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November 4, 2009

The Honorable Noreen Evans, Chair
Assembly Budget Committee
California State Assembly
State Capitol, Room 6026
Sacramento, CA 95814

Dear Assembly Member Evans:

Thank you for your invitation to appear before your committee. Unfortunately, I am unable to participate in the scheduled November 5, 2009 hearing of the Assembly Budget Committee on the implementation of In-Home Supportive Services (IHSS) program changes, as enacted by the Fiscal Year (FY) 2009-10 Budget. Our Deputy Director for Legislative Affairs, Patricia Huston, will attend the hearing.

In response to the Committee's request for information, I am using this opportunity to address issues and concerns that have been raised by the Legislature and stakeholders related to implementation of the IHSS changes, and to highlight many of the actions CDSS has taken to implement the budget trailer bills. Additionally, as was requested of CDSS for the Joint hearing on October 28, we were prepared to present responses to a specific list of issues that had come to the attention of the Legislature, but we were not afforded an opportunity to do so. Per your request at the hearing, I am responding in this letter to those issues.

IHSS is an important part of California's long-term care system, serving hundreds of thousands of recipients with the necessary services to enhance their quality of life and in many instances avoid institutionalization. CDSS believes strongly that the nature of these services requires us to do our utmost to comply with the laws enacted by the Legislature and Governor in the most clear and timely manner possible to avoid unintended consequences for these recipients.

The FY 2009-10 Budget trailer bills, ABX4 4 and ABX4 19 (Chapters 4 and 17 of the 2009-10 Fourth Extraordinary Session, respectively), include some very aggressive statutory time frames for the implementation of the IHSS program changes. Therefore, the bulk of our work, focus, and resources has been directed to those requirements required by statute to be implemented in the first months of this fiscal year. Over the past two months, CDSS has issued 24 All County Letters, All County Information Notices, Electronic Bulletin Board notices, a Board of Supervisors letter, and a County Fiscal Letter. (Please see the attachment "ABX4 4 Implementation.")

Your agenda packet for the October 28 Joint hearing included a list of "sample" issues that have been brought to the attention of the Legislature. Again, since we were not allowed to speak to these specific issues at the hearing, this letter includes a detailed response to each issue. (Please see the attachment "Joint Budget Hearing Committee Comments.")

Additionally, I would like to address the following four concerns raised at the hearing by members of the Committee and stakeholders:

- New Provider Enrollment Immediate Impacts to Recipients / Providers – The impact of the new provider enrollment process will initially be limited to recipients who choose to enroll a new provider who has not been enrolled as a provider since 2001. These new providers will have to go through the new enrollment and clearance process in order to be eligible for payment by the IHSS Program. For current recipients with existing providers and for current recipients or applicants hiring existing providers, their providers will have until July 1, 2010 to complete the new provider enrollment requirements.

While the implementation of the new requirements for providers new to the Case Management Information and Payrolling System (CMIPS) system may create a delay during the initial county implementation, much of the process can occur in the same time frame as the previous enrollment process. Under previous enrollment requirements, there would have normally been a minimum six-week time frame between the provider mailing in their enrollment form and the provider mailing in their recipient-signed completed timesheet for their initial work period. Under the previous process, each provider first received retroactive payment before getting on a regular schedule of timesheets for two time periods per month. The new process will work in a similar way to provide retroactive payments.

- Definition of "Existing / Current Provider" – An existing provider is defined as any provider in the CMIPS system as of November 1, 2009 or at any time back to January 1, 2001 (ACL 09-66, released October 29, 2009). The law specifies that an existing provider has until July 1, 2010 to complete the new provider enrollment requirements. CMIPS has been modified to provide this functionality.
- Enrollment Form Completion by Existing Providers – SB 1104 established Welfare and Institutions Code (WIC) Section 12305.81(a), and required CDSS and the Department of Health Care Services (DHCS) to develop a provider enrollment form containing designated statements related to the provider's criminal history. It also required that each person seeking to provide supportive services complete, sign under penalty of perjury and submit this form to the county. This section is inclusive of all providers – current and prospective. The term "seeking" describes anyone expecting (seeking) remuneration from the IHSS program from the point of implementation of this legislation. The new SOC 426 Provider Enrollment Form represents the implementation of the requirement established in SB 1104.

Therefore, all providers – current and prospective – are required to complete the new SOC 426 Provider Enrollment form.

- Crimes that Exclude Providers – As discussed at the hearing, WIC Section 12305.81 is not the sole controlling statute that addresses the criminal background of providers in the IHSS program.

WIC Section 14123 governs the enrollment of providers in California's Medicaid program, which includes providers in the IHSS program. WIC Section 14123 requires that the director of DHCS suspend a provider of Medi-Cal services for conviction of "any felony or any misdemeanor involving fraud, abuse of the Medi-Cal program or any patient, or otherwise substantially related to the qualifications, functions, or duties of a provider of service." The enactment of WIC Section 12305.81 did not repeal WIC Section 14123 and the two sections are complementary.

Furthermore, pursuant to the Code of Federal Regulations, Title 42, Section 1002.210, a state must have administrative procedures that mandatorily exclude a provider for several classes of criminal convictions in order to receive federal financial participation. These classes of criminal convictions do not appear in WIC Section 12305.81. The crimes specified in WIC Section 12305.81 are elder abuse, child abuse, and fraud committed against specified government programs. Sole reliance on WIC Section 12305.81, therefore, would jeopardize the substantial federal funding that California receives for the IHSS program.

As I indicated during the hearing, the Administration would like to work with the Legislature to enact a list of crimes that would recognize the uniqueness of the IHSS program, while still protecting recipients being cared for in their homes and also complying with applicable federal requirements.

Contrary to comments made at the hearing, many counties have begun the process of requesting criminal records from DOJ as well as entering the information into CMIPS. Forty-two counties already have obtained agreements with DOJ; the remaining county agreements are in process and we are in daily contact with DOJ, which has been very helpful in these efforts. As of mid-day November 2, CMIPS had identified three new approved providers and 156 pending new providers. This level of new enrollments is consistent with the historical daily volume of new provider enrollments. As of November 3, 2009, all computer system modifications were validated and operational. All policy changes related to CMIPS have been implemented and counties have begun – and are – implementing the new provider enrollment process.

CDSS has endeavored to meet the aggressive statutory time frames to the best of our ability given our resources, and we know our local county partners are doing the same in putting forth their best effort to implement these significant reforms in a timely fashion. At this time, the Administration is focusing its efforts on working with our county, Public

Authorities and labor partners on resolving issues for the small percentage of beneficiaries that might experience difficulty getting their chosen new provider enrolled.

We share your commitment to serving the vulnerable aged, blind and disabled individuals served by the IHSS program, and will continue our efforts to identify, clarify, and resolve issues as we discover them, or as they are brought to our attention.

Sincerely,

for 
JOHN A. WAGNER
Director

Attachments

- c: Honorable Members of the Assembly Budget Committee
- Danny Alvarez, Senate Budget and Fiscal Review Committee
- Jennifer Troia, Senate Budget and Fiscal Review Subcommittee #3
- Christian Griffith, Assembly Budget Committee
- Nicole Vazquez, Assembly Budget Subcommittee #1
- Seren Taylor, Senate Republican Fiscal Office
- Chantele Denny, Senate Republican Fiscal Office
- Julie Souliere, Assembly Republican Fiscal Office
- Jack Hailey, Senate Human Services Committee
- Lark Park, Senate Human Services Committee
- Joe Parra, Senate Republican Policy Office
- Eric Gelber, Assembly Human Services Committee
- Mary Bellamy, Assembly Republican Policy Office
- Myesha Jackson, Office of the Senate Pro Tempore
- Gail Gronert, Office of the Assembly Speaker
- Scott Carney, California Health and Human Services Agency
- Jennifer Kent, Office of Governor Arnold Schwarzenegger