

**ASSEMBLY BUDGET COMMITTEE
AND THE
SENATE BUDGET SUBCOMMITTEE NO. 3 ON HEALTH AND HUMAN SERVICES**

***Oversight Hearing on Implementation of Recent Changes in the
In-Home Supportive Services Program***

**Wednesday, October 28, 2009
Room 4202**

Background Paper

This oversight hearing is intended to provide a forum for discussing recent changes in the In-Home Supportive Services (IHSS) program, especially focusing on those program changes currently scheduled to take effect November 1, 2009. This background paper provides information on changes adopted as part of the 2009-10 Budget, the implementation process administered by the Department of Social Services (DSS) to date, and the feedback of counties ultimately responsible for local program operations. Under the segment of this paper dealing with issues and concerns raised, feedback from other stakeholders and advocates is included in part.

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BACKGROUND ON IHSS

The IHSS program provides in-home supportive services to more than 460,000 qualified individuals who are blind, aged, or who have disabilities. These services, which include personal care (such as bowel and bladder care, bathing, grooming and paramedical services), housecleaning, meal preparation, laundry, grocery shopping, accompaniment to medical appointments, and protective supervision, allow recipients to stay in their homes and avoid institutionalization. The total 2009-10 budget for the IHSS program includes approximately \$5.5 billion (\$1.2 billion General Fund).

RECENT PROGRAM CHANGES IN IHSS

Legislation enacted in July for the 2009-10 budget year contained significant changes in the IHSS program, including service reductions and eliminations, the expansion of quality assurance and anti-fraud activities, the elimination of share-of-cost buyouts that previously lowered some recipients' out-of-pocket expenses, a reduction to the support of Public Authorities, and the receipt of federal stimulus funding. The Governor's line-item vetoes included a further reduction to the budgets for the Public Authorities, which is a subject of a pending lawsuit filed by the President Pro Tempore of the Senate, Senator Steinberg.

Service Reductions and Eliminations. The Governor proposed to eliminate IHSS services for nearly 90% of the caseload of recipients, or for all recipients with a functional index score of less than 4.0, for total General Fund (GF) savings of roughly \$700 million. The functional index score is intended to be a standardized measure for overall need for assistance on a daily basis. Instead, the Legislature adopted, effective September, 2009: (1) restrictions in eligibility for domestic and related services, eliminating these services for 90,000 consumers and (2) the elimination of all services for a group of nearly 37,000 IHSS recipients with functional index (FI) scores under 2.0.

These changes were initially estimated to save about \$73 million in 2009-10. For both of these reductions, the Legislature also adopted exemptions to protect recipients who receive paramedical services, protective supervision, or a total of more than 120 hours of services per month. The Legislature additionally authorized the DSS Director to waive these exemptions if they placed the program's federal funding at risk. The exemption for recipients receiving more than 120 hours of services was subsequently waived by the Department.

These service reductions and eliminations have not yet taken effect. First, DSS acted to delay implementation of these reductions and eliminations until November 1, 2009. Subsequently, a federal court stopped their implementation by entering a preliminary injunction as a result of litigation filed by stakeholders.

Program Integrity Measures. In 2004, comprehensive legislation (SB 1104, Committee on Budget & Fiscal Review, Chapter 224, Statutes of 2004) was enacted to

standardize assessment of IHSS recipients' needs and to ensure integrity in the IHSS program. Among its other requirements, SB 1104 directed DSS and the Department of Health Care Services (DHCS) to develop a new provider enrollment form that each person seeking to provide supportive services must complete, sign under penalty of perjury, and submit to the county. SB 1104 also gave DHCS authority to investigate suspected instances of fraud in the IHSS program. The bill required DSS, DHCS, and county quality assurance staff to work together and coordinate activities.

In July, 2009, AB X4 1 (Evans, Chapter 1 of the 2009-10 Fourth Extraordinary Session) allocated additional 2009-10 and 2010-11 funds to DHCS and DSS for a total of 25 new fraud investigation and program integrity-related positions. AB X4 1 additionally included \$10 million in additional funds to be allocated to counties based on their approved plans. AB X4 4 (Evans, Chapter 4 of the 2009-10 Fourth Extraordinary Session), the human services trailer bill, also included language changes to provisions governing the new provider enrollment form, requiring documentation to be submitted in person by applicant providers to county offices.

At the same time, AB X4 19 (Evans, Chapter 17, Statutes of 2009) was enacted to enhance program integrity and anti-fraud protections in the IHSS program. The 2009-10 Budget included the Administration's estimate of about \$162 million GF savings as a result of new anti-fraud activities in the IHSS program.

The provisions in AB X4 19 include the following:

1. **Stakeholder Collaboration.** Requires DSS to consult and collaborate with specified stakeholders on the implementation of provisions of the bill.
2. **Criminal Background Check.** Requires criminal background checks to be completed for all prospective providers as of October 1, 2009 and to be completed by July 1, 2010 for anyone who is already a provider on October 1, 2009.
3. **Applicants' Rights and Appeal.** Requires that any individual applying to become a provider who is rejected as a result of information contained in the criminal background report be given a copy of his or her criminal history, and that DSS develops a written appeal process for current and prospective providers who are deemed ineligible because of information included in their criminal background checks.
4. **Provider Orientation.** Requires, effective November 1, 2009, that all prospective providers complete an orientation at the time of their enrollment as a provider. Requires, between November 1, 2009 and June 30, 2010, that all current providers receive the orientation information.
5. **Targeted Mailings.** Requires DSS to develop protocols for targeted mailings to providers and recipients. Requires counties to distribute these mailings to inform providers and recipients of program rules and the consequences of failing to adhere to them.
6. **Unannounced Home Visits.** Authorizes unannounced visits to a recipient's home in targeted cases where there is cause for concern regarding program integrity.

Requires DSS to develop protocols for follow-up home visits and other actions if the provider and recipient are not present. Allows the provider and recipient the opportunity to address any suspicion of fraud that has resulted in a home visit.

7. **Use of P.O. Box.** Requires the provider enrollment form to be completed with a provider's residential address. Prohibits provider paychecks from being sent to a post office box unless the county approves a written or oral request from the provider addressing why use of a post office box is necessary.
8. **Social Worker Training.** Requires DSS, on or before July 1, 2010, to develop a standardized curriculum and training materials for county social workers in order to prevent fraud in the program.
9. **Fraud Prevention Stakeholder Group.** Effective immediately, requires the convening of a stakeholder group to develop and issue a report evaluating quality assurance and fraud prevention and detection, due to the Legislature by December 31, 2010.
10. **Recipient Informed of Provider Information.** Requires recipients to be informed by January 1, 2010 that providers be notified of hours and service levels.
11. **Provider Notification of Hours.** Requires DSS with counties to develop a process on or before December 31, 2011 to ensure that providers receive a list of approved duties.
12. **Timesheet Changes.** Effective immediately, requires that timesheets include (1) certification by the provider and recipient verifying that information is true and correct and (2) a statement that providers and recipients may be subject to criminal penalties if not. Effective July 1, 2011, requires the index fingerprint of providers and recipients be included on timesheets.
13. **Fingerprinting Requirements.** Fingerprinting for new consumers will occur in the home at initial assessment as of April 1, 2010. For current consumers, effective April 1, 2010, the recipient will be fingerprinted at the next reassessment, also in the home, with exemptions for minors and those physically unable to provide fingerprints due to amputation.
14. **Implementation.** Provides for implementation of certain provisions of the bill through all-county letters or similar instructions.

IMPLEMENTATION OF PROGRAM CHANGES

Immediate Changes. Changes that went into effect immediately after the chaptering of the legislation include the following:

- DSS required to consult and collaborate with stakeholders on implementation of the major changes in law, including the unannounced visits and targeted mailings, changes to the time sheet, criminal background check and appeals process, and use of P.O. Boxes.
- DSS, with county welfare departments, required to develop policies, procedures, implementation timelines, and instructions for the unannounced home visit and targeted mailing changes.
- DHCS, counties, and other stakeholders required to develop a standardized curriculum and training materials.
- Timesheet changes requiring provider and recipient to verify that the information is true and correct and to notify about the possibility of criminal penalties upon violation.
- Counties given authority to investigate fraud. DSS, with stakeholders, to develop uniform statewide protocols and measures for fraud prevention.
- Requires use of a provider's physical residential address, and not use of P.O. Box, for enrollment and payment, unless in response to a written or oral request from a provider, which the county may approve or deny.

November 1 Changes. Of the changes included in the new law affecting IHSS, the following are the changes that the DSS is asking counties to be ready to implement on November 1 and that are not currently the subject of litigation (i.e. the service elimination for FI scores below 2.0 and the domestic and related services elimination for those with FI ranks in these areas less than 4.0):

- All requirements for prospective providers, or those applying to become new providers as of November 1 and not providers providing services to a different or new consumer (must be completed prior to receiving payment for services), including:
 - Completion and processing of the new provider enrollment form;
 - Submission of fingerprints and undergoing a criminal background check;
 - Attending a provider orientation that provides information about the rules and requirements for being an IHSS providers; and
 - Signing a provider agreement stating that they understand and agree to the rules and requirements for being a provider under the IHSS program.
- Availability of the following for current providers, who have until July 1, 2010 to complete all of these in order to continue receiving payment for providing services to IHSS recipients:
 - Submission of fingerprints and undergoing a criminal background check;

- Attending a provider orientation that provides information about the rules and requirements for being an IHSS providers; and
- Signing a provider agreement stating that they understand and agree to the rules and requirements for being a provider under the IHSS program.

- Note that completion of the new provider enrollment form was not intended to be required nor was explicitly required in statute for current providers. This is a point of dispute with the administration, as the All County Information Notice states that current providers, or over 360,000 workers, must complete this form as a prerequisite to the fulfillment of the remaining requirements.

INSTRUCTIONS FROM DSS TO COUNTIES

Finalized Instructions. At the time of this writing, the DSS has issued four final All County Letters (ACLs) and one All-County Information Notice (ACIN) as follows:

- ACIN on Informational Documents for Recipients and Providers Regarding New Provider Enrollment Requirements. This was sent October 5 through October 12, 2009 to all current recipients and providers in the program in English only. The notice to recipients included mention of authorization of case reviews, targeted mailings, and unannounced home visits and asked for recipient cooperation "to avoid possible termination from the IHSS program." This notice also informed recipients of the new provider requirements and stated, "If you choose to receive services from someone who has not yet gone through the official approval process, you will have to pay for any services you get from that person with your own money." This ACIN is attached (see Attachment A).
- ACL 09-52 on New Provider Enrollment Requirements and Revised Provider Enrollment Form. This final ACL, released October 1, provided counties with information on these new processes, provider exclusions, and the appeals process, and included transmission of the new provider enrollment form.
- ACL 09-56 on Implementation of Services Reductions. This final ACL, released October 1, provided counties with information on how the reductions will be implemented and how to complete Legacy CMIPS data entry.
- ACL 09-53 on Public Authority Administrative Reduction for Fiscal Year 2009-10. This ACL was released on October 1.
- ACL 09-61 on Court Injunction Stopping Reductions of IHSS. This ACL was released on October 22.

Draft Instructions. At the time of this writing, the DSS has issued drafts of All County Letters for the following subjects. These are not yet finalized and are required for county implementation of the program changes.

- DOJ criminal background check for all providers and a list of disqualifying misdemeanors. This was released on October 25 and comments are due back to the DSS by October 28.
- Provider Appeals Process and Form.
- Provider Orientation Curriculum and Forms.
- Modifications to the Case Management, Information, and Payrolling System (CMIPS) to implement the new provider enrollment requirements.
- Revised IHSS Recipient Application Form.

Pending from DSS. Aside from the final versions of instructions that are currently in draft, there are items that are pending from the DSS to the counties.

- Although the IHSS county administrative allocation letter was released on October 14, it did not include funding for criminal background checks processing, orientation, appeals, home visits by county staff, and recipient fingerprinting.
- The \$10 million General Fund for fraud prevention and intervention provided in the counties in the Budget has not been remitted by the State.
- Translation of the provider agreement forms in Spanish, Armenian, and Chinese is still expected from the State and has not been received thus far. It is unclear if the orientation materials, or the CD, will be translated into these and other languages as well.

IMPLEMENTATION ISSUES AND CONCERNS

Stakeholders, including individual counties, the County Welfare Directors Association, United Domestic Workers, Disability Rights California (formerly Protection and Advocacy, Inc.), Service Employees International Union, and the IHSS Coalition have raised significant questions in connection with the changes circulating around the DSS November 1 implementation date. Recent letters received from individual counties are also attached (see Attachment B).

These concerns, outlined in numerous letters sent to the DSS over the past two months, focus on the incomplete and confusing elements of the draft and final ACLs, the inaccurate statements already shared with consumers and providers conveyed in the ACIN, and the expectation for November 1 as a hard implementation date for the multiple, complicated changes, engendering a situation where new providers may not be able to provide necessary services for consumers already enrolled and determined to need IHSS.

The following represents a sampling of issues raised under broad categories.

Provider Enrollment.

- Process distinctions, as dictated in statute, for current and new providers need to be addressed throughout the final ACL (e.g. for completion of the provider enrollment form, criminal background check, and receipt of the orientation materials and signing of statement).
- The final ACL indicates in several areas where further instruction will be provided in a "subsequent ACL," including information about the appeals process, interaction with the Medi-Cal Suspended and Ineligible Provider List, and the actual list of misdemeanor crimes and licensure conditions that would bar an individual as a provider.
- The ACL includes additional bars for individuals found liable for fraud or abuse of a government program, but without clarity as to what constitutes fraud/abuse and which government programs would disqualify an individual.
- The provider enrollment form includes language disqualifying providers who have certain licensing and certification histories. Statutory authority and direction to request this information is unclear.
- The ACL asks that all current providers (more than 360,000 individuals) complete the new Provider Enrollment Form and return it in person to the county or public authority by July 1, 2010. This is a point of significant dispute given the agreement between the administration and the Legislature at the culmination of budget decision-making in July – that the completion of the form only apply to new applicants.
- Related to the above bullet and agreement, current providers serving a new consumer after November 1 should not be subject to the new provider enrollment process. The CMIPS draft instruction requires the entire process to be completed before payment is made to a provider, jeopardizing the new consumer and the provider, who exists already in the system. The provider's status in CMIPS is made vulnerable in this scenario and does not align with the intent of the law.
- Related to the above, the CMIPS draft instruction to counties asks that providers in process of completing requirements not be paid until they are all met, jeopardizing payment for new providers in November in an unprecedented fashion (usually paid via "aid paid pending") and current providers come July 1. "Aid paid pending" allows payment to be administered while processing is underway, avoiding disruption in services for consumers who have been determined to have need.
- The ACL asks that provider documentation be filed in either a provider file or the recipient's case file, when the statute specifically references filing of materials (criminal background check, appeal information, fingerprint information, P.O. Box use request) in the provider's file. This is important given that some providers serve more than one consumer.

- The final provider enrollment form doesn't include a full list of felonies and misdemeanor crimes that would prohibit an individual from enrolling as a provider. There remains dispute over the broad interpretation from DHCS Legal on disqualifying crimes.
- Understandability, definitions, and language access issues (the information notice was only released in English) have also been raised for the provider enrollment process.
- Where it lacks specificity or conclusion, the ACL allows and encourages county "flexibility" to create various standards in implementation, which creates additional confusion and raises serious issues for program integrity, reporting, and issues of statewideness for purposes of federal waiver compliance.

Provider Orientation Requirement.

- DSS has developed orientation materials and stated that it would send materials equal to 10% of a county's IHSS provider population. Questions arise about whether the county is expected to recreate the balance of materials for their population on their own. Counties should receive instruction about how to use the materials received and how to comply with copyright law if this applies.
- Lack of disclosure to current providers that they are not required to attend a provider orientation as statute provides only that they receive the orientation materials. If current providers are asked to attend the orientation training in-person, there are certain federal requirements that counties have to meet that are not addressed or outlined.
- Counties are attempting to create new spaces and meet staffing demands for the orientation process, as well as acquire the equipment to provide the orientation for prospective providers and the thousands of current provider who will need to satisfy the requirement before June 30, 2010.
- Content and tone of the orientation material has raised questions.

Criminal Background Check and Appeal.

- Counties state that they must apply for and receive a Criminal Offender Record Information (CORI) number from the Department of Justice (DOJ) and have been told that this process will take 4-6 weeks beyond the time needed to take the required local steps necessary to submit their county application.
- The ACL requires that all providers wait to receive instructions from the county before beginning the criminal background check process. Payment for their work is dependent on their ability to complete a host of new and complicated requirements. Their success in completing this depends on guidance from the counties when there is confusion over implementation details.

- There is no statutory authority for counties to share criminal history information received for a provider with the state for purposes of appeal. This additionally raises confidentiality concerns for providers.
- Clarity is needed on the 60-day time period for providers to file their appeal and at what point this period begins. Provider eligibility for back-pay upon prevailing needs to be further clarified.
- The ACL doesn't make it clear that providers have rights to review and correct their DOJ records as specifically permitted in statute.

CONCLUSION

The implementation steps being undertaken by the DSS currently are under simultaneous review by counties and stakeholder groups. Their responses, questions, feedback, and concerns will be discussed in this hearing, with the administration asked to respond. This background paper is meant to provide history and detailed environmental context to a changing and complicated implementation roll-out.

Please contact Nicole Vazquez, staff to the Assembly Budget Committee, at (916) 319-2099 or Jennifer Troia, staff to the Senate Budget Committee, at (916) 651-4103 with questions on this document or pertaining to the hearing.