



**California Association of Public Authorities
for In-Home Supportive Services**

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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

Dear Assembly Member Evans and Senator Leno;

The California Association of Public Authorities (CAPA) represents 52 IHSS Public Authorities (IHSSPAs) and non-profit consortia across the state. Public Authorities play a critical role in implementing of IHSS Program Changes, particularly in regards to the Department of Justice background check requirements. Public Authorities have a long history in processing similar -- although not mandated -- background checks for individuals applying to our Provider Registries. Because of that experience, and our existing agreements as CORI-authorized receiving entities and Custodians of Record, the great majority of county welfare departments are counting on their Public Authorities to implement those changes that involve DOJ issue,

Although our membership has many significant unresolved concerns, the most distressing issues pertain to the dissemination and retention of the CORI record itself, and the confusion around what exactly the CDSS is requiring that we do regarding subsequent arrest and subsequent conviction information. Even in the most recent ACL draft from CDSS, the department continues to press their requirement that the CORI record received

be shared with various third parties. Our recurring comment has been that our existing agreements with DOJ specifically disallow this. CDSS has repeatedly stated that DOJ has “a 2006 unwritten policy” that allows CORI authorized entities to release CORI information to third parties, but we have been unable to verify the existence of this policy with DOJ. There has allegedly been some discussion between County Welfare Directors Association (CWDA) representatives and the DOJ regarding a movement to amend current CORI authorization agreements. However at this writing no Public Authority that is currently CORI-authorized has received any information on this change.

Below you will find excerpts from the CAPA Rapid Response Team comments to the most recent draft (draft #3) of the ACL regarding DOJ implementation issues. We acknowledge that the department made several significant changes in the second draft, however we detected only a few small changes in the third, and were disheartened by the department’s failure to adequately address our most serious concerns.

(Excerpted from CAPA Rapid Response Team 1-20-09 letter to CDSS)

“As indicated in the body of these comments, we urge the department to reflect on its position regarding 1) provision of the CORI information/report to the provider and 2) the development of a separate, internal appeals process that necessitates provision of CORI information to PEAU. We see no clear reason for either of these actions being required by CDSS. The provider cannot use the report for any reason, and must still request it from DOJ in order to proceed with any corrective action; and we cannot understand what action the PEAU could take that would supersede the authority of the DOJ and allow a provider with disqualifying information on their CORI to somehow circumvent the process and be qualified by PEAU decision. The DOJ record corrections process is already in place and we believe it should be the exclusive avenue for a provider to challenge information gleaned from the CORI.

Please accept the comments and additional questions on behalf of CAPA’s Rapid Response Team.

General Comments:

- *We would like to see a list of the specific disqualifying penal codes we are expected to screen for on the CORI. The W & I code is not what we see on the CORI, the penal code is. This can be tricky to “interpret” so a list of disqualifying penal codes would make errors less likely.*
- *We would like to see a clarification regarding a public authority registry's authority to use additional disqualifying criteria for registry approval. It has always been the practice of local boards to determine what criteria a registry should adopt, however it becomes a bit more confusing with the introduction of specific criteria for ALL providers.*

- *Due to the historical and current involvement of many Public Authorities in the criminal background/DOJ process we believe that this ACL should be directed to PUBLIC AUTHORITY DIRECTORS as well as COUNTY WELFARE DIRECTORS and IHSS PROGRAM MANAGERS*

1. What criminal arrests, convictions or incarceration information will be released by DOJ?

- *Second to last paragraph should specifically list the offenses of 273a(a) PC and 368 PC by their respective description of offense as the statute is clear.*

2. What are counties/PAs supposed to do with subsequent arrest information?

We find that the department has not addressed many of our significant concerns in this third draft. Therefore, we resubmit these comments and ask them to be addressed, as we are unable to proceed without further clarification.

- *We would like to point out that the **original CORI** as well as any subsequent arrest notices could have arrest information that is not yet disposed of. We assume this answer applies to both situations, and the ACL should be clear on this issue.*
- *What, exactly, are counties/PAs expected to do to comply with the advisement to **“pursue the final disposition of any subsequent arrest for the three crimes identified in W&IC 12305.81”**? Historically only registry applicants have been subject to DOJ and subsequent arrests, and the general rule has been that those with arrests (on original DOJ or subsequent notice) have been put on hold, with the recipient notified and no further referrals made until the disposition is provided BY THE PROVIDER to clear their record. That will not work here, for obvious reasons; the provider who shows an original (CORI) or subsequent arrest will have no reason to bring in a final disposition because the arrest record alone does not impede their ability to be enrolled or be paid in CMIPs. We can certainly ask them to, but they will have no motivation to do so. The other alternative is requesting the information from the originating court. Each court handles this differently; some will release the information by phone, some require a personal visit to the court which requires waiting in lines that can be over an hour long, some charge for the information (copy fees), and some require you to look the information up yourself in the case file. We have no other way of knowing when the next court date is, or if the case is being settled out of court, so until the case is disposed this would require regular visits to the courthouse. It is easy to imagine this single function needing at least one full time position to hang out all day at the courthouse trying to track down sub-arrest dispositions. Further, what happens if someone in Sacramento County is arrested for a disqualifying crime in Imperial County? Are we expected to travel to Imperial county court to pursue this arrest?*

- *As indicated above, follow up of Subsequent Arrest outcomes will be time consuming and expensive. Will there be an additional allocation to cover these costs? The initial implementation allocation addresses (rather inadequately in our opinion) only "RAP Sheet processing". While the CORI report is technically not a RAP sheet, we assume this refers to reading, and qualifying or disqualifying applicants based on the original CORI report. It does not address the subsequent arrest process, either reading them or the significant workload required "to pursue the final disposition of any subsequent arrest for the three crimes identified in W&IC 12305.81", as described above.*
- *What are the liabilities involved with not accurately, or timely pursuing the arrest or sub-arrest information? What happens if a disqualifying crime arrest gets a final disposition and the County/PA does not get notice of it for some reason, therefore does not notify the recipient and something bad happens? Who is liable for any damage that occurs (such as subsequent fraud or abuse)?*
- *What is the timeline that the notice must be provided within?*

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7. How can an individual who has been denied enrollment as a provider based on a disqualifying criminal conviction obtain a copy of his/her CORI? Can he/she dispute the information on the CORI?

- *The \$25 fee that must be submitted for a "re-do" is only the fee that DOJ charges for the report and does not include the cost of "rolling" the prints. This fee is charged by the vendor and varies, but is an additional \$10 to \$30. We do not believe that DOJ will provide the report to the disputer without a new livescan, and livescan vendors will not provide this service without charge. This should be clarified in the ACL.*
- *As stated in our CAPA response to the first draft, the provision of this policy in writing is essential to existing IHSS Worker CORI authorized agencies, primarily PAs at this point, to disseminate a criminal record outside the parameters of our current agreements with DOJ, including providing a copy of the report to the applicant. We note the change in language and tone in this section of the ACL, specifically from the use of "does" and "shall" to the use of "will". Is there particular legal and/or liability importance in this shift? In addition, we are very confused by the phrase: "An official DOJ policy dating from 2006, which will now supersede all past/current CORI policies". How can a past unwritten policy supersede a current written policy? It might conceivably supersede an old policy, but not a written, more recent one implemented after the alleged unwritten one. Again, we want to reiterate with emphasis: We cannot in good faith implement a "legend" policy that is antithesis to the written policy we have agreed to follow, for which non-compliance is punishable by arrest and conviction of the Custodian of Records and/or Agency Head for the CORI authorized*

entity, without a clear, written policy rescinding our agreement. This is a deal breaker for many of us.

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10. Do counties/PAs have legal authority to release information from an individual applicant's CORI to the Provider Enrollment Appeals Unit (PEAU) solely for the purpose of adjudicating an appeal?

We find that the department has not addressed many of our significant concerns in this third draft. Therefore, we resubmit these comments and ask them to be addressed, as we are unable to proceed without further clarification.

In addition, we believe that the department's intention to develop an internal appeal process IN ADDITION TO the appeals/records correction process already in place through the DOJ is ill advised. The statute is clear as to disqualifying conviction criteria. If a disqualifying crime appears on the CORI, the DOJ as the regulatory agency, has a process in place - as described in your # 7 answer - to correct erroneous records. If the department implements an internal, separate process, what would the expected outcomes of such an appeal be? Could the PEAU "forgive" or exclude a conviction appearing on a CORI, without the applicant having to initiate the DOJ records correction process described in #7, and allow a provider to be qualified despite their negative CORI record? We ask the department to reconsider the implementation of a separate appeals process for DOJ/CORI background disqualification, and to allow the existing DOJ records correction process to remain the sole route to challenge information provided by the DOJ. Doing so would also address the serious concerns we still have regarding the release of information to 3rd parties, including PEAU."

CAPA appreciates your consideration of our ongoing issues over the DOJ background checks, appeals, and the sharing of information. Feel free to contact us with any questions or concerns.

Sincerely,

Lauren Rolfe
Executive Director