



IHSS Coalition

QUALITY CARE BEGINS AT HOME

January 25, 2010

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

The Honorable Mark Leno
Chair, Senate Budget Subcommittee #3
State Capitol, Room 5019
Sacramento, CA 95814

**RE: IMPLEMENTATION OF IHSS PROGRAM CHANGES ENACTED IN THE
FY 09-10 BUDGET**

Dear Assembly Member Evans and Senator Leno;

The IHSS Coalition is a group comprised of thirty-two organizations representing IHSS consumers, providers and advocates. Our common goals are (1) to ensure sufficient funding for In-Home Supportive Services and its interrelated aspects (2) to develop potential improvements for the program, (3) to disseminate information on homecare issues through public events and our website, and (4) to preserve and enhance consumer-directed services.

We appreciate the Assembly Budget Committee and Senate Budget Subcommittee #3 convening another oversight hearing on the implementation of the changes to the IHSS program enacted as part of the July 2009 budget package. The IHSS Coalition supported the provisions of SB 69 to delay the November 1 implementation mandate on counties to give them the time they desperately need to allow for adequate funding and instruction to come from the state. While SB 69 cleared the Assembly with a strong, bipartisan vote, it was held up in the Senate and the measure did not reach the Governor's desk. The CDSS letter in opposition to SB 69 stated, "We share the Legislature's interest in providing a smooth and safe transition, but at this point, statutory changes would reverse actions already taken and further confuse the implementation process. It is better to focus the collective effort of CDSS staff, county welfare department staff, public authority and labor partners on resolving issues for the recipients that might experience difficulty getting their chosen new provider enrolled."

Despite the numerous All-County Letters and All-County Information notices that have been released since the enactment of ABX4 4 and ABX4 19, we continue to believe that counties and Public Authorities have not been provided clear instructions that comply with the law. Even worse, some instructions from the CDSS are unlawful and have added to the chaos that exists in many counties around the new Provider Enrollment requirements. Counties have not been given sufficient time to implement the new statutes in a rational manner. At least 19 counties have sent letters to DSS complaining that the new rules have been put into place too quickly, and without proper guidelines and training for the counties.

The consequences for consumers and providers are severe:

- providers who do not meet their enrollment requirements are prevented from receiving payment from the state; or
- consumers who are unable to secure a provider (who is willing to work without getting paid) are unable to receive authorized services, which is the same consequence as if they had been denied services.

The CDSS reported in the January 12, 2010 letter to Assembly Member Evans that nearly 12,000 IHSS providers are in a “pending” status – which means they are not getting paid. Thousands of new IHSS providers have gone without pay for services they have provided for 2-3 months. In some instances, consumers are paying these providers in “pending” status out of their own extremely limited funds.

INTERACTION OF CDSS & STAKEHOLDERS: Sending out draft All-County Letters (ACLs) to groups and organizations for feedback is appreciated. However, the members of the IHSS Coalition must relay our distress with the limited opportunity for consumer or provider input into the policy changes that are being developed by CDSS. We are all frustrated with the extremely limited timeframes that have been set by the California Department of Social Services (CDSS) to analyze the draft ACLs. When our coalition and others have responded, despite the short timeframes, we have received no response nor have the vast majority of our comments, requests and suggestions been reflected in the final products.

There have been draft ACL's and new forms that have not been shared with the IHSS Coalition. In the process of “cleaning up” their email lists, CDSS deleted key organizations and individuals from the distribution of draft ACLs that prevented the IHSS Coalition from commenting on draft documents by the deadline set by the Administration. In addition, the coalition did not receive the draft Risk Assessment & Back-Up Plan Form. Section 42 of ABX4 4 clearly requires CDSS to develop a risk management form, with input from the counties and stakeholders representing recipients and providers, no later than 90 days from the date of approval of the 1915(j) State Plan Option. We know that CDSS circulated the draft form to counties in December 2009 and has not shared the draft form with the broader stakeholder community as required by statute.

We note in the CDSS letter of January 12, 2010 to Assembly Member Evans that they have produced 10 Electronic Bulletin Board (EBBs), 1 APB, 1 Board of Supervisors letter, and 3 “Notices” regarding IHSS Program changes. These documents have never been shared with the IHSS Coalition in draft or final form.

On January 21, 2010, CDSS issued a letter to IHSS Stakeholders regarding their plans for upcoming stakeholder meetings. A number of organizations that participate in the IHSS Coalition have not received this letter. It would be helpful to learn which organizations and individuals are on the CDSS distribution list to ensure that a broad stakeholder community is invited to participate, as required by statute, in developing the policies, procedures and protocols associated with implementation of the Anti-Fraud initiative.

MISREPRESENTATION OF PROGRAM RULES

Both the provider orientation training video and the written orientation materials misrepresent the role and ability of the consumer in directing the provider; the provider orientation guide says:

"Can I spend the time authorized for specific tasks doing other IHSS tasks?

No. Time may only be used specifically as identified by the county. If it takes less than the authorized time to complete a task, the remaining time cannot be spent to increase the time on other services."

- 1) The hourly task guidelines are a tool for assessing the services a consumer needs – they are not a prescription for minutes and hours actually used. In fact, the Notice of Action for IHSS does not even include a daily allotment of minutes per task.
- 2) This newly invented policy does not reflect the reality of the lives of consumers; if a consumer needs to have additional laundry done on a particular day and is willing to forgo meal prep because of it, that is not fraud and it is not forbidden by statute. Does CDSS intend that the consumer should call the county social worker and ask for additional minutes for laundry every time that need arises?

CDSS is setting up conflict between consumer and providers by including this unauthorized policy in a document whose major focus is fraud.

ISSUES WITH FELONIES AND MISDEMEANORS PREVENTING PROVIDER EMPLOYMENT: On January 14, 2010, the CDSS released a draft ACL pertaining to Department of Justice (DOJ) and criminal background check procedures. The draft advises counties that the DOJ will provide criminal records based on Welfare & Institutions Code 15660. This basically re-establishes the unlawful policy that the Administration attempted to impose last year that expanded the list of disqualifying crimes beyond those contained in Welfare & Institutions Code 12305.81 (a).

The Administration does NOT have any authority to unilaterally impose a list of non-exempt crimes [beyond those contained in Welfare and Institutions Code 12305.81 (a)] that would bar any individual from serving and being paid as an IHSS provider. Current law only restricts consumers from hiring an individual who has been convicted within the past 10 years for fraud against a government health care or supportive services program and/or felony child, elder and dependent adult abuse.

The list of disqualifying crimes is being litigated under *Beckwith v. Wagner*. Until these issues are resolved in court, CDSS should confine the list of disqualifying crimes to those specified in Welfare & Institutions Code 12305.81 (a) which established the crimes that would make an individual ineligible to be a provider in the IHSS program are limited to a conviction (or incarceration following a conviction) within the last 10 years for: 1) fraud against a governmental health or supportive services program; 2) abuse of a child; or 3) abuse of an elder or dependent adult. Likewise, the Provider Orientation training video and handbook should be immediately revised to limit the disqualifying crimes to Welfare & Institutions Code 12305.81 (a).

UNLAWFUL USE OF CRIMINAL BACKGROUND RECORDS: The January 14, 2010 draft ACL states, “Based upon an official DOJ policy dating from 2006, which will supersede all past/current CORI policy, counties/PAs are allowed to provide specific information to the PEAU.” Despite requests to the CDSS and the DOJ, they have not provided us a copy of this DOJ policy and we are concerned that basic privacy rights and confidentiality requirements are being undermined.

Penal Code Sections 11105 and 13300 identify who may have access to criminal history information and under what circumstances it may be released. The retention and sharing of CORI records between employing and licensing agencies are strictly prohibited. The retention and sharing of information infringe upon the right of privacy as defined in the California Constitution, and fails to meet the compelling state interest defined in *Loder v. Municipal Court (1976) 17 Cal. 3d 859*.

The CDSS does not have authority to create a requirement in any All-County Letter that violates or surpasses its authority under current law.

We understand that these confidentiality restrictions may render the appeals process to be somewhat useless if the county deems a provider to be ineligible solely for reasons associated with the individual’s criminal records. This is a critical issue and should be resolved with legislative involvement and with coordination with the Department of Justice before CDSS issues any final ACL on the provider appeals process.

RETROACTIVE PAY: While the IHSS Coalition agrees with the policy expressed by CDSS to recognize the right to retroactive pay, we believe that more information is needed to operationalize the policy. Counties should be instructed on how to inform applicants/providers about how to keep track of time while the applicant/provider is waiting to receive the official timesheet. Counties should also be provided with instructions about

how to produce official timesheets to cover the entire time period, dating back to the submission of the SOC 426A (IHSS Program Recipient Designation of Provider), so the new provider can be paid for time that services were provided. As indicated above, we know that some IHSS consumers are paying providers who are stuck in “pending status” out of their own pockets. Information is needed about how these individuals will recover those funds once the provider receives the retroactive payment.

We have requested this information from CDSS and have not received any response.

MEDI-CAL SUSPENDED & INELIGIBLE LIST: The IHSS Coalition is concerned about the CDSS requirement on counties to the use of the Medi-Cal Suspended and Ineligible (S & I) Provider list as a device to deem providers to be ineligible for payment by the IHSS program. We cannot find any specific statutory mandate for counties to use the Medi-Cal Suspended & Ineligible List to determine the eligibility for individuals to be paid by the IHSS program.

We reviewed the December 2009 edition of the Schedule U (which contains the list of IHSS Providers) and were alarmed to see IHSS providers who are on the list far beyond the time period specified for them to be ineligible for payment. For example, Julie Ann Cross was added to the S&I list on October 20, 2009 under Schedule U and is specifically listed as an ineligible IHSS provider. Julie Ann Cross is listed as “Suspended indefinitely.” Welfare and Institutions Code 12305.81 (a) establishes a ten-year period for IHSS providers to be deemed ineligible if they have been convicted of specific crimes. We are unable to find any statutory authority for an IHSS provider to be suspended or ineligible for payment beyond the ten-year timeframe.

UNANNOUNCED HOME VISITS: State and county agencies area already started making unannounced home visits, sometimes using armed investigators, without waiting for and having the benefit of the guidelines required by statute. Consumers do not know why they are being visited, they do not know the consequences of completely innocent absences from their home, or their rights to refuse an unannounced home visit, which may happen while they are in the middle of personal care such as bathing and toileting.

Welfare and Institutions Code 12305.71 (c) requires CDSS to develop policies, procedures, implementation timelines, and instructions under which quality assurance activities (including unannounced home visits) will be performed. The IHSS Coalition believes these unannounced home visits should STOP until the required guidelines are completed.

FINGERPRINTING CONSUMERS: Welfare and Institutions Code § 12305.73 requires any IHSS consumer whose initial client assessment occurs on or after April 1, 2010, to be fingerprinted at the same time of initial assessment by a social worker. Consumers that are currently receiving IHSS services on April 1, 2010, will be fingerprinted by a social worker during the recipient’s next reassessment. Any individual who is a minor or

who is physically unable to provide fingerprints due to amputation or other physical limitations is exempt from any requirement to provide fingerprints.

The CDSS Local Assistance Binder for FY 10-11 states, “the budget includes funds associated with personnel, networking, training and site maintenance, establishing infrastructure, ongoing circuit costs, portable units on Statewide Fingerprinting Imaging System (SFIS) desktops which transmit data to the central unit, and management of remote stations, fingerprint ink and cards, and Polaroid cameras [emphasis added]. Fingerprint ink, cards and Polaroid cameras will be used as an interim solution until rollout of handheld portable SFIS devices following thorough testing.”

Members of the IHSS Coalition were alarmed to learn that CDSS intends to require social workers to take pictures of consumers as part of the fingerprinting process. There is no statutory requirement or authorization for Polaroid cameras or other digital imaging devices to be used as an “interim solution” to implement the statute on fingerprinting consumers. This appears to be another situation where CDSS intends to impose unlawful requirements on the counties that are unnecessary and intrusive to IHSS consumers. Given the financial troubles that California is facing, and the proposed drastic cuts to IHSS services, it is outrageous to spend limited IHSS program funds on this unauthorized temporary solution.

Sincerely,

AARP-California
ACLU of Southern California
American Federation of State, County and Municipal Employees (AFSCME)
California Alliance for Retired Americans (CARA)
California Association of Public Authorities for IHSS (CAPA)
Californians for Disability Rights, Inc. (CDR)
California Disability Community Action Network (CDCAN)
California Foundation for Independent Living Centers (CFILC)
California In-Home Supportive Services Consumer Alliance (CICA)
California Senior Legislature
California United Homecare Workers (CUHW)
Congress of California Seniors
Disability Rights California
Gray Panthers California
IHSS Public Authority of Marin County
Independent Living Services of Northern California
Independent Living Resource Center Inc.
Marin Center for Independent Living
National Senior Citizens Law Center
Nevada Sierra Regional IHSS Public Authority
Northern California ADAPT
Older Women’s League California (OWL)
Personal Assistance Services Council of Los Angeles County

Quality Homecare Coalition
Resources for Independent Living
San Francisco IHSS Public Authority
Service Employees International Union – State Council
SEIU United Long Term Care Workers
SEIU United Healthcare Workers West
SEIU Local 521
Silicon Valley Independent Living Center (SVILC)
UDW Homecare Providers Union/AFSCME

cc: Myesha Jackson, Office of the President Pro Tempore
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