

## TIER 2 CRIMES

### Tier 2 crimes include:

- A violent or serious felony, as specified in Penal Code (PC) Section 667.5(c), and PC Section 1192.7(c);
- A felony offense for which a person is required to register as a sex offender, pursuant to PC Section 290(c); and
- A felony offense for fraud against a public social services program, as defined in W&IC Section 10980(c)(2) and (g)(2).

(Note: The above list is not exhaustive; other crimes may meet the criteria of a Tier 2 crime.)

If you **have been** convicted of, OR incarcerated following a conviction for a **Tier 2** crime **WITHIN THE PAST 10 YEARS**, you are **NOT** eligible to be enrolled as an IHSS provider or to receive payment from the IHSS program for providing supportive services. However, if a County/Public Authority/Non-Profit Consortium determines you are ineligible based on a Tier 2 conviction, you **MAY** be eligible to be enrolled as an IHSS provider if **one** of the following conditions apply/occur:

- You filed an **Appeal Request** form (SOC 856) with the Provider Enrollment Appeals Unit (PEAU) and PEAU overturned the decision of the County/Public Authority/Non-Profit Consortium to deny you eligibility to be an IHSS provider;
- You have obtained a **certificate of rehabilitation** or your conviction has been **expunged** from your record pursuant to PC Section 1203.4;
  - Expungement pursuant to PC Section 1203.4 does not, however, apply to certain crimes, and therefore, a conviction for any of the Tier 2 crimes listed below will not allow you to be enrolled as an IHSS provider:
    - PC 286(c) Sodomy of a child under 14 and who is more than 10 years younger than the attacker
    - PC 288 Lewd or lascivious acts with a child
    - PC 288a(c) Oral copulation
    - PC 288.5 Continuous sexual abuse of a child
    - PC 289(j) Sexual penetration of a child under 14 and who is more than 10 years younger than the attacker
- Your IHSS recipient requests an individual **waiver** to hire you; or
- You request and are approved for a **general exception** from the California Department of Social Services (CDSS) Community Care Licensing Division, Caregiver Background Check Bureau (CBCB).

Below is a description of the ways in which you may be eligible to become an IHSS provider, despite a conviction for a Tier 2 crime.

### **Appeal Request**

If you believe you have been erroneously denied eligibility by the County/Public Authority/Non-Profit Consortium, you have the right to file an Appeal Request form (SOC 856), with the PEAU by mailing a completed Appeal Request form to the following address:

California Department of Social Services  
Policy and Litigation Branch  
Provider Enrollment Appeals Unit, MS 9-9-04  
P.O. Box 944243  
Sacramento, CA 94244-2430

An Appeal Request must be filed with the PEAU within 60 days of the date of the denial notice from the County/Public Authority/Non-Profit Consortium.

You may also contact the PEAU at (916) 556-1156 if you have any questions concerning the Appeals process.

### **Certificate of Rehabilitation or Expungement**

If you have been convicted of a Tier 2 crime, and have obtained a certificate of rehabilitation (under Chapter 3.5 [commencing with Section 4852.01] of Title 6 of Part 3 of the PC), or the information or accusation against you has been dismissed pursuant to PC Section 1203.4, you are eligible to be enrolled as a provider if all other provider enrollment requirements have been met.

### **Waiver**

If you have been found ineligible to be an IHSS provider on the basis of a conviction(s) for a Tier 2 crime, but otherwise meet all of the provider enrollment requirements, you may be permitted to provide services to a specific IHSS recipient(s) if that IHSS recipient(s) chooses to hire you in spite of your criminal conviction(s) and submits a request to the County/Public Authority/Non-Profit Consortium for an individual waiver.

The County/Public Authority/Non-Profit Consortium will enclose with the notice of ineligibility sent to the recipient(s) the IHSS Recipient Request for Provider Waiver form (SOC 862) with information about the specific conviction(s) that make you ineligible to be an IHSS provider.

Under state law, Counties/Public Authorities/Non-Profit Consortia are authorized to only disclose your convictions that are listed in the Tier 1 and Tier 2 categories.

If, after reviewing the notice of ineligibility, your recipient(s) still wishes to hire you to be their provider despite your criminal conviction, the recipient(s) (or his/her authorized representative) must complete and sign the SOC 862 and return it to the County/Public Authority/Non-Profit Consortium in person or by mail within ten days from the date of notice of ineligibility. By signing the SOC 862, the recipient(s) accepts responsibility for hiring you, and agrees to hold the State and County/Public Authority/Non-Profit Consortium harmless from any liability that may result from the granting of the individual waiver. Please note that if you are the authorized representative for the recipient, you **cannot** sign the waiver on behalf of him/her. You will be allowed to sign the waiver on behalf of the recipient if you are the parent, guardian, or have legal custody of the minor recipient, or the conservator, or the registered domestic partner of the adult recipient. In situations where you cannot sign the waiver on behalf of the recipient, the waiver must be signed by the recipient or (if that is not possible) a third individual must be designated as an authorized representative for purposes of signing the waiver.

Once a waiver has been signed by the recipient(s) and accepted by the County/Public Authority/Non-Profit Consortium, you will only be allowed to provide IHSS services for the recipient(s) who requested the waiver. You may provide services to additional recipients if each recipient who chooses to hire you submits a separate waiver request to the County/Public Authority/Non-Profit Consortium. A waiver is valid only for the conviction(s) specified in the waiver.

### **General Exception Request**

If you have been found ineligible to be enrolled as an IHSS provider based on a conviction for a Tier 2 exclusionary crime but wish to be listed on a provider registry or to provide services for a recipient who has not requested an individual waiver, you may apply for a general exception of the exclusion.

If you choose to request a general exception, **you must file the general exception form (SOC 863) within forty-five (45) calendar days from the date of your denial notice, along with the required information noted on the SOC 863.**

Mail the SOC 863, along with the required documentation, to the following address:

California Department of Social Services  
Caregiver Background Check Bureau  
744 P Street, MS 9-15-65  
Sacramento, CA 95814