

# SPECIAL ED and IHSS COVID 19

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# DISCLAIMER

- **Do not share any private or confidential information.**
- There is **no right of confidentiality** for anything asked or discussed during the training.
- We are mandated reporters and obligated to report abuse and neglect of adults with disabilities.
  - This is not a private consultation for legal advice and no attorney/client relationship is formed.
  - If you have a private question you want to ask us, please us for an intake appointment or give us information to contact you after training.



# What is OCRA

OCRA advocates on behalf of consumers with developmental disabilities of the 21 regional centers across California.

This includes:

- 1) People currently receiving regional center services
- 2) People seeking eligibility to receive regional center services.

# What can my CRA do for me?

CRA provides **FREE** legal assistance such as:

- Provide info about your legal rights.
- Review documents and advise you on how to resolve your case.
- Prepare you for meetings or hearings.
- Assist in preparing documents to assure compliance with the law.
- Provide legal trainings for consumers, families, service providers and community groups.
- Represent people with developmental disabilities at hearings.
- Investigate denials of rights.



# What areas of law can my CRA assist me with?



Service areas are listed in our brochure, and include the following, among others:

- Regional Center/ Lanterman Act
- Special Education
- Social Security
- Medi-Cal, Private Insurance
- Discrimination
- Alternatives to Conservatorship and Guardianship
- Personal Autonomy
- Community Integration
- IHSS
- Abuse and Neglect

# **Does OCRA assist every person who calls its offices?**

OCRA tries to assist everyone who calls the office. However, the type of assistance will vary. You may receive:

- 1) Information and/or referral
- 2) Technical assistance
- 3) Investigation of your case
- 4) Direct Representation

# Is every caller considered a client?

NO.

Through its contract with DDS, OCRA serves **ONLY consumers of the regional centers**, NOT their family members, service providers or other advocates.

Therefore, **the consumer is the client**, not the parent, family member, service provider, or other advocate.



# Confidentiality



- Since the Consumer is OCRA's client, **only** they are entitled to receive information about their case.
- OCRA **may** share information about the case after getting permission on the phone, in person, or in writing. Usually OCRA needs written permission.
- This means that OCRA **cannot** share information with family members, service providers, health providers, or other advocates without first receiving consent from the client.



# What if I have a problem that OCRA cannot assist me with?

OCRA will try to:

- Refer you to another advocacy agency
- Send you Self-help publications
- Refer you to the DRC Web site: <http://www.disabilityrightsca.org>

**Even if we cannot help you, we may be able to find you appropriate referrals**

# **SPECIAL EDUCATION and COVID 19**

# Students with Disabilities are Entitled to Equal Access

**Equal Access** may Include:

- Ensuring materials are available in an accessible format.
- Providing school-purchased devices and assistive technology.
- Assigning reduced assignments.
- Modifying the curriculum.
- Individualized special education instruction.
- Related services, including speech, occupational therapy and behavior supports.



# **Service Delivery Must Still be Individualized**

Identify the most effective teaching style.

Identify the most effective medium.

**Services may be provided at a school site or in the home, depending on the needs of your child, and health of other students and staff.**

# State Guidance on Accessible Distant Learning

- Use *heading styles* which will allow screen reader software to navigate from section to section.
- Use font, size, and text formatting to distinguish between items or to navigate. Ensure no information is conveyed solely by color or sound.
- Use *Alt-Text* to allow users with screen readers or with slow connection to identify your images, graphs and charts.
- Enable *tool tips* so that descriptions appear when users hover over images, graphs, and charts.

# Can Services be Provided at Home?

**Yes.** The CDE stated: “exceptional situations may [require] certain supports and services to individual students [in-person ...] to maintain [their] mental/physical health and safety for the purpose of supporting the student [with] alternative options for learning ...”

**Essential Workers** include but not limited to physical and occupational therapists and behavioral health workers and speech pathologists.



# Do all IEPs have to be Modified to Reflect Change in Distance Learning?

**No.** Due to the Governor's Order closing schools, it is not necessary for districts to convene a meeting, or propose amendment without a team meeting **solely for the purpose of discussing the need to provide services away from school.**

- However, **parents can still request IEP to discuss the individual needs of the student in this new educational setting.**
- **IEPs must still be scheduled within 30 days of request.**
- The meetings **may** be held virtually or via phone.

# What if the School Only Provides Limited Special Education Services?

- Even if you agree with the services offered during closure, it is important to protect your child's existing IEP for when the schools reopen.
- You have the right to provide "limited consent" to a temporary plan.
- If you agree to the temporary plan **you do not waive your child's IEP right to compensatory services.**



# What if my Child's School is Closed or Refuses to Provide Special Education?

Your *may* be entitled to **compensatory education services** to make up for missed school services.

- Keep contemporaneous notes and a journal of missing services and request IEP meeting to discuss compensatory services.
- Compensatory services are made on an individualized basis.
- However, you **may not** necessarily be compensated for everything.

# Can I Request Reimbursement of Service Costs Missing During Closures?

- Law is not clear.
- If you wish to seek reimbursement: you **should provide the district with prior written notice of your intention to seek reimbursement for the cost of services.**
- You should send Notice to the Special Education Director at least **10 business days** before start of services.



# What if I Disagree with the District's Offer During the COVID Crisis?

**You still have the right to file a Complaint or request a due process hearing** if you do not agree with the school district regarding educational supports for your child.

# General Information on Timelines

- Schools are still required to comply with the timelines in IDEA.
- The U.S. Department of Education and California Department of Education though have provided guidance that gives schools some flexibility with the timelines.
- On March 17, 2020, the California Legislature passed SB 117, a law that waives several state special education timelines.

# U.S. Department of Education Guidance on Timelines



- Upon request, still 30 days to hold IEP and hold annual reviews
- May agree to hold meetings through alternative means.
- You can agree to develop a written document to amend or modify the current IEP instead of calling a meeting.
- Initial evaluations must be conducted within 60 days.
- A reevaluations must still be conducted at least every 3 years.

# CDE Guidance on Timelines

- The California Department of Education continues to accept **compliance complaints**.
- **However, it is extending the 60-day investigation period** by the length of the school site closure.
- As of **3/23/20** mediations are held only by telephone or video conference.



# **New California Law (SB 117)**

- Right to assessment plan within 15 days after referral.
- Right to copies of records within 5 business days after request, before any IEP meeting, or before any due process hearing or resolution session.
- Right to have your former school district send your records to the new one within 5 business days for transfers.

# Practical Tips

- Keep in close contact with IEP team.
- Share what is working and what is not.
- Be patient and creative in designing an effective educational program.
- IEP team should also consider family's unique needs
- Schedule regular check-ins with teachers to discuss how things are going and make changes as needed.
- Prioritize goals and relate them to activities at home.





# Regional Center Assistance

- RC have been given more flexibility to fund various services due to the emergency.
- The *Lanterman Act* states that RC's are the payor of last resort.
- Consumers **must exhaust all generic resources**. School districts are considered a generic resource. **Tip:** Provide school records of exhaustion.
- RC must still hold an IPP meeting within 30 days of your request. Given the circumstances, you can request an emergency IPP meeting.
- RC must provide a copy for review within 45 days of the meeting. It must be provided in your native language.



# **What if the Regional Center Denies Your Request**

- Request a Notice of Action (NOA)
- RC must issue NOA within 5 working days.
- Contact OCRA for assistance.

# **IHSS and COVID 19**

# Medical Cert. Form: SOC 873

**Basic Rule:** Return completed SOC 873 before services approved and begin unless imminent risk of out-of-home placement within 45 days. (You can request another 45 days if with good cause).

**COVID Rule:** Permits 90 day delay for doctor completion of this form.

Services can begin without form if you meet other eligibility requirements. **This delay exception expires 7/1/20.**

County accepts out-of-home placement risk and pandemic is good cause delay.

## IN-HOME SUPPORTIVE SERVICES (IHSS) PROGRAM

### HEALTH CARE CERTIFICATION FORM

#### A. APPLICANT/RECIPIENT INFORMATION (To be completed by the county)

Applicant/Recipient Name:		Date of Birth:
Address:		
County of Residence:	IHSS Case #:	
IHSS Worker Name:		
IHSS Worker Phone #:	IHSS Worker Fax #:	

#### B. AUTHORIZATION TO RELEASE HEALTH CARE INFORMATION (To be completed by the applicant/recipient)

I, \_\_\_\_\_, (PRINT NAME) authorize the release of health care information related to my physical and/or mental condition to the In-Home Supportive Services program as it pertains to my need for domestic/related and personal care services.

Signature: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_  
(APPLICANT/RECIPIENT OR LEGAL GUARDIAN/CONSERVATOR)

Witness (if the individual signs with an "X"): \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

#### TO: LICENSED HEALTH CARE PROFESSIONAL\* -

The above-named individual has applied for or is currently receiving services from the In-Home Supportive Services (IHSS) program. State law requires that in order for IHSS services to be authorized or continued a licensed health care professional must provide a health care certification declaring the individual above is unable to perform some activity of daily living independently and without IHSS the individual would be at risk of placement in out-of-home care. This health care certification form must be completed and returned to the IHSS worker listed above. The IHSS worker will use the information provided to evaluate the individual's present condition and his/her need for out-of-home care if IHSS services were not provided. The IHSS worker has the responsibility for authorizing services and service hours. The information provided in this form will be considered as one factor of the need for services, and all relevant documentation will be considered in making the IHSS determination.

IHSS is a program intended to enable aged, blind, and disabled individuals who are most at risk of being placed in out-of-home care to remain safely in their own home by providing domestic/related and personal care services. IHSS services include: housekeeping, meal preparation, meal clean-up, routine laundry, shopping for food or other necessities, assistance with respiration, bowel and bladder care, feeding, bed baths, dressing, menstrual care, assistance with ambulation, transfers, bathing and grooming, rubbing skin and repositioning, care/assistance with prosthesis, accompaniment to medical appointments/alternative resources, yard hazard abatement, heavy cleaning, protective supervision (observing the behavior of a non-self-directing, confused, mentally impaired or mentally ill individual and intervening as appropriate to safeguard recipient against injury, hazard or accident), and paramedical services (activities requiring a judgment based on training given by a licensed health care professional, such as administering medication, puncturing the skin, etc., which an individual would normally perform for him/herself if he/she did not have functional limitations, and which, due to his/her physical or mental condition, are necessary to maintain his/her health). The IHSS program provides hands-on and/or verbal assistance (reminding or prompting) for the services listed above.

\*Licensed Health Care Professional means an individual licensed in California by the appropriate California regulatory agency, acting within the scope of his or her license or certificate as defined in the Business and Professions Code. These include, but are not limited to:

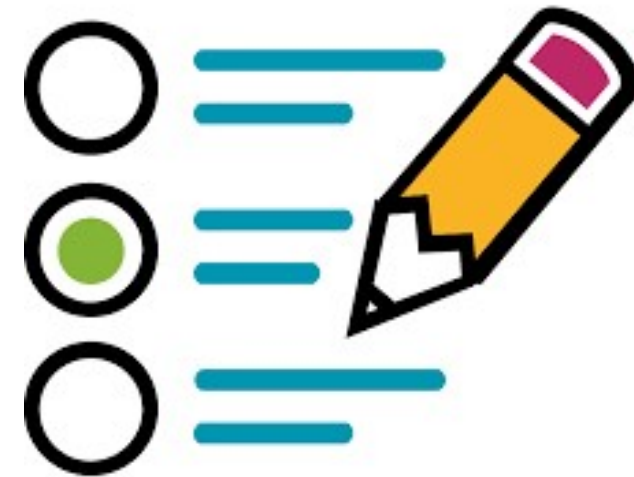
# Assessments

New applicants still require in-person assessments. IHSS encouraged to call ahead to obtain information to conduct a short visit.

**Option 1: Remote Assessments.** May conduct initial assessments via video call and **must** be reviewed and approved by a supervisor before authorization.

**Option 2: Face-to-Face Assessments.** Social Worker **must** take public health precautions. SW prohibited if they have COVID symptoms or may have been exposed.

If Applicant is sick, can be completed over the phone. SW will call the applicants ahead of time. SW can reschedule 30 days later.



# Reassessments

Annual Redeterminations suspended through 6/30/20. SW will interview by phone and ask for forms via mail for signature.

Actions to **reduce/terminate** hours based on redetermination are suspended until 7/1/20.

**BUT for those actions:** IHSS will send notice effective 6/30/20.

(You still have right to Appeal and APP)



# Provider Orientation/Paperwork

- New Provider orientations will now occur via computer/phone
- County must still receive proper documentation and applicant must complete a criminal background check.
- If New Provider is unable to be fingerprinted, she may request a **DOJ name-based criminal background check instead.**
- New Providers **must still complete fingerprinting background check by 6/15/20.**

# New Parent Provider Rules

**Basic Rule:** Parent can be provider for child if left work full time or cannot work full time because they must care for child, no other suitable provider and child at risk of institutionalization.

**Basic Rule: Two Parents Household:** first parent must meet above rule **AND** second parent is unavailable because they work, attend education or vocational program, or searches employment.

**COVID** First parent can be provider if second parent loses job or is no longer attending an education or vocational program through **6/30/20**. **BUT AFTERWARD, on 7/1/2020, First parent will no longer be able to be paid as parent provider**



# Emergency/Back Up Providers

California has instructed counties to create an **emergency back-up IHSS provider program** through 6/30/2020.

- Recipients can be assigned an emergency back-up provider when their regular provider can no longer work because of COVID.
- Contact the local public authority, social worker, or County IHSS offices: <https://www.cdss.ca.gov/inforesources/county-ihss-offices>.

# Paid Sick Leave

**Basic Rule:** IHSS allows providers to earn paid sick leave at the current rate of 8 hours per year after working a certain number of hours as provider.

**COVID:** From 4/2/20 until 12/31/20:

- Providers who work 40 or more hours per week have 2 weeks of COVID-related sick leave.
- Providers who work under 40 hours per week have COVID sick leave hours based on an average hours for a two week period.
- COVID paid sick leave can only be claimed for certain COVID related reasons and **does not affect existing paid leave.**

# Personal Protective Equipment

- The Department of Public Health distributed some masks and gloves to the county (Personal Protective Equipment, “PPE”)
- Providers should contact their county regarding their availability.
- PPE is available to providers who perform direct care at home to clients with **confirmed or suspected COVID.**



# Provider Overtime Violations

**Basic Rule:** Work violations occur when a timesheet has hours above the workweek **overtime or travel time limits**. Repeated violations eventually lead to suspension.

**COVID:** Counties may be flexible with recipients assigning weekly service hours to their providers so:

- They can immediate needed services
- If providers incur overtime violations while performing services that are “**in critical need,**” the violations can be removed through 6/30/20.

# Alternative Resource Loss

IHSS **must** increase a service hours upon learning of loss of alternative resource (e.g., child care or schools closed, community program).

Beneficiary **must** report to IHSS the reopening of such a program **within 10** days.

STATE OF CALIFORNIA  
HEALTH AND HUMAN SERVICES AGENCY  
CALIFORNIA DEPARTMENT OF SOCIAL SERVICES

**NOTICE OF ACTION** COUNTY OF \_\_\_\_\_

**IN-HOME SUPPORTIVE SERVICES (IHSS) CHANGE**

Notice Date: \_\_\_\_\_  
Case Name: \_\_\_\_\_  
Case Number: \_\_\_\_\_  
Social Worker Name: \_\_\_\_\_  
Social Worker Number: \_\_\_\_\_  
Social Worker Telephone: \_\_\_\_\_  
Social Worker Address: \_\_\_\_\_

**NOTE:** This notice relates ONLY to your In-Home Supportive Services. It does NOT affect your receipt of SS/SSP, Social Security, or Medi-Cal. **KEEP THIS NOTICE WITH YOUR IMPORTANT PAPERS.**

(ADDRESSEE)

As of \_\_\_\_\_ the services you can get and/or the amount of time you can get for services has changed.  
Here's why: \_\_\_\_\_

Total Hours-Minutes of IHSS you can get each month is now: \_\_\_\_\_. This is a/an increase/decrease of \_\_\_\_\_.

You will now get the services shown below for amount of time shown in the column "Authorized Amount of Service You Can Get." That column shows the hours/minutes you got before, the hours/minutes you will get from now on, and the difference. If you are getting less time for a service, the reason(s) is shown on the next page.

1) If there is a zero in the "Authorized Amount of Service You Can Get" column or the amount is less than the "Total Amount of Service Needed" column, the reason is explained on the next page(s).  
2) "Not Needed" means that your social worker found that you do not require assistance with this task. (MPP 30-756.11)  
3) "Pending" means the county is waiting for more information to see if you need that service. See the next page for more information.

SERVICES	TOTAL AMOUNT OF SERVICE NEEDED HOURS:MINUTES	ADJUSTMENT FOR OTHERS WHO SHARE THE HOME (PRORATION)	AMOUNT OF SERVICE YOU NEED HOURS:MINUTES	SERVICES YOU REFUSED OR YOU GET FROM OTHERS		AUTHORIZED AMOUNT OF SERVICE YOU CAN GET	
				HOW	WHEN	HOURS	MINUTES
<b>DOMESTIC SERVICES (per MONTH):</b>							
<b>RELATED SERVICES (per WEEK):</b>							
Prepare Meals							
Meal Clean-up							
Routine Laundry							
Shopping for Food							
Other Shopping/Errands							
<b>NON-MEDICAL PERSONAL SERVICES (per WEEK):</b>							
Respiration Assistance (Help with Breathing)							
Bowel, Bladder Care							
Feeding							
Routine Bed Bath							
Dressing							
Menstrual Care							
Ambulation (Help with Walking, including Getting In/Out of Vehicles)							
Transferring (Help Moving In/Out of Bed, On/Off Seats, etc.)							
Bathing, Oral Hygiene, Grooming							
Rubbing Skin, Repositioning							
Help with Prosthesis (Artificial Limb, Visual/Hearing Aid) and/or Setting up Medications							
<b>ACCOMPANIMENT (per WEEK):</b>							
To/From Medical Appointments							
To/From Places You Get Services in Place of IHSS							
<b>PROTECTIVE SUPERVISION (per WEEK):</b>							
<b>PARAMEDICAL SERVICES (per WEEK):</b>							
TOTAL WEEKLY HOURS-MINUTES OF SERVICE YOU CAN GET:							
MULTIPLY BY 4.33 (average # of weeks per month) TO CONVERT TO MONTHLY HOURS-MINUTES:						x 4.33	=
SUBTOTAL MONTHLY HOURS-MINUTES OF SERVICE YOU CAN GET:							
ADD MONTHLY DOMESTIC HOURS-MINUTES OF SERVICE YOU CAN GET (from above):							
TOTAL HOURS-MINUTES OF SERVICE YOU CAN GET PER MONTH:							
<b>TIME LIMITED SERVICES (per MONTH):</b>							
Heavy Cleaning							
Yard Hazard Abatement							
Remove Ice, Snow							
Teaching and Demonstration							
TOTAL HOURS-MINUTES OF TIME LIMITED SERVICES YOU CAN GET PER MONTH:							

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# Tips: Lost Alternative Resources

If you cannot reach SW, document the request, and adjust their hours. You should document:

- Attempts to reach SW (how and when).
- Identify Alternative Resource lost.
- Identify IHSS tasks in which time was reduced.
- Identify IHSS tasks now needed because of the loss.

You can try to get paid for these additional hours worked by documenting all the steps you took above.

# Adverse Actions

Counties are directed to focus on new applicants and service authorizations.

They are prioritizing initial assessments and requests for reassessments when client needs increase.

**Counties should not take action to terminate/decrease services until after 6/30/20. (ACL No. 20-26).**

# Appeals and Hearings

**You still HAVE 90 days from an adequate NOA to appeal. Only telephone hearings** but you still have a right to an in-person hearing. However, there is a long wait.

Can still request “**Aid Paid Pending**” (APP) within 10 days to keep services **as is** while appeal is pending.

- APP *may* be available if you request a hearing **BEFORE effective date** of change
- APP is also available if the NOA is **otherwise inadequate**.



# Questions? Please Call OCRA

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