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1/22/92

January 22, 1992

Leslie Bryant, Executive Director
Area Board 13
6160 Mission Gorge Road Ste. 208
San Diego, CA 92120

Re: Regional Center respite and IHSS
for clients needing protective supervision

Dear Ms. Bryant:

You asked me whether a Regional Center may reduce needed respite hours purchased for a client receiving services under the In-Home Supportive Services (IHSS) program, including protective supervision. The answer is generally no. The interplay of the statutory and regulatory conditions in IHSS program and the nonsupplanting provision in the Lanterman Act, prohibit a Regional Center from reducing its purchase of needed respite because a client receives IHSS services.

1. The Lanterman Act

The Lanterman Act requires a Regional Center to purchase respite to "[a]ssist family members in maintaining the client at home . . . [and] relieve family members of the constantly demanding responsibility of caring for the client." (Welf. & Inst. Code § 4691(a)(1), (3).) Respite care covers the in-home care needs of any client. (§ 4691(a)(2), (4).)

The Act prohibits a Regional Center from purchasing services if they "supplant the budget of any agency which has a legal responsibility to service all members of the general public and is receiving public funds for providing such services." (Welf. & Inst. Code § 4648(b)(5).) It prohibits a Regional Center from requiring any nonlegally responsible person from paying for services except parents of minor children must pay for residential services in some circumstances. (§ 4782.)

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2. The In-Home Supportive Services Program

a. Overview

The IHSS program provides an array of domestic and health maintenance services to keep the aged, blind or disabled poor at home and out of institutions. (Section 12300; Miller v. Woods (1983) 148 Cal.App.3d 862, 867-69 [Appendix 1].) IHSS statutes (§§ 12300, 12300.1) and DSS regulations (MPP § 30-757 [Appendix 2 for all cited regulations]) define the eligibility conditions for each service. One authorized IHSS service is protective supervision for people needing twenty-four hour monitoring to protect them against injury because of some mental impairment. (MPP § 30-757.17.) It pays for up to 195 hours for nonseverely impaired and 283 for severely impaired recipients. (§§ 12304(b), 12304.1.)

A county determines the specific number of hours for each authorized service on a monthly basis up to the maximum (Miller v. Woods, supra, 148 Cal.App.3d at 868) by a specific three step process. (MPP § 30-763.11.) First, it determines the total need for IHSS services. (MPP § 30-763.2.) Second, it then determines whether "alternative resources" are available to provide any of the services and if so, how many hours they will provide the service (MPP § 30-763.3.) Third, it determines the amount of IHSS purchased by subtracting the amount of alternative resources from the total need up to the maximum. (MPP § 30-763.4.) The amount of IHSS services needed above the maximum constitutes an unmet need for services. (MPP § 30-761.274.)

b. Recipients needing protective supervision

Recipients eligible for protective supervision typically have an unmet need for IHSS services because the program does not pay for twenty-four hour a day care. For these recipients, a county determines the need for all other services and then adds the remaining hours under the maximum to set the amount for protective supervision. These recipients typically get about 9.5 hours a day of IHSS services (283 hours per month/4.33 weeks per month/7 days per week). The rest of the twenty-four hour period is an unmet need for IHSS protective supervision.

How are IHSS hours affected if someone provides one of the specified services, either voluntarily or paid for by a different program? Does it reduce the monthly IHSS hours below the maximum for recipients eligible for protective supervision? No. A reduction in the amount of one service needed does not reduce the total IHSS grant for recipients with unmet needs. The County simply reduces the amount of service provided, and then increases

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the amount of protective supervision by the same amount as long as there is an unmet need for protective supervision.

Here is an illustration. A severely impaired recipient needing protective supervision is authorized the following services each month (Hours Now column). A month later, someone starts providing all domestic and related services (7 hours). A County will make the adjustment shown in the Hours Later column, reducing those services by 7 hours and increasing protective supervision by 7.

Service	Hours Now	Hours Later
Domestic services	3.00	0
Related services		
Prepare meals	2.00	0
Meal cleanup	1.00	0
Shopping for food	.50	0
Other shopping errands	.50	0
Non-medical personal		
Bowel and bladder care	7.00	7.00
Feeding	4.00	4.00
Dressing	7.00	7.00
Ambulation	1.50	1.50
Move in/out of bed	3.50	3.50
Bathe, oral hygiene	5.75	5.75
Rub skin, reposition	2.00	2.00
Transportation		
Medical appointments	.50	.50
Protective supervision	27.10	34.10
Total weekly	<u>65.35</u>	<u>65.35</u>
Total monthly (weekly x 4.33)	283.00	283.00

3. A Regional Center may not reduce needed respite hours for clients eligible for protective supervision and having an unmet need for services under the IHSS program.

A Regional Center may not reduce purchased respite to a client who receives IHSS, is eligible for protective supervision, and has an unmet need for IHSS services. There are three distinct legal reasons.

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- a. A Regional Center does not supplant DSS's duty to pay for IHSS services by purchasing respite services.

The nonsupplanting provision in subsection 4648(b)(5) applies only if a Regional Center's purchase of services will affect another agency's duty to pay for the same service. It requires a calculation of precisely how the other agency would treat the Regional Center's purchase of service.

A Regional Center's purchase of respite will not supplant DSS's duty to pay the maximum IHSS grant to recipients eligible for protective supervision and with an unmet need for services. Every reduction in hours for one IHSS service paid for by Regional Center respite, will increase the amount that must be allocated for protective supervision if there is an unmet need.

- b. Requiring providers to reduce their IHSS income violates IHSS statutes.

A Regional Center may not require recipients to give up any part of their IHSS grant so their providers may get respite. Such a condition violates the right to choose provider provisions in the IHSS program for the same reasons as the DSS regulation invalidated in Miller.

The IHSS program makes a recipient's right to choose a provider a central statutory goal. (Miller v. Woods, supra, 148 Cal.App.3d at 878 [interpreting sections 12304 and 12304.1].) "The legislative purpose is to insure the least intrusion upon the recipient's privacy because the services provided involve the most intimate and person aspect of a recipient's life." (Ibid.) Recipients needing protective supervision cannot obtain enough IHSS funding for twenty-four hour care every day of the month. Most recipients rely on relatives to be their providers; they provide unpaid care. (148 Cal.App.3d at 870.) Limiting their provider's income interferes with their choice of providers, who may forced back to work, leaving them with strangers or in institutions. (Id. at 870 ["These providers must subsist on a reduced IHSS grant"], 878.)

Most Regional Center clients with mental retardation or autism need protective supervision. They are more dependent on relative providers who give a substantial amount of uncompensated care. The maximum IHSS grant allows them a modest income to keep a family member home. For spouses and parents of minor children, IHSS requires that they give up or be unable to get jobs because no other suitable provider is available. (§§ 12300, 12301.) Any restriction on their grant will undermine the provider's economic ability to stay home and in turn the recipient's as well.

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- c. Forcing IHSS providers to reduce their IHSS income violates the relative responsibility provisions of the Lanterman Act.

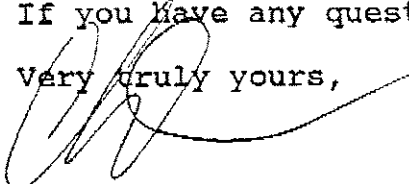
The Lanterman Act generally prohibits a Regional Center from forcing family members to pay for services which it must otherwise purchase. Section 4782 limits the duty of anyone to pay for client services under the Act to parents of minor children for their residential care. (See also § 4659(a),(c).) The Regional Center may not require non-legally responsible providers to give up IHSS hours to get respite.

Conclusion

A Regional Center may not reduce purchased respite hours for clients receiving IHSS who are eligible for protective supervision and still have an unmet need for services.

If you have any questions, do not hesitate to call.

Very truly yours,



CHARLES WOLFINGER

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Encl.