



Sacramento County **GRAND JURY**



Donald W. Prange, Sr.

March 23, 2009

Georgia Bastion

Dear Judge Hom and the Residents of Sacramento County:

Michael Broderick

Russ Campbell

Grand Juries by law issue a report at the end of their terms in June covering the issues investigated during its tenure. This year's Grand Jury will be issuing several reports early to call public attention to problems which affect the community's finances and the safety of our most fragile members.

Robert Cervantes

Irene Cervantes

This report deals with the specific issue of fraud in the In-Home Supportive Services Program, which was designed to help aged, blind, and disabled people remain in their homes as opposed to being moved into nursing homes at greater expense.

Richard Cochran

Robert Devoe

Almost every person who was interviewed, and there were many, spoke of rampant abuses of the IHSS system. At best, it is dysfunctional system plagued by upper management who refuse to make meaningful changes or even to look into matters that will be beneficial to the truly needy people it is pledged to help. The aged, blind, and disabled in these challenging financial times need every dollar spent on help to be directed to their needs. The lack of fiscal controls and oversight at IHSS has made it an easy target for those who are greedy.

Ann Early

David Feldstein

Patricia Gayman

Susan Husa

This report recommends a number of changes to IHSS to reduce fraud, thus ensuring that the funds expended are used solely for the benefit of those who need them.

Jerry Jagers

Rosemary Kelley

Sincerely,

Ramona Lavelle

Paul McAmis

Donald Prange Sr., Foreman
2008-2009 Sacramento County Grand Jury

James Monteton

Robert Segal

Robin Whiting

IHSS: For the Needy, Not the Greedy

Issue

Are Sacramento County In-Home Supportive Service (IHSS) funds being spent efficiently and effectively for those in need?

Methodology

The methodology used in this investigation included interviews with or testimony by:

- County District Attorney staff.
- Executive Director of the County Welfare Directors Association.
- Sacramento County Sheriff.
- A member of the Death Review Team.
- Past and current Department of Human Assistance IHSS fraud investigators.
- Former and current IHSS social workers.
- IHSS Director.
- IHSS Public Authority (Registry) Director.
- County Budget Director.
- A State Department of Justice representative.
- County Office of Education representatives.
- State Department of Social Services representatives.
- Past Grand Jury reports of various counties.
- A Little Hoover Commission report.

- Research studies.
- Policy reports and news articles.
- Numerous IHSS documents and forms.
- IHSS Public Authority annual reports.
- State IHSS legislation.
- State Legislative Analyst's Office reports, and
- County demographic reports and IHSS budgets.

Background

IHSS. IHSS is a federal entitlement program established in 1973 that provides assistance to the aged, blind and disabled to enable them to remain at home. Over succeeding years the program expanded. In 1999, the program took its present form with funding by Federal (49%), State (33%) and County (18%) governments, although none of these entities has the legal responsibility for being the employer of record, The program components consist of the IHSS administration, recipients (or clients) and providers (or caregivers), and The Registry (a Public Authority), an independent ancillary agency.

State. The State Department of Social Services provides pass-through Federal and State funding to the County and promulgates various rules, regulations, and guidelines for County programs. In IHSS, being a Federal entitlement program, funding is automatic. As more people have learned about the program and how to qualify for the benefits, applications for inclusion in the program have taxed County IHSS service and oversight capabilities.

County IHSS Department. IHSS is the administrative arm of the program with about 219 staff positions. Social workers attend a required State-sponsored IHSS Training Academy. Topics include:

- Assessment tools.
- Communication tools.
- Interactions and needs assessments of people with disabilities.
- The Needs Assessment tool.
- The Functional Index Scale.
- Administrative issues.

Administrative Issues. To meet the challenges of the escalating growth of the IHSS program, the computer program entitled Adult Data Automation Module (ADAM) was implemented a year ago, replacing fifteen antiquated systems. IHSS social workers conduct initial intake Needs Assessment of Applicants. The visitation notes of the social workers are entered into ADAM and applicant information is forwarded to Medi-Cal for review and action. Based on the Needs Assessment and Functional Index, social workers assign hours for provider care services. The services include: feeding, bathing, housekeeping, laundry, shopping, meal preparation, transportation to Medi-Cal appointments and reminding recipients to take prescribed medication. The maximum number of service hours per recipient that may be allocated is 283 per month, or approximately nine hours per day.

Recipient case file information is contained in ADAM. This database system is user-friendly and performs needs analysis, computations, case

recommendations, and hour limitations. With the assistance of ADAM, clerical staff assign recipients to social workers according to zip code and current workload. Recipient case data and changes in ADAM are stored in the permanent County computer system.

Recipients. Recipients are deemed to be the Employer of Record and are responsible for hiring and firing their providers. Anyone who is blind or disabled, on Medi-Cal, Supplemental Security Income, and is income eligible qualifies for the program. Once deemed eligible for IHSS a recipient may remain in the program for an extended period and in many cases until death. As of January 2009, there were about 21,290 recipients in the County.

Providers. A provider is any individual who is hired by a recipient to provide care for him or her. There are no qualifications to become a provider. There is no assessment of the provider's ability to provide care, no criminal background check, no tuberculosis test, nor any training (except for Registry providers.) Most often providers are family members or acquaintances. Many providers are unseen by IHSS social workers for extended periods of time, and some have never been seen. The current provider compensation is \$10.40 per hour, paid twice per month. More than 3,400 providers who work over 85 hours per month are receiving Medi-Cal and dental benefits. Providers pay \$15 per month, with the County's share at \$395.26 per month.

In contrast, home health aides, privately hired and State certified, perform similar duties and are required to complete a 12-week training course by the County

Office of Education and pay for a tuberculosis test and a criminal background check. The training course consists of 25 modules that include:

- Health and Safety
- Ethics
- Prevention and Management of Catastrophic Occurrences
- Patient Care Skills
- Patient Care Procedures
- Nutrition
- Emergency Procedures
- Death and Dying
- Home Health Care

The median starting hourly rate for a home health aide is \$9.25.

Registry. The County Board of Supervisors exercised the option of creating The Registry as a Public Authority in September, 2000. Its governing authority is the five-member County Board of Supervisors. The IHSS Registry has increased its budget from \$1.07 million in FY 2003-04 to \$1.56 million in FY 2007-08. The functions of The Registry are to:

- Act as the Employer of Record for the purpose of collective bargaining.
- Assist IHSS recipients in hiring providers.
- Investigate the qualifications and background of potential providers.
- Provide training for recipients and providers.
- Perform any other functions related to delivery of IHSS services.

- Ensure recipients meet Medi-Cal requirements.

Ninety-nine percent of the 19,670 providers in the County are not hired from The Registry list. Other counties cite a rate as high as 50-70 percent.

Classes conducted by The Registry include:

- Administration of Medication
- Coping with Grief and Loss
- Hospice
- Nutrition
- Tax Preparation

A limited number of classes are conducted with concurrent translation in Spanish, Russian, and other languages. As of February 2009, 128 Registry-screened providers were employed, and an additional 335 are available for employment. About 488 others were previously screened but are no longer available for work.

Program Cost. In Sacramento County the IHSS program has grown considerably. The following table depicts Sacramento County’s share of program budgets over the past five fiscal years.

IHSS Expenditures (in millions)

Fiscal year	IHSS Admin.	Provider Cost
2003-04	\$11.8	\$44.4
2004-05	12.9	43.8
2005-06	17.5	49.7
2006-07	20.9	57.6
2007-08	24.2	65.4

The IHSS administrative cost has more than doubled from \$11.8 million in FY 2003-04 to \$24.21 million currently. IHSS provider payments have increased from \$44.4 million in FY 2003-04 to \$65.4 million in 2007-08. The total cost of these programs the last fiscal year in Sacramento County alone exceeded \$89 million.

The State Legislative Analyst Office noted in its report to the Legislature in 2007 that over the past ten years "...IHSS cost rose rapidly from less than \$4,000 per person to over \$10,000 per person...The IHSS program budget increases have dramatically outpaced other social services assistance programs."

IHSS Fraud. Grand Jury reports and news articles in counties such as Los Angeles, Fresno and Santa Barbara and others have reported substantial IHSS fraud in the millions of dollars. IHSS fraud and waste in Sacramento County has received scant attention. The Grand Jury was informed by witnesses that there is not an annual fraud report for Sacramento County. According to a published news report an analysis by the Governor's Office estimates the Statewide fraud rate for IHSS at 25 percent.

Currently, in Sacramento County fraud investigations are based on reports of suspected fraud by the public and on referrals by IHSS social workers.

Complaints of fraud are initially reviewed for substance by a small number of internal IHSS staff. Those cases with evidence of fraud are referred to investigators in the Department of Human Assistance who conduct formal investigations. Only cases of fraud of \$1,500 or greater are accepted by the

County District Attorney's Office for prosecution. Fraud cases under \$1,500 are referred to the Department of Revenue and Collections for restitution. The number of cases referred between agencies is illustrated in the table below.

IHSS Fraud Case Referrals

Fiscal Year	Referrals DHHS to DHA	Investigations DHA to DA	Prosecuted DA Cases Filed
2004-05	236	23	24
2005-06	341	16	15
2006-07	397	31	25
2007-08	Not Available	28	24

Illustrative of the fraud are

- Claims by different providers of the same services at the same time.
- Claims of mental illness “stage-managed” by recipients or providers.
- Claims inflated by “under the table” check-splitting between recipient and provider.
- Claims by incarcerated providers.
- Claims by providers despite the death of the recipient.
- Claims of fiscal needs by recipients who have hidden assets or income.
- Claims of Medi-Cal conditions unverified by Medi-Cal professionals.

Recently it was reported that recipients with conditions of severe forgetfulness, asthma or restricted mobility were going to casinos for six to ten hours several days a week.

Claims of “mental illness” by saying the “magic words” such as “he wanders” or “acts strange and is disoriented” are particularly problematic in that social workers are not sufficiently trained to assess such claims and are told “to believe

the client.” Even upon the death of recipients they keep generating income for their providers because death notifications are not timely.

Fraud prevention and detection is weakened by the lack of a database to track Medi-Cal practitioners who may be routinely signing-off on client claims to identify those with an unusually high incidence of approving IHSS services. A number of fraud cases are not pursued due to the statute of limitations because of inordinate delays. The social worker training in fraud is at best perfunctory and consists of only four presentation slides and a very brief exercise. This training gives a mixed message by including a slide stating “...Don’t be a cop.”

When investigations are pursued as a result of social worker referral, there is little or no feedback on the disposition of cases. Many witnesses stated that social workers are not acknowledged for their diligence in reporting fraud. Furthermore, fraud investigations are seriously hampered by lack of “under penalty of perjury” statements on timesheets, vague time block reporting, and lack of data systems to effectively detect possible fraud.

The small number of cases accepted for prosecution is not an indication of the magnitude of fraud taking place. What it does point to is a fragmented fraud prevention, detection, investigation and prosecution system. Witnesses testified that current fraud prevention efforts are not adequately supported by upper management.

The fraud overpayment cases of less than \$1,500 referred to the Department of Revenue and Collections for civil collections are displayed in the table below:

IHSS Collections

Fiscal Year	Amt. Referred for Recovery	Amt. Actually Recovered	Number of Cases in Recovery
2003-04	\$154,225	\$17,524	84
2004-05	60,718	22,349	38
2005-06	356,320	23,366	164
2006-07	395,594	41,016	177
2007-08	166,862	56,451	186

The amount referred for restitution for the past five fiscal years totals \$1,133,719. Of that amount only \$186,245 was actually collected. Sworn witnesses testified that better Needs Assessment training, program oversight, monitoring of service hours, aggressive fraud detection and prosecution are essential. Currently, IHSS providers have no meaningful oversight, no assessment of skills to meet client needs, no monitoring of the validity of service hours, and no background checks. Criminal background checks are not prohibited by the State. There is no requirement that all providers undergo a criminal background check for felonies such as sex offenses, drug use, theft, robbery or burglary is a major barrier to improved program quality, oversight and accountability.

The provider aspect of the program has been characterized by a witness as "...an employment program for ex-felons and a breeding ground for fraud." A news report in Contra Costa County noted that "...the IHSS program provides an unreasonable opportunity for risk of misconduct, including fraud by caregivers..." A recent Los Angeles County Grand Jury noted that "[IHSS] inadvertently supports criminal activity."

According to sworn testimony, the types of fraud being committed in Sacramento County include but are not limited to:

- Misrepresentation of hours worked by IHSS providers.
- Service not given by IHSS providers as required.
- Use of false Social Security numbers by recipients or providers.
- Use of false names by recipient or providers.
- False representation of need by recipients.
- Collusion between recipient and provider.
- Continued payment of providers after recipient has died.
- Forgery of recipient's signature on time sheets.
- Payment to incarcerated providers.
- Payment to incarcerated recipients.
- Payment to providers when recipient is in nursing facility or hospital.
- Fraud by social worker.
- Fraud by "able and available" spouse.
- Undisclosed assets or income by recipient.

In summary:

- Fraud in the IHSS program is reported to be rampant and out-of-control.
- There are insufficient IHSS administrative procedures to mitigate fraud.
- Individuals with a criminal past constitute a majority of the providers who committed documented fraud.
- Timesheet misrepresentation is significant.
- The IHSS fraud prevention, identification, investigation and prosecution are almost non-existent.
- Fraud restitution is insignificant.

- Social workers are not adequately trained in fraud identification and reporting.
- Social workers grant more hours than appear necessary due to inconsistent use of the Needs Assessment process and the practice of “believe the client.”
- There is inadequate verification of some client needs.
- Social workers’ denials of requested IHSS services are routinely overturned on appeal.
- Annual reassessments of recipients are seriously in arrears.
- There is a need to track and identify physicians who routinely authorize IHSS services.
- The number of Registry-screened providers is less than one percent of total providers in the County.
- The number of people attending Registry classes is very low.

IHSS management dismissed fraud as inconsequential. By contrast witnesses interviewed consistently expressed frustration at management’s attitude about fraud as “...the cost of doing business...,” and that there is a lack of resources and systems to more effectively address fraud.

The incidence of fraud in IHSS is higher than expected and is likely to detract from IHSS’ ability to provide for the truly needy.

Findings and Recommendations

The IHSS program is based on the assumption that it is cheaper to care for the needy at home than in nursing facilities. However, only if the program is targeted to the truly needy with quality control and oversight features would it be cost effective. It is recognized that the IHSS program provides important services, but it is absolutely essential to significantly improve program oversight, accountability, and quality of recipient services, seek efficiencies, and address the looming issue of fraud if it is to become a premier program.

Finding 1: IHSS does not have adequate program controls to eliminate fraud.

Finding 1.1. Time sheets are routinely completed in a pro forma manner.

Time sheets are often identical week after week, month after month, year after year and do not reflect when providers or recipients are unavailable due to illness or other factors.

Recommendation 1.1: Add a supplemental time sheet with clock hour implements versus the current block time accounting to be put in the recipient's file. A County supplemental time sheet would not require any computer system reprogramming, and the cost would be insignificant.

Finding 1.2. The lack of a perjury statement is a problem in fraud investigations.

Recommendation 1.2: Include a perjury statement on the County Supplemental Time Sheet. Require both recipient and provider

thumbprints on these timesheets to improve accountability, deter fraud and facilitate fraud investigation.

Finding 1.3. The required annual recipient reassessments are in arrears from four to twelve months.

Recommendation 1.3: Enforce the annual Recipient reassessment requirement.

Finding 1.4. There is a no fraud data management system.

Recommendation 1.4: Develop a data management system capable of detecting potential fraud.

Finding 1.5. Social workers rarely make unannounced visits to recipients.

Recommendation 1.5: Require social workers to conduct unannounced home visitations on a random basis to reduce the number of “stage managed” reassessments.

Finding 1.6. Recipients are not fully informed by IHSS social workers that they may request a criminal background check their providers.

Recommendation 1.6: Enforce the requirement that social workers inform recipients of their right to have criminal background checks conducted on their providers.

Finding 2: Service hours are added without verification of recipients’ health needs and Medi-Cal conditions.

Recommendation 2.1: Establish an independent pool of physicians to periodically review recipient files of Medi-Cal and mental conditions to provide both quality control and certification of claimed needs and services.

Recommendation 2.2: Require a Medi-Cal evaluation when a change of 20% or more hours is requested for those receiving 200 or more hours of service.

Finding 3: The existing fraud investigation process is cumbersome and ineffective.

Recommendation 3.1: Create an operationally independent task force composed of the County Sheriff's Department and the County District Attorney's Office to conduct fraud investigations. It would be funded by \$1 million currently being expended on fraud by IHSS.

Recommendation 3.2: Establish a "Deferred Entry of Judgment" program by the County District Attorney to permit the expeditious adjudication of fraud cases, determination of offender sanctions and monetary restitution.

Recommendation 3.3: Transfer the IHSS monetary restitution function to the Sheriff's Department from the Department of Revenue and Collections. Because of sanctions that may be imposed, the amount of restitution can be expected to dramatically increase.

Recommendation 3.4. Lower the current prosecution threshold set by the District Attorney's Office for IHSS fraud prosecutions from \$1,500 to \$500.

Recommendation 3.5: Submit to the County Board of Supervisors a yearly comprehensive fraud report, including cases investigated, types of fraud, dollar value, and disposition.

Finding 4: Social workers do not receive adequate training in fraud identification and reporting.

Recommendation 4.1: Require management to provide and social workers to successfully complete comprehensive training in fraud detection, with updates to be given annually.

Recommendation 4.2: Require reliability assessment of social worker training on the Needs Assessment to achieve greater uniformity on recipient needs assessment and hours granted.

Finding 5: Recipients lack sufficient information to make informed decisions about their providers.

Recommendation 5.1: Require that all current providers undergo a face-to-face meeting with an IHSS representative to verify identification and to receive a program orientation that is verified by providers' signatures.

Recommendation 5.2: Revise the provider application to include name, date of birth, driver's license number, address, photo, and thumb prints, a question regarding any convictions, a question regarding whether he/she has ever been a provider elsewhere, used any other name, alias or

security number, and sign a perjury statement that the information provided is correct.

Recommendation 5.3: Require all providers to have and pay for a fingerprint-based criminal background check and the results to be given to recipients so they can make an informed judgment about their provider.

Recommendation 5.4: Require all providers to pass a tuberculosis test.

Finding 6: The IHSS Information Technology Department has recently developed and implemented a software database name ADAM (Adult Data Automation Module). This has immensely improved the intake, evaluation and tracking of IHSS recipients.

Recommendation 6: The IHSS Information Technology Department is commended and should be recognized for their accomplishment.

Finding 7: The Registry, funded last year at \$1.6 million, is not cost-effective. The number of employed Registry screened providers is small (less than one percent) as is attendance in various classes.

Recommendation 7: Encourage the County Board of Supervisors to evaluate the Registry functions, workload and level of funding.

Penal Code sections 933 and 933.5 require that specific responses to both the findings and recommendations contained in this report be submitted to the Presiding Judge of the Sacramento Superior Court by June 22, 2009 from:

- **Sacramento County District Attorney's Office**
Finding 3 and Recommendations 3.1, 3.2, 3.3 and 3.4
- **Sacramento County Sheriff**
Finding 3 and Recommendation 3.1
- **The Sacramento County Board of Supervisors**
Findings and Recommendations 1, 2, 4, 5, 6 and 7 and
Finding 3
Recommendations 3.5