of in-home services" income deduction to aged, blind or disabled medically needy (ABD-MN) persons who would otherwise require institutionalization (long-term care or board and care placement). This letter provides you with detailed implementation instructions.

Background:

Although statute and regulation have authorized an "in-home services" income deduction for SGA-disabled persons for several years, standardized procedures have previously not been issued due to the small size of the population impacted. Since the deduction is now being extended to another segment of the Medi-Cal population, procedures have been developed to ensure uniform statewide application. Because the law requires that the need for services be determined in accordance with the Department of Social Services (DSS) In-Home Supportive Services (IHSS) program regulations, an assessment to verify the need for "in-home services" shall be conducted by county social services staff. Medi-Cal staff will perform the Medi-Cal eligibility determination and determine the amount of the income deduction.

We anticipate that the majority of persons who may be entitled to this new deduction are persons who have previously been denied IHSS as income eligibles because their income is sufficient to purchase the needed services. Income eligibles are persons who meet all SSI eligibility criteria except for income in excess of the SSI income level. The following procedures were developed with this in mind.

Use of Aid Code 65

ABD-MNs who receive the new "in-home services" income deduction will be assigned aid code 65 (up until now this aid code has been used exclusively for SGA-disabled persons). The reasons for deviating from the traditional 1X, 2X; 6X coding for the aged, blind and disabled are as follows:

1. Aid code 65 is already a "non FFP" aid code and the Medi-Cal payments for persons receiving the IHSS income deduction will be totally state funded unless a federal waiver can be obtained. (We are currently seeking such a waiver, however it will be several months before we know the outcome).

2. The SGA-disabled population has been relatively stable over the years (6-10 people during any month). Use of aid code 65, therefore, will allow us to keep track of the number of ABD-MNS who qualify for the new "in-home services" income deduction.
3. No systems changes will be necessary as "65" is already a valid Medi-Cal aid code; additionally, there are very few remaining unused aid codes.

County Administrative Costs for the IHSS Needs Assessment

As stated previously, we believe that the majority of persons who will be requesting this deduction are persons who have previously been denied services under the DSS-IHSS program as income eligibles. Since a county social services staff person will have already conducted a needs assessment, we anticipate no increased administrative costs during the first calendar year. DHS and DSS will be monitoring the number of beneficiaries receiving this new deduction in order to develop estimates on the number of persons applying for the deduction.

MEDI-CAL INTAKE

- I. Persons Who Have Been Denied IHSS Due To A Board and Care Living Arrangement Determination.

This type of a denial may occur when an individual is living with an adult relative and a county social services staff person determines the relative is providing board and care rather than performing "in-home services". Persons denied IHSS due to such a determination are not impacted by the new legislation and are not entitled to an "in-home services" income deduction. Additionally, the provisions of 22, CAC Section 50515 (a)(3) would apply only if the home is licensed as a board and care facility.

- II. Persons Who Have Been Denied DSS-IHSS As Income Eligibles.

Persons whose services are being provided by a family member living in the home are not entitled to this deduction, 22, CAC, Section 50551.6 (b)(1). For persons with other providers:

- A. Physician's Statement Not In File

Check the IHSS case file for the presence of a physician's written statement regarding the necessity of board and care or long-term care placement without IHSS. If a statement is not on file, advise the applicant that the "in-home services" income deduction cannot be provided until such verification is received. Continue processing Medi-Cal eligibility. If Medi-Cal eligibility is determined and the physician's statement has not been received, compute share of cost as usual and assign the appropriate 1X, 2X, 6X aid code; include a statement on the approval Notice of Action that the cost of "in-home services" has not been allowed as a deduction as the required

physician's statement has not been received (22, CAC, Section 50551.6(d)). Do not deny Medi-Cal eligibility solely due to nonreceipt of the physician's statement.

B. Physician's Statement On File Or Physician's Statement Received.

Check the IHSS case file to ensure that the IHSS needs assessment form (SOC 293) is complete; if it is not complete refer to IHSS unit for completion. Once it is ascertained that the assessment is complete, verify that payment is actually being made in accordance with 22 CAC, Section 50169 (b). If Medi-Cal eligibility has been determined and verification has not been received, compute share of cost as usual and assign appropriate 1X, 2X, 6X aid code; include a statement on the approval notice that the cost of "in-home services" has not been allowed as a deduction as verification of payment has not been received. (22, CAC, Section 50169 (d)). Do not deny Medi-Cal eligibility solely due to nonreceipt of verification of "in-home services" payment.

If verification of payment is received, the amount of the deduction shall be computed based upon the number of hours and types of services authorized by the IHSS assessment and the amount the individual pays for the services. (The county's maximum IHSS limit cannot be employed because the Medi-Cal statute specifies that the deduction shall be the actual amount paid). If the individual pays for more hours or receives more services than determined by the needs assessment, deduct only the amount paid for the authorized services. Document the calculation of the deduction, using the IHSS worksheet, SOC 293, (an example is included as Attachment III). Enter the amount of the deduction on line 9 of Column III, MC 175M. Assign the individual aid code 65.

III. Persons Who Have Not Applied For DSS-IHSS, But Are Applying As ABD-MN.

Medi-Cal eligibility staff must ask persons applying as ABD-MN if they are paying for "in-home services" provided by someone other than a family member. (The MC 210 will be revised to include this question). If the answer is "yes" the following procedures apply.

A. Persons Who Wish To Have Eligibility For An "In-Home Services" Payment Determined.

Follow existing county procedures for IHSS program referral. If the applicant is denied IHSS as an income eligible, follow the procedures in II above.

B. Persons Who Wish Eligibility Under The Medically Needy Program With The Cost Of "In-Home Services" As A Deduction.

Advise persons of the required physician's statement regarding the necessity of board and care or long-term care placement if "in-home services" were not received. Continue processing Medi-Cal eligibility, if eligibility is determined and the physician's statement has not been received, compute share of cost as usual and assign appropriate 1X, 2X, 6X aid code; include a statement on the approval Notice of Action that the cost of "in-home services" has not been allowed because the required physician's statement has not been received (22 CAC, Section 50551.6). Do not deny Medi-Cal eligibility solely due to nonreceipt of physician's statement.

If a physician's statement is received refer the applicant to the IHSS unit for a needs assessment. (For persons applying as disabled who are having disability determined via a disability evaluation referral, wait until disability has been established before making the IHSS referral. This will limit the IHSS referrals to those persons whom we know are appropriate IHSS referrals).

Once the IHSS needs assessment has been completed, follow the appropriate procedures in II B above.

MEDI-CAL CONTINUING

I. Current Caseload

If you are aware of ABD-MN beneficiaries who are paying for "in-home services" provided by someone other than a family member living in the home, advise them immediately of the new "in-home services" income deduction. Also, advise them of the required physician's statement regarding the necessity for board and care or long-term care placement if "in-home services" are not received. Document this in the case record. If a physician's statement is received, follow the Medi-Cal Intake procedures for the IHSS needs assessment, the verification of payment and the computation of the amount of the deduction. Send a Notice of Action as appropriate.

Advise your remaining non-LTC/board and care ABD-MNs of the new deduction at the next beneficiary contact and document in the case record. If the required physician's statement is received follow the Medi-Cal Intake procedures for the IHSS needs assessment, the verification of payment and the computation of the amount of the deduction. Send a Notice of Action as appropriate.

II. New Continuing Beneficiaries From Intake

If a case is received from Intake with an approval Notice of Action which indicates that the cost of "in-home services" has not been allowed as a deduction because either the physician's statement or verification of payment was not received and the information is subsequently received,

follow the Medi-Cal Intake procedures as appropriate to determine the applicability and/or amount of the "in-home services" income deduction. Apply the deduction commencing with the month of receipt of the required information unless there was good cause for failure to supply the information timely. In the latter case, recompute the share of cost back to the effective month of approval and follow existing share-of-cost adjustment procedures.

Change the individual's aid code to 65.

III. Redeterminations for Persons Receiving The "In-Home Services" Income Deduction.

As part of the annual redetermination for persons receiving the "in-home services" income deduction, make a referral for an IHSS needs assessment redetermination as required by 22 CAC, Section 50169 (d)(6). If the needs assessment has changed, make the necessary changes in the beneficiary's share of cost, sending a Notice of Action as appropriate.

IHSS STAFF

Conduct the need assessments for ABD-MN referrals as you would for status eligibles applying under the IHSS program. The Medi-Cal staff will review the SOC 293 and determine the amount of the income deduction based upon the amount actually paid for the needed services.

The Medi-Cal procedures in this letter are being incorporated into the Procedures Portion of the Medi-Cal Eligibility Manual. If you have any questions regarding the Medi-Cal activities discussed in this letter, please contact Ruthell Ussery of my staff at (916) 324-4970. Questions regarding IHSS should be directed to your Adult and Family Services Operations Bureau Consultant at (916) 322-6671.

Sincerely,

Original signed by

Tom J. Elkin, Acting Chief
Medi-Cal Eligibility Branch

Enclosure

cc: Medi-Cal Liaisons
Medi-Cal Program Consultants

Expiration Date: January 8, 1986

FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE OFFICE OF ADMINISTRATIVE LAW

R-87-84
85 0509

REGISTER 85 #22

OFFICE OF
ADMINISTRATIVE LAW
ENDORSED
APPROVED FOR FILING

MAY 30 1985

Office of Administrative Law
LEAVE BLANK

1. ATTACHED ARE REGULATIONS ADOPTED,
AMENDED OR REPEALED BY:

Department of Health Services

(AGENCY)

Kenneth W. Kizer, M.D., M.P.H.

BY:

(AGENCY OFFICER AUTHORIZED TO SUBMIT REGULATIONS)

ENDORSED FILED
IN THE OFFICE OF

MAY 30 4 08 PM 1985

MARCH FONG EU
SECRETARY OF STATE
OF CALIFORNIA

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AGENCY CONTACT PERSON AND POSITION

Ron C. Wetherall, Chief, Office of Regulations (916) 322-4990

TELEPHONE

Indicate California Administrative Code Title and specify sections to be amended, adopted, and/or repealed:

SECTIONS AMENDED

ie: 22 50169, 50551.6

SECTIONS ADOPTED

SECTIONS REPEALED

TYPE OF ORDER (CHECK ONE)

☐ Regular

☒ Emergency
(Attach Finding of Emergency)

☐ Certificate of Compliance

Other Regulatory Actions:

☐ Procedural and Organizational
Change

☐ Editorial Correction

☐ Authority and Reference
Citation Change

THIS ORDER A RESUBMITTAL OF A PREVIOUSLY DISAPPROVED OR WITHDRAWN REGULATION?

☐ No ☐ Yes, if yes give date of previous filing

THIS FILING A RESULT OF THE AGENCY'S REVIEW OF EXISTING REGULATIONS?

☐ No ☐ Yes

THESE REGULATIONS REQUIRED PRIOR REVIEW AND APPROVAL BY ANY OF THE FOLLOWING AGENCIES,
CHECK THE APPROPRIATE BOX OR BOXES.

☐ State Fire Marshal
(Attach Approval)

☐ Building Standards Comm.
(Attach Approval)

☐ Fair Political Practices Comm.
(Include FPPC Approval Stamp)

☒ Department of Finance
(Attach STD. Form 399)

a. DATE OF NOTICE IN CALIFORNIA
ADMINISTRATIVE NOTICE REGISTER

b. DATE OF ADOPTION OF REGULATION(S)

May 16, 1985

c. DATES OF AVAILABILITY OF MODIFIED
REGULATION(S) (GOV. CODE SEC. 11346.8(c))

IS THIS REGULATORY ACTION SCHEDULED ON YOUR AGENCY RULEMAKING CALENDAR?

☐ No ☐ Yes

EFFECTIVE DATE OF REGULATORY CHANGES: (SEE GOVERNMENT CODE SECTION 11346.2 AND INSTRUCTIONS
REVERSE)

☐ Effective 30th day after filing with the Secretary of State.

☐ Effective on _____ as required by statutes: (list) _____

☒ Effective on Filing (Designate effective date *earlier than* 30 days after filing with the Secretary
of State pursuant to Government Code Section 11346.2(d).)

☐ Request Attached

(1) Amend Section 50169 to read:

50169. Additional Verification Requirements.

(a) The county department shall not require verification of information, other than the verification specified in these regulations, unless the county department considers the verification necessary to ensure a correct eligibility determination in the specific case.

(b) The need for in-home supportive services shall be determined under the IHSS program pursuant to the standards and procedures established for that program, DSS Manual of Policies and Procedures, Division 30, Sections 30-700 through 30-775, and verified prior to the application of the deduction specified in Section 50551.6. Such determination and verification shall be limited to the type and amount of services needed. The payment for IHSS services shall be verified by viewing cancelled checks, or receipts signed by the provider of service.

~~(b)~~ (c) The county department shall document in the case file the type of verification obtained when verification is required under (a) or (b) or under Sections 50167 and 50168.

~~(c)~~ (d) The following items shall be verified at each redetermination, restoration or reapplication.

(1) Incapacity.

(2) Legal responsibility for a child applying alone.

(3) Refusal of the parent to apply for an 18 to 21 year old child.

(4) Income, except income received from the United States government which has previously been verified in accordance with the provisions of Section 50167(a)(7)(A)1. through 5. or for which verification has been obtained from the appropriate government agency.

(5) Status and value of nonexempt property.

(6) The continuing need for IHSS services.

~~(d)~~ (e) The following items shall be verified whenever there is a change:

(1) Blindness.

(2) Disability.

(3) Alien status.

(4) SSN.

(5) HIC number.

~~(e)~~ (f) The following procedures shall apply, for persons who were determined eligible prior to the effective date of this subsection and who have not submitted an SSN, at the time of the next redetermination, restoration or reapplication:

(1) Section 50168(a)(1) shall apply when a face-to-face interview is required.

(2) Persons for whom a face-to-face interview is not required shall submit an SSN, or evidence of application for an SSN, within 60 days.

~~(f)~~ (g) Certification for Medi-Cal shall not be delayed or discontinued pending receipt of verification from a person who is currently eligible unless the beneficiary refuses to cooperate.

NOTE: Authority cited: Sections 10725 and 14124.5, Welfare and Institutions Code; and Section 57 2, Chapter 336-364, Statutes of ~~1983~~ 1984.
Reference: Section s 14005.14 and 14011, Welfare and Institutions Code.

(2) Amend Section 50551.6 to read:

50551.6. Cost of In-Home Supportive Services— ABD-MN and SGA Disabled.

(a) The amount actually paid for in-home supportive services provided ~~an~~ any ABD-MN person, or to a SGA-disabled person as defined in Section 50223(a)(2) shall be deducted from the combined nonexempt income of ~~a~~ SGA-disabled or ABD-MN person and the responsible relative, except limited by (b) , and (c) and (d).

(b) The cost of in-home supportive services shall be a deduction ~~on~~ when both of the following conditions are met. The services:

(1) Are provided by a person other than a family member living in the
home.

(2) Have been determined to be necessary pursuant to an IHSS need
assessment described in Section 50169(b).

(c) In-home supportive services means those services which may be provided under the IHSS program.

(d) For ABD-MN persons, the provisions of this section shall be limited
to persons who, without in-home supportive services, would require
24-hour-a-day care in a health facility or community care facility as
evidenced by a statement signed by a physician.

Attachment II

Assembly Bill No. 3398

CHAPTER 364

An act to amend Section 14005.14 of the Welfare and Institutions Code, relating to public social services, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 10, 1984. Filed with Secretary of State July 10, 1984.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3398, Bane. Public social services: Medi-Cal.

Under existing law, in determining the share of cost of a person eligible for Medi-Cal who qualifies because he or she is disabled, but engaged in substantial gainful employment, an income exemption is allowed each month for the amount actually paid toward the cost of in-home supportive services.

This bill would extend the income exemption for the amount actually paid toward the cost of in-home supportive services to medically needy individuals who, without in-home supportive services, would require 24-hour-a-day care in a health facility or a community care facility. It would require the State Department of Health Services to seek all federal waivers necessary to allow for federal financial participation. It would continue in effect the income exemption authorized by this bill while the federal waivers are pending. If those waivers cannot be obtained, it would require the department to continue implementing the income exemption.

This bill would take effect immediately as an urgency statute. It would also require the State Department of Health Services, which administers the Medi-Cal Act, to adopt emergency regulations to implement its provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 14005.14 of the Welfare and Institutions Code is amended to read:

14005.14. (a) In addition to the income exemptions specified in subdivision (a) of Section 14005.7, an income exemption shall be allowed each month for the amount actually paid toward the cost of in-home supportive services needed as determined under standards and procedures established by the Director of Social Services, by a person who is eligible for Medi-Cal in accordance with Section 14005.3 or 14005.7. For the purpose of this section, "in-home supportive services" means those services that are available to recipients of the In-Home Supportive Services Program as defined by the Director of Social Services in regulations adopted pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of

Division 9.

(b) The income exemption provided by this section for those persons eligible for Medi-Cal in accordance with Section 14005.7 shall be restricted to those persons who, without in-home supportive services, would require 24-hour-a-day care in a health facility, as defined in Section 1250 of the Health and Safety Code, or a community care facility, as defined under Section 1502 of the Health and Safety Code.

(c) The State Department of Health Services shall seek all federal waivers necessary to allow for federal financial participation. The income exemption authorized by subdivision (b) shall remain in effect during the time period that the federal waivers are pending. If the necessary federal waivers cannot be obtained, the income exemption authorized by subdivision (b) shall continue to be implemented by the department.

SEC. 2. The State Department of Health Services shall adopt regulations implementing this act. These regulations shall be adopted as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For the purposes of the Administrative Procedure Act, the adoption of the regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, emergency regulations adopted by the State Department of Health Services in order to implement this act shall not be subject to the review and approval of the Office of Administrative Law.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to safeguard the ability of disabled persons to remain in their homes, and in order to extend the benefits provided by this bill to those persons as quickly as possible, it is necessary that this act take effect immediately.

ALTERNATE RESOURCES USED	F. SERVICES (HOURS PER WEEK)	Total Need	Adjusted months	Total Need by IHSS	Alternative Resource	To Be Purchased By IHSS	Unmet Need	
1. DOMESTIC SERVICES	a. Sweeping, vacuuming, etc.			15 min				
	b. Washing kitchen counters, etc.			20 min				
	c. Cleaning bathroom			30 min				
	d. Storing food and supplies			30 min				
	e. Taking out garbage	3 hrs		15 min				
	f. Dusting and picking up			30 min				
	g. Cleaning oven and stove			30 min				
	h. Cleaning and defrosting refrigerator			10 min				
	i. Bringing in fuel and miscellaneous							
	SUB-TOTAL							
	2. RELATED SERVICES							
	a. *Preparation of meals				3 hrs			
b. Meal clean up and menus				20 min				
c. Routine mending and laundry, etc.				10 min				
d. Changing bed linen and making bed	5 hrs 30 min			1 hr				
e. Shopping for food				1 hr				
f. Other shopping and errands				1 hr				
SUB-TOTAL								
3. HEAVY CLEANING (See SOC 293 HY)								
4. NON-MEDICAL PERSONAL SERVICES								
a. *Respiration								
b. *Bowel and bladder care								
c. *Feeding								
d. *Routine bed baths								
e. *Dressing								
f. *Menstrual care								
g. *Ambulation								
h. *Moving into and out of bed								
i. Bathing, oral hygiene and grooming	10 hrs 30 min			3 1/2 hrs				
j. Rubbing skin, etc.								
k. Care and assistance with prosthesis				7 hrs				
SUB-TOTAL								
5. TRANSPORTATION SERVICES								
a. Medical appointment								
b. To alternative resources								
6. YARD HAZARD ABATEMENT (See SOC 293 HY)								
7. PROTECTIVE SUPERVISION								
8. TEACHING AND DEMONSTRATION								
9. *PARAMEDICAL SERVICES								
10. TOTAL "TO BE PURCHASED BY IHSS" COLUMN								
11. DOES RECIPIENT OPT FOR RESTAURANT ALLOWANCE?								
<input type="checkbox"/> YES <input type="checkbox"/> NO IF YES, ENTER TOTAL HOURS FROM 2A, B, E.								
12. TOTAL WEEKLY HOURS (SUBTRACT LINE 11 FROM LINE 10)								

applicant
20150 \$4.00/hr
IHSS provider
82.25 hrs
x 4.00
29.0000
IHSS Income
Deduction

1. AUTHORIZATION		2. SERVICE DELIVERY METHOD (CHECK)	
LEVEL OF SERVICE (CHECK ONE)		<input type="checkbox"/> COUNTY <input type="checkbox"/> INDIVIDUAL	
*SEVERELY IMPAIRED (SPECIFY NO. OF HOURS: _____) <input type="checkbox"/> NON-SEVERELY IMPAIRED		<input type="checkbox"/> CONTRACT AGENCY	
MONTHLY HOURS AUTHORIZED		4. AUTHORIZATION PERIOD	
19 x 4.33 = 82 hrs 15 min		_____ TO _____	
DATE _____		5. APPROVED BY:	
DATE _____		a. _____	
DATE _____		b. _____	