STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF SOCIAL SERVICES
744 P Street • Sacramento, CA 95814 • *www.cdss.ca.gov*

CDSS

JOHN A. WAGNER
DIRECTOR

ARNOLD SCHWARZENEGGER
GOVERNOR

January 12, 2010

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

Dear Assembly Member Evans:

This letter provides answers to questions asked by members of the Assembly Budget Committee during the November 5, 2009 hearing on the In-Home Supportive Services (IHSS) program. Additionally, this letter provides an update on the efforts of the California Department of Social Services (CDSS) and our county partners to implement the IHSS changes enacted last year. As implementation issues arise or are brought to our attention, CDSS continues to work with counties and other stakeholders to provide guidance and clarity. We are aware of your intention to hold another oversight hearing at the end of this month. We look forward to providing an update at that time and responding to any additional questions from you and your colleagues.

The enactment by the Legislature and Governor of ABX4 4 and ABX4 19 required continuous dialogue between CDSS, the counties, and other stakeholders to implement those changes. CDSS has issued numerous communications and directions to facilitate implementation of the IHSS program changes, including All-County Letters (ACLs), All-County Information Notices (ACINs), Electronic Bulletin Boards, and other communications. These documents, most developed within very tight timeframes in communication with key stakeholders, are summarized in Enclosure 1 and largely highlight the major IHSS changes below:

- Instructions to counties have been issued on provider enrollment, orientation and appeals activities.
- Recipient notices have been issued related to provider enrollment requirements and other program changes.
- Fiscal Year 2009-10 funding was augmented and has been allocated to support the new program and administrative requirements.
- Written materials related to provider enrollment and provider orientation have been translated into the three threshold languages for IHSS (Spanish, Chinese, and Armenian) and are available to counties.

- County boards of supervisors have applied for and been awarded (in some cases tentatively) anti-fraud funding.
- We are receiving feedback from stakeholders on a comprehensive draft "question and answer" (Q&A) ACL, and will be splitting it into two ACLs and making other changes in response to their input and suggestions. The final versions of these two ACLs will be released in January, one sooner than the other.
- Instructions and recipient notifications were also issued related to IHSS functional index rank and score criteria (service reductions), the proposed reduction in the state's financial participation in IHSS wages, and the elimination of the state IHSS supplementary payment program. Those program changes, as well as the types of crimes which would disqualify a person from participating as an IHSS provider, have been affected by litigation. Enclosure 2 is a summary and status of the litigation related to the IHSS program changes.

Below is a list of questions that members asked during the hearing, followed by our responses:

1. *What is CDSS doing to monitor implementation issues and problems?*

   The IHSS program is overseen by the State, and administered and operated at the county level. We are in frequent communication with counties to discuss any issues they are encountering, including any issues involving the Case Management Information and Payrolling System (CMIPS). For example, conference calls were held on December 1 and 23, 2009 to solicit information regarding county implementation issues, particularly as they relate to the Department of Justice's involvement. As requested in a December 31, 2009 letter sent to many county welfare directors (Enclosure 3), counties and Public Authorities will continue to inform us as they identify difficulties and barriers to implementation so that we can jointly determine if further instruction/clarification is warranted, or if systemic changes may be needed.

   On November 2, 2009, all counties received a direct point of contact for all IHSS provider enrollment questions. Additionally, the provider enrollment system vendor's (Electronic Data Systems') help desk provides assistance with technical questions or problems. CDSS continues to respond to all questions from counties and other stakeholders, and is tracking the types of questions received and their resolutions.

2. *How many people since the November 1 implementation date have been retained in nursing homes, rather than being released to their home with IHSS in place?*

   If an individual requires an assessment in a nursing facility, a county social worker performs an assessment at the facility to determine the kind of services and the amount of hours the recipient needs. Once the preliminary services and hours are assessed, the social worker assists the recipient in finding a provider, by referring them to the Public Authority registry, referring them to an existing provider not yet

subject to these particular enrollment changes, or instructing the recipient on the process their new prospective provider needs to pursue. CDSS and counties do not collect information as to the numbers of people who remain in nursing homes or experience discharge delays rather than being released to their home or another setting.

3. *Has CDSS identified any impediments that will harm people?*

   Some counties have notified CDSS of instances that have resulted in delays in providers being enrolled in the program and in situations in which recipients are not able to immediately employ their provider of first choice because of the new enrollment process.

   Based on collected information, including a December 30, 2009 contact to counties, a variety of issues have been identified that impact provider enrollment timeframes – ranging from just recently receiving their Originating Response Indicator numbers from the Department of Justice, final approval from the county Board of Supervisors, contract delays between counties and Public Authorities, to time spent clarifying and resolving issues that have been identified, delays in data entry into CMIPS, and changing instructions as a result of ongoing litigation. CDSS, counties, and Public Authorities continue to address issues that require systemic program or policy changes, in addition to resolving individual situations.

4. *Have any specific examples of adverse impacts resulting from the November 1 implementation date come to the attention of CDSS?*

   We continue to listen to the many IHSS stakeholders, recipients, and providers that have offered comments and feedback, and continue to work with counties on implementation issues that are encountered. Regular monthly stakeholder meetings also will be held. We regret that we cannot more fully answer this question due to pending litigation.

5. *How many IHSS providers have been enrolled since November 1?*

   As of January 8, 2010 there are 5,653 providers who have completed the new enrollment process and are now enrolled, and 11,983 individuals in pending status which means they are going through the provider enrollment process, for a total of about 17,636 providers. Please note that the "Ellis v. Wagner" litigation also has impacted the provider enrollment process (see Enclosure 2 for a description of this case).

6. *Can we provide any assurance that new IHSS providers will get paid retroactively?*

   As has been the standing practice even before enactment of these reforms last year, CDSS will provide retroactive payments for time worked to each approved IHSS provider, back to the date on which the recipient first employed that provider.

7. *Does CDSS have a legal process to determine if the state is out of compliance with the Olmstead v. L.C. ruling?*

   CDSS follows federal and state statutes, regulations and court decisions as normal operating procedure when developing, implementing, and administering policies and procedures.

8. *What is left to do in terms of implementation of the IHSS program changes?*

   As is the case whenever there are significant changes to an existing program, there is a lengthy list of implementation activities and it is not unusual to continue to be engaged in ongoing implementation activities for a long period of time. For the enacted IHSS program changes, this list of activities continues to evolve as a result of county and stakeholder input, litigation, and experience. Beyond implementation of provider enrollment provisions, the following provisions will be implemented over the next year: home visits to ensure recipients are receiving the services for which they have been approved, by the providers who will be billing for those services; recipient fingerprinting for the prevention and detection of fraud; targeted mailings to individuals who appear to have not complied with the program requirements; preparation activities for fingerprints of recipient and providers to be attached to the timesheet; and necessary information technology system changes and updates. We will be happy to elaborate on these items at your forthcoming hearing, if you wish.

9. *Will CDSS be convening a stakeholder process for the remaining implementation activities?*

   In addition to our ongoing commitment and partnership to identify and resolve issues, CDSS will be convening additional periodic stakeholder meetings in 2010 and 2011. Among other program changes, these stakeholder meetings will address the anti-fraud protocols and activities, social worker fraud training, a report to the Legislature on quality assurance and fraud prevention and detection, development of new provider orientation materials, development of a notice to inform providers regarding the recipient's authorized hours and tasks, the prohibition on the use of a P.O. Box on the provider enrollment form, and ongoing meetings to review implementation and address any further changes that may result from litigation.

Thank you for your interest and concern regarding implementation of these enacted changes to the IHSS program. We have a shared goal of implementing these changes as smoothly as possible to minimize any harm to, and maximize protections for, recipients and providers participating in the IHSS program. If you would like additional information or have questions, please contact me at 916-657-2598.

Sincerely,

JOHN A. WAGNER
Director

Enclosures (3)

c: Honorable Members of the Assembly Budget Committee
Honorable Members of the Senate Budget and Fiscal Review Subcommittee #3
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
Sara McCarthy, Senate Office of Research
Todd Bland, Legislative Analyst's Office
Ginni Bella, Legislative Analyst's Office
Scott Carney, California Health and Human Services Agency
Jennifer Kent, Office of Governor Arnold Schwarzenegger

ABX4 4 and ABX4 19 Implementation
Documents Released: September 1, 2009 – December 28, 2009

Date	Document Type	Document #	Document Description
December 2009			
12/28/09	CFL	09/10-43	In-Home Supportive Services (IHSS) County Anti-Fraud Plans
12/28/09	CFL	09/10-40	Fiscal Year (FY) 2009-10 Allocation For Fraud Investigations and Program Integrity Efforts Related to the In-Home Supportive Services (IHSS) Program
12/23/09	EBB	09-023	Overpayment Processing
12/16/09	EBB	09-022	Provider SSA Verification File
12/10/09	CFL	09/10-37	Time Study and Claiming Instructions for IHSS Anti-Fraud Initiative Administrative Activities
12/8/09	ACIN	I-87-09	Request for County IHSS Provider Appeals Contact Information
12/7/09	EBB	09-021	November 1, 2009 SSI/SSP payment Standard Update
November 2009			
11/25/09	ACL	09-78	*Mary Beckwith, et al. v. John A. Wagner, et. al.* Temporary Restraining Order Limiting IHSS Provider Disqualifying Crimes to those Crimes Listed in WIC Section 12305.81
11/10/09	APB to IHSS Program Managers		Availability of Translated Forms Related to the Expanded IHSS Provider Enrollment Requirements
11/3/09	EBB	09-016	Provider Enrollment Update
11/2/09	EBB	09-015	CMIPS further instruction for New Provider Enrollment Requirements
October 2009			
10/31/09	ACL	09-70	Provider Fingerprinting and Criminal Background Check
10/31/09	ACL	09-69	IHSS Provider Enrollment Agreement (SOC 846) & Revised IHSS Recipient/Employer Checklist (SOC 332)
10/31/09	ACL	09-68	IHSS Provider Appeals Process
10/31/09	ACL	09-63	Revised IHSS Recipient Application Form (SOC 295)
10/29/09	ACL	09-66	CMIPS Modifications for New Provider Enrollment Requirements
10/29/09	CFL	09/10-33	FY 2009-2010 Planning Augmentation for Administration of IHSS Program

ABX4 4 and ABX4 19 Implementation
Documents Released: September 1, 2009 – December 28, 2009

Date	Document Type	Document #	Document Description
10/28/09	ACL	09-54	IHSS Provider Orientation
10/27/09	Recipient Notice – Injunction		Notice to impacted Recipients of IHSS Service Reduction Injunction
10/26/09	EBB	09013	IHSS Service Reductions Injunction – CMIPS Instructions to Restore Recipient Case Information
10/23/09	EBB	09012	IHSS Service Reductions Injunction – CMIPS removal of edits
10/22/09	ACL	09-61	Court Injunction Stopping Reductions of IHSS
10/15/09	Recipient & Provider Mega Mailer		Notice to IHSS Recipients and Providers regarding New Provider Enrollment Requirements
10/13/09	EBB	09-011	IHSS Service Reductions Automated changes in CMIPS and implementation of new edits
10/6/09	EBB	09-010	Provider Enrollment CMIPS Changes
10/5/09	ACIN	I-69-09	Mega Mailer – Informational Documents for IHSS Recipients and Providers regarding New Provider Enrollment Requirements
10/1/09	ACL	09-52	New IHSS Provider Enrollment Requirements and Revised Provider Enrollment Form
10/1/09	ACL	09-53	PA Administrative Budget Reduction for FY 2009-2010
10/1/09	ACL	09-56	IHSS Service Reductions
September 2009			
9/25/09	Letter		Board of Supervisors Letter- Funding for Fraud Investigations and Program Integrity
9/21/09	ACL	09-48	Policy Change Regarding SPEC Transaction (X-27) – Missed BuyOut Reimbursement
9/16/09	ACL	09-47	Elimination of SOC BuyOut
9/14/09	EBB	09-008	Termination of BuyOut

ABX4 4 and ABX4 19 Implementation
Documents Released: September 1, 2009 – December 28, 2009

Date	Document Type	Document #	Document Description
9/5/09	Recipient Notice Elimination BuyOut		Notice to impacted Recipients of Elimination of SOC BuyOut

ACLs	13
ACINs	2
CFLs	4
Notices	3
EBBs	10
APB	1
BOS Letter	1
Total	34

SUMMARY OF IHSS LAWSUITS

Beckwith/Ellis v. Wagner
Issue: All Felonies

On November 13, 2009, seven IHSS providers and one recipient filed a lawsuit challenging the policy of the State whereby any person convicted of a felony or serious misdemeanor is precluded from providing IHSS services. The Department took this position based on Welfare & Institutions Code (WIC) sections 12305.81 and 14123, and federal Medicaid and state Medi-Cal statutes and regulations. Plaintiffs argue that the Department has no authority to preclude the individuals at issue from providing services. On November 24, 2009, the Court issued a temporary restraining order (TRO), prohibiting the State from disqualifying providers on the basis of a conviction of any felony or serious misdemeanor but does not prevent disqualifying providers convicted of the crimes listed in WIC 12305.81. The TRO was recently found to be procedurally defective by the Court of Appeal and a hearing to resolve the matter will take place on January 22, 2010.

V.L. v. Wagner
Issue: Functional Index Score/Rank

After the Legislature and the Governor approved the reduction in services for IHSS recipients as part of the Budget Act in Assembly Bill (AB) X4 4, individual recipients of In- Home Supportive Services (IHSS) and various chapters of the Service Employees International Union (SEIU) brought this suit to prevent the implementation of changes to Welfare and Institutions Code sections 12309(e) and 12309.2 that would reduce services. The changes would have required that applicants/recipients of IHSS have a calculated Functional Index (FI) Score of at least 2.00 before services could be authorized. In addition, ABX4 4 mandated that domestic and related services be authorized only for those individuals with a substantial need for that specific service based on a FI Rank of at least 4 in that functional area.

Plaintiffs assert that implementation of the provisions at issue would violate Medicaid requirements, among other federal laws. Plaintiffs also allege that the statutory changes improperly discriminate against children and people with mental disabilities. Plaintiffs further allege that the Notices of Action that would have been sent to IHSS recipients to notify them of the reduction or termination of their services was inadequate.

The judge granted a preliminary injunction on October 19, 2009. The Department has filed a Notice of Appeal of the court's preliminary injunction with the Ninth Circuit Court of Appeal.

Yang/Martinez v. Schwarzenegger
Issue: Wage Reduction

After the Legislature and the Governor approved the reduction in the State's participation in wages/benefits in the February 2009 Budget Act, the SEIU and other parties filed a lawsuit against the reduction. On June 26, 2009, the U.S. District Court issued a preliminary injunction against the reduction in the State's participation, citing that an analysis required by 42 U.S.C. § 1396a(a)(30)(A) must first be completed. The court amended the injunction in July 2009 and required counties to change their wages and benefits to pre-July 1, 2009 levels. Until the injunction is lifted, the State continues to participate in wages and benefits up to $12.10. On August 7, 2009, an appeal of the injunction was filed with the US 9th Circuit Court of Appeal, and a hearing date has been set for January 19, 2010.

Northern California ADAPT v. CDSS
Issue: Share-of-Cost Buyout

In this case, various advocacy groups and IHSS recipients have filed for a preliminary injunction in San Francisco Superior Court. Plaintiffs are requesting that the court reinstate the program whereby CDSS made payment for medically recognized expenses (MRE) to IHSS recipients, even though this program terminated on October 1 pursuant to ABX4 4. This program is also informally known as the share-of-cost buyout program. Plaintiffs contend that recipients were not given proper notice of the termination of the program for a variety of reasons, including that the notices were only sent in English and that recipients could not understand the content of the notices.

On November 30, the court denied plaintiffs' request for preliminary injunction.

Enclosure 3

CDSS
JOHN A. WAGNER
DIRECTOR

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DEPARTMENT OF SOCIAL SERVICES
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ARNOLD SCHWARZENEGGER
GOVERNOR

December 31, 2009

Ms. Cathi Grams, Director and Public Guardian/Public Administrator
County of Butte
Department of Employment & Social Services
P.O. Box 1649
Oroville, CA 95965

Dear Ms. ~~Grams~~: Cathi

This letter responds to your letter and the concerns you and many others have raised regarding implementation of changes to the In-Home Supportive Services (IHSS) program, as enacted by the Legislature and Governor as part of the 2009-10 budget agreement. I sincerely appreciate that you took the time to share your concerns. The IHSS program is an important part of California's long-term care system, serving hundreds of thousands of recipients to enhance their quality of life and in many individual instances avoid institutionalization. The California Department of Social Services (CDSS) and I believe 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 IHSS recipients. As implementation issues are identified, CDSS will continue its partnership with counties and other stakeholders to work through the issues to achieve appropriate resolution.

The 2009-10 state budget trailer bills, specifically Assembly Bills 4 and 19 of the Fourth Extraordinary Legislative Session of 2009 (Chapters 4 and 17, respectively), included some very aggressive statutory timeframes for the implementation of the IHSS program changes. Therefore, the bulk of our work, focus, and resources has been directed to those provisions required by statute to be implemented in the first half of this fiscal year. It has been the Department's priority to provide counties, recipients, and providers with clear and timely information and instructions necessary to implement these IHSS program changes. Over the past few months, CDSS has issued numerous All County Letters, All County Information Notices, Electronic Bulletin Board notices, two Board of Supervisors letters, and a County Fiscal Letter. Within roughly the next week, after lengthy and appreciated consultation with the California Department of Justice, many counties, and other stakeholders, at least one additional comprehensive All-County Letter will be issued that responds to issues that have been brought to the Department's attention up to this point.

Further, also stemming from this enacted legislation, there is a long list of implementation activities still to come in the IHSS program. This list of activities continues to evolve as a result of litigation, stakeholder input, and our shared ongoing learning experience as we work through issues that arise. These forthcoming activities will be implemented through several topical stakeholder processes, and include but are not limited to: home visits to ensure recipients are receiving the services for which they have been approved, by the providers who will be submitting timesheets for those services; recipient fingerprinting to ensure that resources are available to persons with legitimate need for IHSS services; targeted mailings to persons that do not appear to have complied with program requirements; adding recipient and provider fingerprints to timesheets; and ongoing information technology system changes and updates.

I'd like to again acknowledge the breadth of reforms in our IHSS program that were enacted this year by the Legislature and the Governor. These reforms are certainly and undeniably some of the biggest changes we've made to the program in years. Our collective timeframes within which to implement these changes are extremely tight and aggressive, in some cases complicated by litigation regarding some of the changes, and also constrained by the fiscal and human resource limitations faced by all of us, including CDSS.

Thank you again for your interest, concern and partnership regarding implementation of the enacted changes to the IHSS program. We have a shared goal of implementing these changes as smoothly as possible to minimize any harm and maximize protections for IHSS recipients and providers. In this effort, please continue to bring issues to our attention as soon as possible, and know that we will work diligently with you and other concerned parties to clarify and resolve those issues as effectively and expeditiously as possible. You may contact me and/or Pete Cervinka Program Deputy Director for Benefits and Services at (916) 657-2598 or Eva Lopez, Deputy Director for Adult Programs Division at (916) 653-5403.

With appreciation,

JOHN A. WAGNER
Director