

## Why Does This Hearing Matter?

- ☒ After Nov 1, newly eligible seniors and persons with disabilities who are legally entitled to IHSS services to remain safe at home won't get those services until their provider completes the enrollment process.
  - State computer system will prevent payments to new providers who have not completed all the necessary steps, starting Nov 1.
  - The provider must complete the process before they can get paid, even if the recipient has an immediate need that would otherwise lead to institutional care.

## Why Does This Hearing Matter?

- ☒ State's implementation has made it impossible for counties to enroll new providers starting Nov 1.
  - A growing number of counties have notified DSS in writing they cannot implement Nov 1: Alameda, Fresno, Imperial, Kern, Kings, Los Angeles, Monterey, Plumas, Sacramento, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, Santa Cruz, Solano, Trinity, Yolo
  
- ☒ Most IHSS recipients will go without services.
  - Low income elderly and persons with disabilities would have to pay out of their own pocket – without knowing if they will get reimbursed from the state; or
  - Providers would have to agree to work for free, not knowing exactly how long the enrollment process will take and with no promise of payment for work performed.

## **Instructions Are Very Late – Most Not Finalized**

- ☒ The only relevant county instructions finalized as of Oct 27 are related to the provider enrollment form.
- ☒ Five sets of instructions needed by Nov 1 (Sunday) are not yet finalized.
  - Provider orientations
  - Orientation forms
  - Criminal background checks
  - Appeals process
  - Related automation system changes
- ☒ Counties cannot implement with draft instructions and won't be able to implement by Nov 1 even if instructions are finalized at this late date.

## **Some Instructions Are Contrary to Federal, State Law**

- ☒ State sent out error-filled “informing notices” to existing providers and recipients on October 5, potentially scaring providers away from the program.
  - Contained erroneous information about timeframe to complete the process, fingerprint fees, attending orientations, ban on any felony convictions/misdemeanors, and immediate cooperation with unannounced home visits and targeted mailings.
  
- ☒ County and Public Authority offices are being overwhelmed with calls and visits from concerned providers and recipients who received these unnecessary, incorrect notices.

## **Some Instructions Contrary to Law (cont.)**

- ☒ All-county letter establishes lifetime ban for providers convicted of any felony or serious misdemeanors – but this is not supported by federal or state law.
  - A lifetime ban is contrary to W&I Code 12305.81, other state laws pertaining to Medi-Cal provider enrollment, and federal Medicaid law.
  - Also includes a ban for prior licensing violations, but there is no authority for this in state law.
  
- ☒ State instructs counties to share criminal history information in violation of state law and DOJ regulations.

- ☒ Instructions raise significant liability concerns for counties and workers.



## Instructions Raise Major Unresolved Legal Questions

- ⊗ The types of misdemeanors disclosed by DOJ don't match the disqualification list proposed by CDSS.
- ⊗ It appears that providers serving child IHSS recipients may be processed differently by DOJ than those serving adult recipients, and at a higher cost.
- ⊗ CDSS has not confirmed whether new providers who serve IHSS recipients while completing the enrollment process will be able to receive back pay once enrolled.
- ⊗ It is not clear if existing providers who are found ineligible but file an appeal can continue getting paid during appeal.

## **Major Unresolved Legal Questions (cont.):**

- ☒ Because recipients are the employer of record with respect to hiring and firing providers, it is not clear what rights they have to review county and state decisions.
  
- ☒ CDSS instructions require all current providers to submit the revised provider enrollment form by July 1, 2010, but the law contains no such provision.

## **Some Instructions Are Incomplete, Unclear, Inaccurate:**

- ☒ Counties are required to check and add names to the Medi-Cal “Suspended and Ineligible” Provider List, but have not received instructions on how to do either.
  
- ☒ For providers who previously received a criminal record clearance in order to be placed on a public authority registry, it is not clear:
  - Whether their existing clearance “counts” under the new rules.
  - Whether they are allowed to take on a new recipient without first going through the new enrollment process.

## **Incomplete, Unclear, Inaccurate Instructions (cont.):**

- ☒ Prospective providers may ask to have their background check fees waived due to indigency, but counties have not been given any information about the fee waiver or how providers are to apply for it.
  
- ☒ Counties are supposed to screen for “government fraud” but what this means and how to do has not been provided.

## **Other Implementation Barriers:**

- ☒ State has not allocated funding to implement the new provider enrollment processes.
- ☒ Counties cannot train staff on materials not yet finalized.
- ☒ Criminal records and fingerprinting processes are controlled by the Department of Justice.
- ☒ State computer glitch related to lawsuit, court injunction on IHSS service cuts is draining county resources.
  - Because of this state computer problem, counties must manually restore services to 135,000 in a very short timeframe at the same time the provider enrollment process is supposed to be starting.
  - There will be a huge impact to providers, clients and counties if service restorations can't be completed on time.

## Other Implementation Barriers (cont.):

- ☒ Language used in some materials is inappropriate, overly complex; materials available only in English as of Oct 27.
  - The state says it will translate materials such as the provider enrollment form and appeals notices into Spanish, Chinese and Armenian; however, these forms are currently only in English.
  - The orientation CD and materials are only in English, with a Spanish version to be made available possibly Jan 1, 2010. Concerns have been raised about the CD's objectionable tone.
  - Providers must sign under penalty of perjury that they understand and agree to IHSS program requirements, despite lack of translation and confusing, complex language.
  
- ☒ No state guidance on what happens to providers if counties cannot complete the service restorations on time.

## **Implementation Is Not Just About Instructions**

- ☒ Even if the state finalizes all of the outstanding instructions today, counties cannot implement by Nov 1.
- ☒ “Implementation” also requires (among other things):
  - Development of county procedures for staff to follow on a day-to-day basis.
  - Allocation of funding that the Legislature appropriated.
  - Hiring and training necessary county staff.
  - Space acquisition
  - Establishing relationships with DOJ and gaining approval to receive background check details.

- MOUs and contract amendments and necessary Board of Supervisors approvals



## **What Should the State Do Now?**

- ☒ Delay implementation for three to four months from the point at which CDSS expeditiously resolves the many implementation questions raised by counties and other stakeholders.
- ☒ If this time frame is to be met, the process must be more collaborative than it has been to date.
- ☒ Collaboration is especially vital given what else is on the horizon for IHSS:
  - Finger Imaging of IHSS Applicants
  - Fingerprinting Recipients and Providers on Time Cards
  - Protocols for Home Visits and Targeted Mailings