



IHSS Coalition

QUALITY CARE BEGINS AT HOME

October 28, 2009

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

RE: IMPLEMENTATION OF IHSS PROGRAM CHANGES

Dear Assembly Member Evans;

The IHSS Coalition is a group comprised of thirty-one 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's review of some of the changes that are being made to the IHSS program enacted as part of the July 2009 budget package. For more than thirty years, our state's homecare system has been socially progressive, cost efficient, and has provided maximized choice and control for Californians with disabilities, including seniors, who need assistance to remain in their homes and avoid unwanted and expensive institutions. . The policy changes that are being implemented in the IHSS program will impact the lives of hundreds of thousands of consumers and providers. There is a great deal of fear, anger and confusion throughout the state about these changes.

The philosophical, practical and statutory cornerstone of the IHSS program has been the right of consumers to hire, fire and supervise their care provider. We believe that the consumer-directed model for IHSS has been significantly compromised with the enactment of ABX4 4 and ABX4 19, which restrict the ability of the consumers to retain the provider of their choice.

REACHING OUT TO STAKEHOLDERS: The 450,000 consumers are without a doubt the largest group of stakeholders in the IHSS program. Their lives and their ability to live with dignity and maximum independence will be significantly affected by the changes being made to this essential program. Despite the great efforts of coalition partners like

Disability Rights California and the California Foundation of Independent Living Centers, it is simply impossible on this accelerated schedule of implementation to provide the training and information for all those who need it.

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.

We were particularly outraged with the release of All-County Information Notice 69-09 that contained two letters that were mailed by CDSS to every IHSS consumer and provider in California, without any opportunity for stakeholders to comment in advance. Those warning letters were inaccurate, confusing and, in some instances, go beyond the provisions of ABX4 and ABX4 19 by creating new and unlawful program requirements. 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.

The failure of CDSS to make a good-faith effort to develop and distribute understandable information for those whose lives and livelihoods are most affected is unacceptable. Such hastily implemented policy changes, driven by legislation that is itself based on questionable presumptions, shows a process that is neither accessible to nor representative of those who are affected most.

CONSUMER CHOICE: Our state's social model homecare program has always strived for maximum control being placed in the hands of consumers. Instead of being part of a continuum, as it is in other states, in California, in part because of both Paramedical and Protective Supervision, it parallels all levels of institutional care. The program is responsible for low usage of California's Medi-Cal home health care services compared to other states and for lack of growth of Medi-Cal nursing facility beds. It has been a cost-effective model for other states, and has been the cornerstone of the independent living movement. The key component of consumer choice is control in the selection, training, hiring and firing of care providers. The allotment of a monthly block of hours for authorized services has allowed consumers to meet their specific needs and has given them the flexibility to deal with variables such as fluctuations in their health or care provider schedules. Most elected state officials understand that consumers knew their own unique needs best; this knowledge has resulted in numerous improvements in IHSS over the years.

As with any system, there is an opportunity for exploitation. But the flexibility of IHSS which allows consumers maximum control over their independent living is legitimately needed. The dignity and quality of life it allows for almost half a million Californians should not be marginalized for the few that break trust with the system to benefit themselves illegally.

ISSUES WITH FELONIES AND MISDEMEANORS PREVENTING PROVIDER EMPLOYMENT: The Administration has released a draft ACL that says that any individual with ANY felony conviction and convictions for specified misdemeanors cannot be enrolled and paid as an IHSS provider. 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.

UNLAWFUL USE OF CRIMINAL BACKGROUND RECORDS: Current law prohibits counties and Public Authorities (along with other employers) from sharing or disseminating criminal records obtained from Department of Justice (DOJ) to any other person or agency. 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.

PROVIDER RIGHTS MISSING FROM THE DRAFT: ABX4 19 contains a variety of provider rights that are not included in the draft ACL, including:

- Prospective and current providers have the right to receive a copy of his or her own criminal record from the Department of Justice,
- the right to contest the DOJ criminal record, and
- the right to a waiver of any fee for obtaining a copy of their criminal record.

These provisions of law must be included in any final ACL regarding the Provider Appeals Process.

PROBLEMS WITH THE FRAUD ORIENTATION PROCESS SET FORTH BY THE LEGISLATURE: With simultaneous elimination of large portions of funding for Public Authorities as well as significant workload increase placed upon each county with no funding attached to it, many counties may not be able to cope with the demands for training of the entire IHSS workforce prior to the deadline. Care providers and their clients will suffer grave consequences should they fail to complete the newly mandated tasks, which include new orientation training, provider enrollment and fingerprinting and background checks. There is no appeal process should counties fail to make reasonable efforts to make these required protocols and training available to care-providers, simply a discontinuation of their ability to receive pay for care.

Providers will face challenges in attending orientations at some county sites or Public Authority offices. In large or rural counties, distances can be great, and public transportation lacking. At the very least, providers will be spending a great amount of time – and money – to travel to training sites, all of which may be uncompensated

MORE CLARITY NEEDED IN APPEALS PROCESS: It is imperative that the Provider Appeals process be implemented carefully, thoughtfully, and with appropriate respect for the dignity of both the provider and the consumer. Before any final decision is made to deny any provider eligibility status for payment, CDSS must establish a fair and balanced appeals process for all parties concerned. We do not believe that the draft ACL meets those standards.

The draft ACL is not sufficiently clear on the timeline for counties to notify consumers and providers that a decision has been made that finds the provider ineligible for payment. Likewise, the draft ACL should be more precise in explaining the deadline for providers to submit their appeal to the CDSS IHSS Provider Enrollment Appeals Unit (PEAU) and the timeline that the PEAU must follow in processing and making a final determination on the appeal request.

Some effort should be made by CDSS to develop clear, concise fact sheets on the Provider Appeals process so they may be distributed to consumers and providers as soon as possible. These should be produced in other languages (in addition to English) in order to reach all consumers. This would enable advocacy groups and service organizations (most operating with limited resources) to distribute this crucial information to more people in the abbreviated timeline imposed on us.

LANGUAGE AND LITERACY PROBLEMS: The draft ACL indicates that CDSS is in the process of translating the orientation training materials into Spanish, Armenian and Chinese and that counties “shall provide needed bilingual/interpretive services and translations to non-English or limited English proficient populations as required by the Dymally Alatorre Bilingual Services Act (Government Code section 7290 et seq.) and by State regulation (MPP Division 21, Civil Rights Nondiscrimination, section 115).”

We object to the CDSS imposing these translation requirements on the counties. Especially when county dollars for services have been cut, it makes no sense for each individual county to translate these materials into languages that are common across many counties. For example, many counties have a significant percentage of providers who speak Vietnamese and Russian. It is an unnecessary and unjustified cost to counties to pay for translations into threshold languages where data clearly documents the ethnic diversity of the provider population across multiple counties.

When a consumer who is eligible for services or a provider who is eligible to work are forced to sign documents saying they understand materials which are not understandable – because of literacy level, language, or lack of accessible formats, they are being trapped rather than being informed.

When eligible consumers cannot hire eligible workers because of the hurdles being placed in the way, the consumers are being denied services just as surely as if they had been cut from the program.

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
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
Gail Gronert, Special Assistant, Assemblywoman Speaker Bass
Nicole Vazquez, Consultant, Assembly Budget Committee
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