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## In-Home Supportive Services (IHSS) Overtime Exemptions

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This publication contains information about requesting an exemption to the weekly maximum that providers may work in the In-Home Supportive Services (IHSS) program which is part of the new federal and state overtime rules. For more information on overtime rules generally, see Disability Rights California's publication #5586.01 New Rules for IHSS: Overtime & Related Changes (<http://www.disabilityrightsca.org/pubs/558601.pdf>).

Beginning February 1, 2016, state law limits the maximum weekly number of hours an IHSS provider can work in a workweek. IHSS providers will be paid overtime if they work more than 40 hours a week.<sup>1</sup>

In general:

- A provider who works for only one consumer cannot work more than 70 hours and 45 minutes per week for IHSS.

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<sup>1</sup> Note, there are different exemptions for workers who provide Waiver Personal Care Services (WPCS) through the Nursing Facility/Acute Hospital or In-Home Operations Waivers. See DRC Fact Sheet "NF/AH and IHO Waivers Overtime Exemptions" Pub #5587.01 for more information. ["Return to Main Document"](#)

- A provider who works for more than one consumer cannot work more than 66 hours a week for IHSS.

## **EXEMPTIONS FOR IHSS ONLY**

The California Department of Social Services (CDSS) now has two exemption policies which can allow some IHSS providers to work more than the limits described above:

### **A. The “Family” exemption is for providers who met all the following conditions on or before January 31, 2016:**

1. Provide IHSS services to two or more IHSS recipients;
2. Live in the same home as all of the IHSS recipients for whom they provide services; and
3. Are related to the IHSS recipients to whom they provide services as his/her parent, stepparent, adoptive parent or grandparent or are his/her legal guardian.

*Providers who meet the conditions in 1, 2 and 3 above will be allowed to work up to a maximum of 90 hours per workweek and up to a maximum of 360 hours a month under this exemption.*

**CDSS sent a letter and a form to providers who have been identified as meeting these criteria. If the provider wants the exemption, the form must be completed according to the directions on the letter and returned to CDSS. If you meet the above criteria and you did not receive the form, or if your request is denied, please contact CDSS:**

- Calling: 916-551-1011 (Answered 9am-4pm.) Any messages left on that line will be returned, if a name and phone number are provided.
- Mailing: 744 P Street, Mail Stop 9-9-04, Sacramento, CA 95814
- Emailing: [apbinquryresponse@dss.ca.gov](mailto:apbinquryresponse@dss.ca.gov)

If you have tried to get the Family exemption and were not able to, please call DRC at 1-800-776-5746.

## **B. Extraordinary Circumstances Exemption**

### *What is the Extraordinary Circumstances Exemption?*

The Extraordinary Circumstances Exemption applies to IHSS providers who provide services for two or more consumers whose circumstances leave them vulnerable and place them at serious risk of placement in out-of-home care if their IHSS authorized hours could not be provided by the existing provider.

### *How Does Someone Qualify for the Extraordinary Circumstances Exemption?*

In order to qualify for the Extraordinary Circumstances Exemption, all consumers the provider works for must meet at least one of the following conditions:

1. Have complex medical and/or behavioral needs that must be met by a provider who lives in the same home as the consumer; OR
2. Live in a rural or remote area where available providers are limited and as a result the consumer is unable to hire another provider; OR
3. Be unable to hire a provider who speaks his/her same language in order to direct his/her own care.

The provider need not live in same home as the consumer(s) to qualify for the Extraordinary Circumstances Exemption if the consumers meet conditions 2 and/or 3 above.

### *What is an Extraordinary Circumstance?*

An extraordinary circumstance is one in which all possible options for finding another provider to work within the consumers' authorized weekly and monthly hours have been explored and exhausted by both the consumers and the county, and no other provider is available. As a result, the only viable option during a specific period is to determine that the consumers have an extraordinary circumstance. In this case, the Extraordinary Circumstances Exemption will allow the IHSS provider to work beyond the statutory workweek limitations to maintain continuity of

care and ensure that the IHSS consumers are able to remain safely in their homes.

*How Do I Apply for the Extraordinary Circumstances Exemption?*

CDSS and counties will decide whether the exemption will be granted.

To apply for this exemption, call the IHSS county social worker and ask the social worker to complete and submit the IHSS Program Exemption from Workweek Limits for Extraordinary Circumstances Referral Justification form (APD 005). The county IHSS Program Supervisor/Program Manager shall review the APD 005 before sending it to CDSS for consideration and approval. The county shall have 15 business days from the date of identifying a consumer who may be eligible for the Extraordinary Circumstances Exemption to evaluate the case to determine whether all of the conditions are met and submit the APD 005 to CDSS.

*What Should I do if My Request is Denied or the County Refuses to Process My Request?*

As of now, CDSS says that it will not inform providers or consumers about the possibility of an Extraordinary Circumstances Exemption. CDSS also says if the County refuses to process a request or disagrees that an Exemption is needed, consumers do not have a right to appeal. We think this is incorrect. We are keeping track of these denials, so if you have tried to get an Extraordinary Circumstances Exemption and were not able to, please call DRC at 1-800-776-5746.

*How Much Can My Provider Work if We Get an Extraordinary Exemption?*

Please note that even with an exemption, providers cannot work more than 90 hours per workweek or more than 360 hours per month. If the hours for the provider's consumers are more than that, one or more of the IHSS consumers will have to hire another IHSS provider to work the rest of their IHSS hours. Call DRC at 1-800-776-5746 if you or your provider believes that your provider needs to work more than 360 hours per month for you to remain safely at home.

### **C. What if I need more hours than 360?**

You can call DRC if you or your provider believes that your provider needs to work more than 360 hours per month for you to remain safely at home. Because the state will not pay a provider for more than 360 hours per month, we are not currently able to help you get an exemption for more than 360 hours per month, but we are keeping track of examples to advocate with the state for exemptions for people in that situation.

**TIP:** If because of the 360 hour cap, you have hours which are not being worked or not being paid, (because no other provider can pick up the hours) you should document that you continue to have the hours of care needs authorized even though no IHSS provider can be identified to provide those hours.

Please note that overtime means that any provider who works more than 40 hours per week will receive time and a half pay for the hours above 40 per week. Even if a provider has to cut back her hours because of the overtime limits, she may make the same amount of money as before the cut.

Here is an example of how that works for a provider in a county which pays \$10 per hour for IHSS, who works for a consumer with an exemption allowing the provider to work up to 360 hours per month.

A. Before overtime pay and rules went into effect:

Provider works 450 hours per month at \$10/hour = Total provider pay of \$4,500 per month.

B. After overtime pay and rules go into effect:

Provider works 160 hours at \$10/hr = \$1,600

Provider works 200 hours at \$15/hr (overtime) = \$3,000.

Total provider pay = \$4,600 per month.

The provider earns \$100.00 more for 360 hours per month than she did working 450 hours per month.

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