



IHSS Coalition

QUALITY CARE BEGINS AT HOME

May 3, 2010

The Honorable Dave Jones
Chair, Assembly Budget Subcommittee #1
State Capitol, Room 6026
Sacramento, CA 95814

**RE: Governor's January IHSS Budget Proposal &
Implementation of the IHSS Anti-Fraud Initiative**

Dear Assembly Member Jones;

The IHSS Coalition is writing to address the Governor's January 2010 budget proposal for IHSS and to submit comments about implementation issues for the IHSS Anti-Fraud Initiative that was enacted last year. The IHSS Coalition is a group comprised of thirty-five 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.

January 2010 Budget Proposals

In his proposed budget for FY 10-11, Governor Schwarzenegger is requesting the federal government to provide \$6.9 billion in new federal assistance to California. If California is successful in securing these additional federal dollars, the Governor proposes to terminate 91% eligibility for 426,733 IHSS consumers and eliminate employment for 340,000 homecare providers. If California fails to secure the federal funds, the Governor's budget would deploy a trigger mechanism that would completely eliminate the IHSS program. This IHSS budget proposal is the most draconian that has been suggested by any Administration since the IHSS program was established under Governor Reagan in 1973. While we recognize the dire fiscal situation of the California state budget, it is inexcusable for the Governor to sacrifice the health and welfare of

seniors and people with disabilities and their caregivers with this devastating budget proposal.

The impact of eliminating IHSS is staggering:

- Approximately 450,000 IHSS consumers would lose the services they need to remain living safely at home; and
- Approximately 370,000 homecare workers would lose their job which would raise the state's unemployment rate to 13.2 percent and negatively impact the economy across the state.

The IHSS program provides personal care and domestic services to approximately 450,000 aged, blind or disabled individuals in their own homes. The purpose of the program is to allow these individuals to live safely at home rather than in costly and less desirable out-of-home placement facilities. IHSS is a critical component of long-term care services in California. Like virtually all other states, California is facing a situation in which the need for long-term care over the next several decades will grow at a much faster pace than it has in the last 30 years, almost entirely because of the aging of the baby boom generation.

Administration proposal defies US Supreme Court *Olmstead* ruling.

In 1999, the United States Supreme Court in *Olmstead v. L.C.* held that, “Unjustified isolation . . . is properly regarded as discrimination based on disability.” The Schwarzenegger Administration has consistently acknowledged that California's IHSS program has played a significant role in helping people remain at home and avoid institutionalization, as well as in developing a model system of self-directed services. The proposed elimination of the IHSS program is in direct conflict with the Americans with Disabilities Act, the legal foundation of the *Olmstead* decision, which requires that services to people with disabilities be provided in the most integrated setting possible.

The budget proposal that was adopted last year (to eliminate IHSS services to consumers below a Functional Index Score of 2.0), was stopped by a federal district court order stating that if the cuts went forward, “people could lose something irreplaceable – the ability to remain safely in their homes.” Substantial harm, damage, and injury would result, causing “human suffering.” The judge ruled that plaintiffs were likely to show at trial that the cuts to IHSS services violate federal law, including the Americans with Disabilities Act and the Medicaid Act. Governor Schwarzenegger's basis for proposing massive cuts is the state's budget crisis. However, the court's order took the budget crisis into account, stating that,

“The Court weighs California’s budget crisis in the balance. However, ‘[a] budget crisis does not excuse ongoing violations of federal law, particularly when there are no adequate remedies available other than an injunction.’”

On March 8, 2010, the U.S. Department of Justice filed an amicus brief in the Ninth U.S. Circuit Court of Appeals in support of this lawsuit challenging California's plan to cut spending for IHSS. The Obama administration, in the brief, argued that the district court had applied the correct standard in analyzing whether the budget cuts violate the Americans with Disabilities Act, which “prohibits discrimination against individuals with disabilities in the provision of public services.”

Economic realities and consequences

IHSS consumers cannot afford to pay for homecare services on their own. By definition, IHSS consumers are very poor; the vast majority have monthly incomes less than \$1,000 and \$2,000 or less in personal assets. According to the California Department of Social Services, approximately 85% of all IHSS consumers receive SSI/SSP. The current maximum monthly SSI/SSP grant for elderly and disabled individuals is \$845 per month and the maximum grant for couples is \$1,407. This is all the money that SSI/SSP recipients get to pay for all of their food, clothing, shelter, transportation, Medi-Cal co-payments, and anything else that they need other than medical care paid for by Medi-Cal and IHSS.

Beginning in 2001 the HUD Fair Market Rent (FMR) for a one bedroom unit in California now exceeds the maximum SSI payment for a single person. The situation has gotten worse over time. The value of the SSI grant barely equals the FMR for a studio apartment. In Los Angeles, for example, the FMR for a studio is \$863 a month while the maximum SSI payment for a single person is just \$845. In San Diego the availability of rental units has declined in large part due to a flood of families impacted by the foreclosure crisis turning to the rental market, according to the San Diego Union Tribune. Such high rental costs leave little or nothing for food, utilities, medicine or transportation – and are clearly insufficient to pay for homecare services.

The social implications of eliminating the IHSS program are staggering. If the IHSS program is eliminated, we are most certain that the life expectancy and longevity of seniors will diminish. People who have care and nourishment through IHSS, particularly when frail and elderly, live longer. Those without it don’t live as long. There are also people who are at risk of dying because the elimination of the IHSS program would deprive them of needed access to meal preparation and food shopping. If the elimination of IHSS goes forward, it will be a humanitarian disaster. Adult Protective Services and other programs serving seniors and people with disabilities will be flooded

with calls. Families will be desperately trying to find nursing home beds for loved ones who can no longer remain at home. Hospitals will see more emergency admissions for people who stop taking their medications, stop eating and stop caring for themselves.

New State Costs

Eliminating the IHSS program will create new state costs. The IHSS program saves the state money by avoiding more costly institutional care. The average yearly IHSS cost is \$10,000; nursing home costs start at around \$55,000 per year and can be much higher than that figure depending on the facility. California has one of the lowest rates of institutional-based care in the nation. California has the sixth lowest rate of nursing home utilization (and the lowest rate among the 10 most populous states). Overall, California has 2.70 occupied nursing home beds per 1,000 residents, which is 44% lower than the national average (excluding California) of 4.85 nursing home beds per 1,000 residents. These statistics are a direct reflection of the success of the ADHC, IHSS, and MSSP programs enabling persons with significant disabilities to live in the community. These programs have received national recognition for this success, and continue to serve as models emulated by other states.

Eliminating IHSS will lead to more hospitalizations, emergency room visits and other medical intervention, as people lose the services which allow them to stay safe at home. All these will be paid by the state; all will cost much more than the IHSS which the individual consumer was receiving. For people who are in the developmental disabilities services system, costs will be shifted but not avoided.

The Administration is wrong in asserting that family members will provide free homecare services. Family providers are people who are providing services because it's their job – often it's their only source of income. "Family providers" includes nieces, grandchildren, cousins – none of these family members are legally obligated to provide IHSS services. Many IHSS providers give up income from other, better-paid employment in order to provide care to their family member. When a parent is the IHSS provider for her/his child, the parent will receive payment for IHSS only when that person leaves full-time employment or is prevented from obtaining full time employment because no other suitable provider is available, and, if care is not given by that person, the child may be subject to inadequate care or inappropriate placement. It is important to note that almost half (42%) of IHSS workers are not family members.

The IHSS Coalition is emphatically opposed to the Governor's budget proposal to eliminate (or nearly eliminate) the IHSS program. We respectfully urge the Assembly Budget Subcommittee #3 reject this proposal to eliminate the IHSS program.

Implementation of the IHSS Anti-Fraud Initiative

The enactment of the Governor's Anti-Fraud Initiative in ABX4 4 and ABX4 19 created some of the most substantial changes to the IHSS Program since its inception in 1973. These bills did not go through the normal legislative process and there was no opportunity for input by the public into the statutory changes that were being considered when the legislature voted to pass these measures. As often happens in these cases when legislation is being rushed through the process, many of the IHSS Anti-Fraud statutes that were enacted in ABX4 4 and ABX4 19 are not based on data or fact or cost-benefit analysis, are riddled with inconsistencies, have inadequate detail and unrealistic implementation deadlines. The Department of Social Services has described the implementation deadlines in ABX4 4 and ABX 4 19 as "ambitious" and "very aggressive." The consequences of bad implementation are severe for both IHSS consumers and providers.

The IHSS Coalition is requesting the Assembly Budget Subcommittee #1 hearing to address three specific issues: (1) Provider Enrollment Deadline of July 1, 2010, (2) Fingerprinting of IHSS Consumers, and (3) Stakeholder input concerns.

Provider Enrollment Deadline

Effective on October 1, 2009, counties are required to conduct criminal background checks through the Department of Justice for all individuals who are applying to become an IHSS provider. Criminal background checks must be completed by July 1, 2010 as a condition of the provider's continued enrollment in the IHSS program. Despite vigorous efforts by counties and Public Authorities to set up the local enrollment process, it appears certain that thousands of IHSS workers will be unable to complete enrollment by the statutory deadline through no fault of their own. The consequence of non-enrollment is that the provider cannot be paid.

- **The IHSS Coalition is requesting** the Assembly Budget Subcommittee #1 to require CDSS to provide information on their plans to ensure that consumers and providers are not harmed by the provider enrollment statutory deadline of July 1, 2010.

Fingerprinting IHSS Recipients

ABX4 19 requires the state to start collecting consumer fingerprints on April 1, upon application or reassessment, in the consumers' homes. The purported purpose of the fingerprints is to ensure the identity of the applicant and to prevent duplicate aid – people receiving IHSS under more than one name or in more than one county. This is a solution in search of a problem; there is no evidence that

people are disguising themselves as someone else to get IHSS, or that people are going from county to county to be bathed. The legislation exempts people who are unable to supply fingerprints because of a disability and exempts minors. It also requires the state to develop protocols for the fingerprinting process, which has not been done.

Despite the lack of statutory authority, the Administration is moving forward to collect both fingerprint AND photo images of IHSS consumers using a military-style camera that costs \$5000 per unit.; the money spent on each camera would buy almost 500 hours of IHSS services. We were appalled that the legislature approved an FY 09-10 appropriation of \$8.2 million to cover the cost of fingerprinting IHSS recipients. We are still reeling from the information in the Administration's OSI Executive Summary on SFIS/IHSS fingerprinting that revealed the state plans to spend **\$41.6 million** over 8 years – and that doesn't appear to cover all known and expected costs associated with fingerprint and photo imaging of IHSS recipients – including the time it will take an already reduced number of social workers to take photographs.

- **The IHSS Coalition is requesting** the Assembly Budget Subcommittee #1 stop this unwarranted and unauthorized intrusion into the lives of IHSS consumers and halt expenditures of our state's limited fiscal resources for this project.

Stakeholder process

Implementation of many of the provisions of the Anti-Fraud Initiative requires CDSS to obtain input from IHSS stakeholders. CDSS recently decided to bifurcate the stakeholder process into two stages. First, they are meeting with counties, Public Authorities and District Attorneys to develop policies and protocols for various Anti-Fraud components required under ABX4 4 and ABX 4 19. Then they plan to release the recommendations of that workgroup to the larger IHSS stakeholder community. Despite numerous requests, CDSS has decided not to allow consumers, providers or the organizations that represent consumers or providers to participate in the initial stakeholder process.

- **The IHSS Coalition is requesting** the Assembly Budget Subcommittee #1 to urge the Administration to include consumers and providers (and organizations that represent them) UP FRONT in the stakeholder process.

Thank you for this opportunity for the IHSS Coalition to share our recommendations on

the Governor's January budget proposal and some key issues associated with implementation of the IHSS Anti-Fraud Initiative.

Sincerely,

AARP-California
Access 2 Independence
ACLU of Southern California
The Arc
California Alliance for Retired Americans (CARA)
California Association of Public Authorities (CAPA)
California Congress of Seniors
Californians for Disability Rights, Inc. (CDR)
California Foundation for Independent Living (CFILC)
California IHSS Consumer Alliance (CICA)
California Senior Legislature
California Disability Community Action network (CDCAN)
California United Homecare Workers (CUHW)
Dayle McIntosh Center for the Disabled
Disability Rights California (DRC)
Friends Committee on Legislation
Gray Panthers
Independent Living Resource Center Inc.
Independent Living Services of Northern California (ILSNC)
Marin IHSS Public Authority
National Senior Citizen's Law Center
Nevada-Sierra-Plumas Public Authority
Northern California ADAPT
Older Women's League
Personal Assistance Service Council of Los Angeles
Resources for Independent Living
San Francisco 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)
Southeast Asia Resource Action Center | California Office
Tri-Counties Center for Independent Living
UDW Homecare Providers Union/AFSCME