

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

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

**Wednesday, January 27, 2010, 1:30 to 3:30 PM
Room 4202, State Capitol**

BACKGROUND

This is the third oversight hearing the Legislature is conducting to review implementation of major reforms in the In-Home Supportive Services (IHSS) program. These reforms were proposed by Governor Schwarzenegger and ultimately revised and adopted in Assembly Bills 4 and 19 of the Fourth Extraordinary Legislative Session of 2009 (Chapters 4 and 17, respectively), which were passed as part of the 2009-10 Budget agreement.

Major Reforms Adopted in 2009-10 Budget. A table on the program reform changes for IHSS adopted as part of the 2009-10 Budget is included in [Attachment A](#). The reforms range from a new provider enrollment process, including criminal background checks and provider orientations, to enhanced program integrity measures like social worker trainings, the development of protocols for targeted mailings and unannounced home visits, and the fingerprinting of recipients and providers.

Program Description. The IHSS program provides in-home personal care and domestic services to 460,000 qualified individuals who are blind, aged, or who have disabilities. These services, which include bowel and bladder care, bathing, grooming, 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. Currently, there are approximately 385,000 IHSS individual providers statewide.

Oversight Hearings. The focus of earlier October and November, 2009 oversight hearings was the administration's November 1 implementation date for numerous provider enrollment changes impacting both new and existing providers, including criminal background checks, provider orientation, and appeals. The Committees received numerous letters from counties outlining critical issues in implementation, with some asserting their inability to implement the proposed changes. This hearing will review continuing concerns in those areas and look prospectively to additional reforms that the Department of Social Services (DSS) and the Department of Health Care Services (DHCS) are scheduled to administer in the coming months, including new finger imaging of recipients and fingerprinting requirements for providers and consumers on timesheets.

Content.

This background piece provides the following:

- Guiding key questions to frame the purpose of this hearing.
- Identification of the largest priority areas in implementation to be addressed in the hearing, with more specific, critical questions for each of these.
- Requests from the Legislature to the administration going forward.

Guiding Key Questions for Panelists.

At a high level, the Committees are asking the administration to respond to the following questions, with counties and advocates also providing feedback.

- What has been or continues to be the impact from the problems around the implementation of the provider enrollment changes on November 1, 2009?
- Has the administration resolved all of the issues identified in the last two oversight hearings?
- Are there unresolved and/or new concerns regarding implementation of policy changes?
- Has the administration engaged stakeholders or conducted stakeholder meetings to resolve problems identified by counties and advocates?
- What else could be done to ensure that implementation is completed properly?
- Are the counties, DSS, DHCS, and public authorities on track to implement the provisions that are effective in April and June, 2010 without the same complications and problems of implementation we faced with the November changes?
- What is being done to ensure smooth implementation and unintended harm to qualified consumers, their chosen providers, and the county workers and systems upon which the program relies?

Priority Areas in Implementation.

Provider Enrollment

New Consumers and Providers – November 1, 2009 Implementation

Effective November 1, many IHSS consumers faced unprecedented difficulties accessing program services. DSS implemented a large volume of changes in provider enrollment on that date with late, confusing, conflicting, and incomplete instructions to counties. As of January 8, 2010, DSS reported that there were 5,653 providers who had completed the new enrollment process and 11,983 provider applicants in pending status, for a total of 17,636.

The counties report that prior to November 1, 2009, there were next to no delays in enrollment of new providers (which took 2-3 days at that time, rather than the current timeline of at best 2-3 weeks). It is uncertain how consumers are being impacted by this provider enrollment backlog. Those of the 11,983 providers who have already begun caring for consumers will not be paid through the program until they complete their enrollment process.

Questions:

- *What is happening to consumers who are unable to secure an existing provider on the registry or a new provider who is willing to work without pay for 2-3 months?*
 - ◆ *Are these consumers being denied authorized services altogether?*
 - ◆ *Are some consumers managing to pay providers out of pocket? And if so, how will they recover their funds once the provider is enrolled and eligible for back pay?*
- *What is being done to advise the 12,000+ providers who are in "pending" status that they will be eligible for retroactive pay if they are later enrolled? What is being done to properly track their time worked? What readiness will there be to pay them when they are ultimately approved?*
- *How does the 12,000 number break out? What categories of providers are included in this number?*
- *How has DSS responded to questions and issues with pending All-County Letters (ACLs) raised in letters from CWDA, UDW, and the other advocates?*
- *What is DSS's current policy on disqualifying felonies and misdemeanors given pending litigation and existing court orders? What is the statutory basis for use of the Suspended and Ineligible List?*
- *Have any new provider applicants been denied the ability to enroll thus far? What issues have been raised regarding the Provider Enrollment Appeals process?*

Completion of Provider Enrollment Process for Current Providers – June 30, 2010 Deadline

It is estimated that approximately 385,000 providers who were enrolled prior to November 1, 2009 are required to undergo most of the same requirements that new providers are subject to by a deadline of June 30, 2010. These requirements include the criminal background check, completion of orientation at the time of enrollment for new providers, and signed acknowledgement of receipt of orientation materials for current providers.

Questions:

- *What is the outlook and what are the challenges for meeting the requirements for current providers before the June deadline?*
- *What are the consequences for a current provider who has not met the requirements on July 1, 2010, the day after the deadline?*
- *What will happen to recipients' access to services on July 1, 2010 if there is a huge backlog of current providers who have not yet been able to complete all of the requirements?*

Program Integrity and Anti-Fraud Program Reforms

Fingerprinting Requirements and Time Sheet Changes – April 1, 2010 Implementation

Beginning April 1, 2010, finger imaging will be required for new consumers, to be conducted in their homes at the time of initial assessment. Current consumers (460,000) will be finger imaged at their next reassessment, conducted annually and also in the home, with exemptions for minors and those physically unable to provide fingerprints due to amputation. The statute does not in any place require a picture image to be taken of the consumer. The statute requires DSS to consult with county welfare departments to develop protocols to carry out these requirements. To date, this formal consultation toward protocol development with the counties has not occurred.

DSS has provided minimal information on its readiness to begin finger imaging on April 1. The Department's proposed 2010-11 budget references an "interim solution" of "fingerprint ink, cards, and Polaroid cameras" to be used "until rollout of handheld portable [Statewide Fingerprint Imaging System (SFIS)] devices following thorough testing." No specific information on materials cost, training for social workers, information for consumers, or longer-term plans for a final solution has been submitted to the Legislature.

Additionally, time sheets are now required to include a certification by the consumer and recipient that information is true and correct. Effective July 1, 2011, statute also requires the index fingerprint of providers and recipients to be included on timesheets.

Questions:

- *What is the plan for stakeholder collaboration to formulate the April 1, 2010 protocols for implementation of the consumer finger imaging policy?*
- *What is the specific timeline and plan for draft and final instructions, mailers, bulletin board postings, etc. for implementation of this policy?*
- *Why is the administration requiring Polaroid pictures of consumers when there is no statutory requirement for photographs?*
- *What are the General Fund costs of the administration's proposal for finger imaging and picture-taking of consumers for current and budget years?*
- *What happens to a consumer if a county or social worker is unable to take finger images at the time of the initial assessment?*

Home Visits (Dependent on Protocol Development) and Anti-Fraud Funding for Investigations

The trailer bill authorized unannounced visits to a recipient's home in targeted cases where there is a cause for concern regarding program integrity. Upon enactment of the statute, which was signed July 28, 2009, DSS was required to develop protocols for these home visits and other actions if the provider and recipient are not present at the time of the visit. The statute allowed the provider and recipient the opportunity to address any suspicion of fraud that has resulted in a home visit.

To date, no consultation with stakeholders has occurred on the home visit protocol, yet advocates and counties cite reports of home visits taking place in the program given the recent increase in state investigators at the Department of Health Care Services. The number of investigators was increased in the 2009-10 Budget from two to 32. Additionally, the Legislature appropriated \$10 million in new General Fund dollars for counties to investigate fraud based on plans submitted to the state.

Questions:

- *What is the plan for stakeholder collaboration, drafting, and approval of protocols for implementation of the home visit policy?*
- *Are state and county agencies already making unannounced home visits?*
- *How has the administration confronted the issue of on-going, previously existing activities and "new" activities made possible by the 2009-10 appropriation? How does this reconcile with the needed development and implementation of protocols as required in statute now?*
- *How has the anti-fraud augmentation been administered? What is the funding being used for? How does the administration account for its projected savings in this area?*

Targeted Mailings (Dependent on Protocol Development)

The trailer bill requires DSS to develop protocols for targeted mailings to providers and recipients, intended to inform both of program rules and the consequences of failing to adhere to them.

Questions:

- *What is the plan for stakeholder collaboration, drafting, and approval of protocols for the implementation of the targeted mailing policy?*
- *What is the specific timeframe for commencing targeted mailings?*
- *Can the administration provide a paper overview of its current activities under SB 1104, passed in 2004, to show how targeted mailings fit within the broader context of Quality Assurance and anti-fraud efforts already adopted as part of that ongoing effort?*

Requests Moving Forward.

The sponsoring Committees for this oversight hearing make the following formal requests on behalf of the Legislature:

1. A high-level update on remaining issues as identified by DSS and the advocates on provider enrollment, separately for new and current providers. This should include what counties and Public Authorities are identifying as continuing difficulties and barriers to implementation.
2. A schedule and plan for meeting the April 1 fingerprinting implementation date, including a formalized plan for stakeholder involvement, related costs, and a timeline for draft and final county instructions.
3. Similar plans per #2 above for protocol development for the home visit and targeted mailing policies.
4. An update on the allocation of the anti-fraud dollars by county, showing General Fund and other sources, a description of what the dollars are being used for, pursuant to the county plans, a discussion of how impact will be evaluated, and detail on expected program savings generated as a result of this appropriation.
5. A list of stakeholders that DSS is working with, with a plan for scheduled meetings with these stakeholders, noting topics to be discussed and key milestones to meet. Legislative staff are also named as stakeholders in statute and should be included.
6. Sharing of all draft and final All County Information Notices (ACINs), All County Letters (ACLs), Forms, and Mega Mailers with principal legislative staff (leads from four caucuses and leadership).