

AGENDA
SUBCOMMITTEE No. 1
ON HEALTH AND HUMAN SERVICES
ASSEMBLYMEMBER DAVE JONES, CHAIR
WEDNESDAY, MAY 12, 2010
STATE CAPITOL, ROOM 4202
1:30 PM

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VOTE-ONLY ITEMS

4300 DEPARTMENT OF DEVELOPMENTAL SERVICES

ISSUE 1: ADDITIONAL RESOURCES TO INCREASE FEDERAL FUNDS PARTICIPATION

The Governor's Budget requests five two-year, limited-term position and the associated cost of \$515,000 (\$228,000 General Fund and \$287,000 in reimbursement authority).

BACKGROUND

The Department of Developmental Services was required to make a \$334 million reduction in 2009-10. As a part of the \$334 million savings plan, the Department assumed a significant amount of additional Federal Financial Participation (FFP). This proposal would help the Department implement this proposal.

The additional positions will help the Department capture \$78.8 million Federal Financial Participation (FFP) in 2009-10 and \$132.5 million in 2010-11. Of these new federal dollars, \$64.6 million FFP and \$117.1 million in 2010-11 are associated with:

- (1) Submission to the Centers for Medicare and Medicaid Services (CMS) of a 1915 (i) Medicaid State Plan Amendment (SPA). The SPA allows for federal funds for services to consumers who are Medi-Cal eligible, but are not on the existing Home and Community-Based Services (HCBS) Waiver;
- (2) Submission to CMS of a state plan amendment seeking federal participation in cost of the day and non-medical transportation services received by regional center consumers residing in Skilled Nursing Facilities (SNF's), as well as day and transportation services of Intermediate Care Facilities –Developmental Disabilities (ICF-DD) residents; and,
- (3) Working with DHCS and CMS to develop a payment process for providers receiving Medicaid dollars through the 1115 Medi-Cal waiver.

STAFF COMMENT

The new waiver submission will help the state address consumers who are on Medi-Cal but are not eligible for the Home and Community Based Waiver because they do not meet the institutional level of care required for Waiver eligibility. Specifically, \$64.6 million and \$117.1 million in 2010-11 will maximize FFP for regional center consumer services.

Early establishment of these positions was necessary in order for the Department to generate the required \$64.6 million this current year. As a result, the Department administratively established the positions January 1, 2010 and redirected resources to fund current year costs. However, the Department is currently under furlough days and has no elasticity to absorb long-term cost. Therefore, the establishment of five two-year, limited-term positions as of July 1, 2010 is still necessary to ensure the success of the three SPA's and ultimately, the 1915 (i).

The Departments current vacancy rate is 8 percent, but due to the magnitude of the work to be accomplished, approval of this proposal is critical to obtain future federal funds, achieve a General Fund (GF) savings, reduce reliance on state general fund dollars in the delivery of services to individuals with developmental disabilities and make California the second state with an approved CMS 1915 (i).

Staff Recommendation: Approve as budgeted.

ISSUE 2: PORTERVILLE – NEW MAIN KITCHEN RE-APPROPRIATION

The Department of Developmental Services (DDS), request re-appropriation of the budget authority from 2006 and 2008 to complete the Porterville New Main Kitchen Project. The request is a three year re-appropriation of \$25.4 million to June 30, 2014 for the construction phase of the project.

BACKGROUND

In December of 2008, as a result of the state's deteriorating cash position in the Pooled Money Investment Account (PMIA) the Administration issued Budget Letter 08-33, directing departments to suspend any projects that required cash disbursements from the PMIA loans.

Funding for this project was originally approved in 2006 and 2008. In 2006, \$19.9 million were appropriated and in 2008, \$5.4 million were appropriated, for a total of \$25.4 million. These funds are due to expire June 30, 2011 for the Porterville New Main Kitchen Project.

STAFF COMMENT

Once bonds are sold in the fall, the DDS will be able to access the construction balance of the lease revenue bonds. Cost for the preliminary plans and working drawings for the project have already been incurred. The Department notes that the 2011 deadline may be sufficient, but it does not account for unforeseen delays in the bidding process, that may jeopardize funds if exceeded. The new expected completion date is estimated to be October 10, 2012.

Staff Recommendation: Approve as budgeted.

5180 DEPARTMENT OF SOCIAL SERVICES

ISSUE 1: IN-HOME SUPPORTIVE SERVICES – OVERSIGHT ON ADOPTED PROGRAM CHANGES
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This issue was heard at the Subcommittee's May 5, 2010 hearing (please see that agenda for a complete narrative on the issue). In that hearing, program changes in IHSS that were adopted as part of the 2009-10 budget were discussed and questions were posed to the administration on various elements of implementation.

The action items on this issue were carried forward to this hearing for consideration. In the absence of formal action last Wednesday, the Chair made requests for information and a follow-up document containing these questions was sent to the administration and shared with stakeholders.

Staff Recommendation:

Staff has revised the recommendation to reconcile with what was requested by the Chair in the prior hearing, and so the action items recommended for this hearing include the following (each recommendation may be taken as a separate motion):

Recommendation 1 - Provide for Inclusive Stakeholder Process for IHSS Program Changes.

Aligning with prior requests, provide formal direction to the DSS to coordinate and conduct a stakeholder working group, including representatives from consumer and provider groups, to meet on a regularly scheduled basis (e.g. monthly) where the administration will describe its implementation efforts across the IHSS recent program changes and provide written updates to this effect to the group and legislative staff, answer questions from stakeholders, and take feedback on issues of concern. DSS is asked to provide information on when these meetings are scheduled and which organizations or entities are included in each to legislative staff. DSS is asked to consider modeling this stakeholder process after its prior efforts in IHSS Quality Assurance over the years and to look to the Department of Developmental Services for a current model on this type of stakeholder convening and process.

Recommendation 2 – Reject Requested Positions for DSS

Reject the Administration's proposal for six new positions for IHSS Anti-Fraud and Program Integrity Mandates and hold open the request for \$500,000 in authority to contract for support in developing the required report. This is consistent with action taken in the Senate.

Recommendation 3 – Require Cost-Benefit Analysis

Adoption of placeholder trailer bill language to require the administration, led by the Health and Human Services Agency, to collaborate with stakeholders, including academia and social science experts in the field, to construct a cost-benefit model for analysis of anti-fraud program changes and report on the considerations, costs, thresholds for fraud deterrence assumptions, and risks that should be assessed for (1) implementation of anti-fraud activities in IHSS, before or when a request is made to the Legislature for any resources associated with design, soft roll-out, and/or full implementation, and (2) for future proposals in IHSS or other social service programs at any point at which these come forward. This model shall include all costs and benefits and specifically detail the basis for all assumptions, including the analytical basis for deterrence assumptions. Program changes to be implemented that are subject to this cost-benefit analysis include the unannounced home visits and targeted mailing policies that have yet to be analyzed or designed.

ISSUE 2: SUPPLEMENTAL SECURITY INCOME/STATE SUPPLEMENTARY PAYMENT (SSI/SSP) PROGRAM

This issue was heard at the Subcommittee's May 5, 2010 hearing (please see that agenda for a complete narrative on the issue). In that hearing, the proposed grant reduction for SSI/SSP was discussed and was held open pending the May Revision.

In that agenda, the SSI/SSP cash-out policy was discussed. Recapping briefly, in California, recipients of SSI/SSP are not eligible for federal food stamp benefits. This is because California has opted to increase the SSP portion of the grant (by \$10 monthly) rather than administer food stamps to SSI/SSP recipients. This is known as the food stamp "cash-out" policy. The Legislature has the option of reversing the cash-out policy to allow SSI/SSP recipients to apply for food stamps. Reversing the cash-out would benefit some SSI/SSP recipients by making them eligible for food stamps, while reducing food stamp benefits for others. Generally, those who would benefit from the reversal of the cash-out would be those with lower income who live in households comprised only of SSI/SSP recipients. The households most likely to experience a reduction in food stamp benefits would be in cases where SSI/SSP recipients reside with other existing food stamp recipients whose total income tends to be higher.

Staff Recommendation:

Staff has revised the recommendation from last week due to further discussion with stakeholder and staff now recommends:

Adopt Supplemental Report Language (SRL) to direct the Department of Social Services to convene a working group of stakeholders, to include policy and budget staff of the Legislature, to evaluate the estimated effects of eliminating California's SSI cash-out policy. This direction is only valid if the following two conditions are met – (1) the State receives a positive response from the USDA given its requests made in the April 1, 2010 letter from DSS Director John Wagner to the USDA and (2) the response allows for California to pursue a policy that has no deleterious impact on SSI/SSP members in mixed households, thereby allowing for a partial cash-in for California SSI/SSP recipients with only changes that benefit recipients, and hold harmless policy for anyone who wouldn't.

ISSUE 3: BCP #2 – CONLAN V. SHEWRY

DSS requests, in a Budget Change Proposal, \$113,000 (\$56,000 GF) to establish one new position to review claims filed by IHSS recipients under the *Conlan II* court decisions. DSS also requests to permanently extend one limited-term manager position that would otherwise expire in June 2011 (at an annual cost of \$128,000 [\$64,000 General Fund]). If these requests are granted, the *Conlan II* unit at DSS would consist overall of one Staff Services Manager and three other permanent positions. DSS states that all of these positions are necessary to meet the provisions of the *Conlan II* court order.

In 2009-10, the Legislature approved DSS's request for the creation of one new position and extension of two additional positions, but rejected the request for a fourth position, to review recipients' claims for reimbursement under *Conlan II*.

The Administration also proposes to continue its authority, in BBL, to transfer local assistance funding that would otherwise be directed to counties to instead be used for state operations costs and administratively established positions associated with *Conlan II* workload. As in prior years, the Department of Finance would be required to notify the Legislature of any transfers pursuant to this section. To date, the Administration has used this authority once- to transfer \$57,000 (\$29,000 GF) for the administrative establishment of one position in 2007-08.

BACKGROUND

Conlan II was a series of lawsuits that resulted in court decisions regarding the reimbursement of IHSS recipients for specified out-of-pocket, medically-necessary expenses they paid beginning in 1997. The court approved the state's plan for implementing the decisions in 2006. Under this plan, there are two time periods for which recipients can claim expenses: 1) claims for services received between 1997 and November 16, 2006, which must have been filed by November 16, 2007, and 2) claims for services received after November 16, 2006, which must be submitted within one year of service receipt.

According to DSS, as of January, 2009, the department was out-of-compliance with the 120-day processing timeframe required by the *Conlan II* court order. DSS has stated that the *Conlan II* cases have resulted in an increasing and permanent workload. In 2009, the Department estimated that the workload could include up to 400 claims per year. The Department now estimates that the annual total may be even higher. The Department estimates that most claims take 12 hours to review (with some taking up to 20 hours).

Staff Recommendation:

Staff recommends approving the requested positions and BBL. In future years, however, the Subcommittee may wish to revisit whether the authority granted to the Administration in the BBL continues to be necessary and consistent with the Legislature's oversight of staffing for the workload associated with implementing these court decisions. This is consistent with action taken in the Senate.

ISSUE 4: BCP #6 – UNACCOMPANIED REFUGEE MINOR PROGRAM SUPPORT POSITION

The Governor's budget includes, in a budget change proposal, \$102,000 (all federal funds) for the establishment of one new, permanent position to support the URM program within DSS's Refugee Programs Bureau.

BACKGROUND

The URM program is administered by the federal Office of Refugee Resettlement (ORR) to provide child welfare and foster care services to refugee, asylee, and trafficked children who have come to the United States without parents or a close relative to care for them. ORR provides funding to DSS to contract with voluntary resettlement agencies in California. This request for expanded state operations staffing for the program is the result of: 1) an anticipated quadrupling in the number of children served (from 29 children in 2008-09 to 111 children in 2010-11), 2) the inclusion of additional youth who have been granted Special Immigrant Juvenile Status (unknown number at this point) as a result of the recent federal Trafficking Victims Protection Reauthorization Act of 2008, and 3) corrective actions required by ORR as a result of its review of the Northern California URM program. These corrective actions are focused on the need for the state to better develop placement sites, monitoring, and data collection policies and procedures.

Staff Recommendation:

Staff recommends approval of the proposed funding and position. This is consistent with action taken in the Senate.

ISSUE 5: DSS TBL #640 – ITFC AND MTFC RATES

The Governor's proposed budget for 2010-11 includes TBL to suspend implementation of statutes enacted by SB 1380 (Chapter 486, Statutes of 2008). Similar to the TBL proposed for two other child welfare issues heard by the Subcommittee on April 28, 2010, existing law would be implemented when "the Department of Finance determines that sufficient state operations resources have been appropriated." Again, the effect would be to transfer Legislative authority to the Administration.

BACKGROUND

SB 1380 expanded eligibility and revised operational, reporting, and training requirements for the Intensive Treatment Foster Care (ITFC) program. ITFC was originally established in 1990 to ensure that foster children with emotional challenges could thrive in a family home with therapeutic services, rather than high-level and more expensive group homes. The Assembly Appropriations Committee analysis of SB 1380 indicated that the bill would result in net savings because foster children would be placed in less costly, less restrictive home settings, as opposed to more costly group home environments.

The Administration has indicated that it may be reconsidering whether to continue pursuing this TBL and/or to amend its proposal.

Staff Recommendation:

Staff recommends taking action to reject the proposal. This is consistent with action taken in the Senate.

ISSUE 6: STATE/COUNTY PEER REVIEW

DSS proposes to reduce 2009-10 funding for the state and county CalWORKs peer review process to \$37,000 (TANF funds) and to de-fund the program entirely in 2010-11. The 2009-10 budget for the program was \$221,000 (TANF) in local assistance funding for the counties. DSS also proposes trailer bill language to suspend the statutory requirement for the Department to implement the process statewide by July 2007 and to instead require its implementation only in the year for which a sufficient appropriation is made in the Budget Act.

BACKGROUND

A 2006 budget trailer bill (AB 1808, Chapter 75, Statutes of 2006) required DSS to establish a state and county peer review process statewide by July 1, 2007. The purpose was to assist counties in implementing best practices and improving their performances in the CalWORKs program. Given the \$221,000 appropriation for 2009-10, the Department anticipated that 18 peer reviews would be conducted. Under this proposal, three reviews would be conducted in 2009-10 and none would occur in 2010-11.

Staff Recommendation:

Staff recommends approving the proposed suspension of funding for the peer review process for 2010-11 and adopting placeholder trailer bill language to effectuate this. This action rejects the Administration's proposal to transfer Legislative authority to determine the sufficiency of program funding to the Department of Finance. This is consistent with action taken in the Senate.

ITEMS TO BE HEARD

4300 DEPARTMENT OF DEVELOPMENTAL SERVICES

The Department of Developmental Services (DDS) is responsible under the Lanterman Act for ensuring that more than 240,000 Californians with developmental disabilities receive the services and supports needed to live independent and productive lives. To be eligible for services, the disability must begin before the consumer's 18th birthday; be expected to continue indefinitely; present a significant disability; and be attributable to certain medical conditions, such as, mental retardation, cerebral palsy, epilepsy or autism.

Services are delivered through four state-operated developmental centers (Fairview, Lanterman, Porterville, and Sonoma) and two community facilities, and under contract with a statewide network of 21 nonprofit regional centers (RC's). Approximately 99 percent of consumers live in the community and slightly more than one percent lives in a State-operated Developmental Centers.

ISSUE 1: DEFICIENCY FUNDING REQUEST

The Joint Legislative Budget Committee received notification of Receipt and Approval of a Deficiency Funding Request from the Department of Developmental Services. As a result of the outcome of *Shaw v. Chiang* litigation, DDS has a net deficiency of \$131,137,000 (GF).

BACKGROUND

As proposed by the Governor, the Budget Act of 2009 (July) appropriated \$138,275,000 in Public Transportation Account (PTA) funds, to backfill for General Fund support for regional center (RC) transportation services, which are an entitlement under the Lanterman Act. PTA funds derive primarily from sales taxes on gasoline and diesel fuels and its purpose of use is delineated in Section 14506 of the Government Code for expenditures. The Administration believed RC transportation needs were within the intended purpose. However, *Shaw v. Chiang* disallowed the use of PTA funds for this activity, as well as for other purposes.

As a result, GF is required to maintain the program funding level. The Department was able to offset a net decrease of \$7,138,000 GF through a fund shift resulting from the receipt of increased federal funds in the Early Start Part C programs, but a net deficiency of \$131,137,000 GF still remains.

STAFF COMMENT

The decision to use PTA funds was made by the Business and Transportation Commission, thus this is a technical issue. However, the DDS requests \$131 GF due to re-estimated caseload and expenditures for the 2010-11 November estimate using updated data through May 2009. The General Fund backfill is necessary by June 30, 2010 or else the state would be in violation of the Lanterman Act and the "Olmstead" decision.

PANELISTS

- DDS –Please respond to the questions below.
- DOF
- LAO

Questions:

What is the importance of funding this deficiency?

If funds are not appropriated by June 30, what may happen and how will the state be vulnerable to further litigation?

Staff Recommendation: The Committee may wish to share their position on funding this deficiency with the Joint Legislative Budget Committee.

ISSUE 2: UPDATE ON 2009-10 IMPLEMENTED BUDGET REDUCTIONS

The Budget Act of 2009 proposed a \$334 million (GF) reduction, with a corresponding federal fund reduction. The Legislature restored \$234 million (GF) of this amount in its February 2009 budget, thereby reducing the DDS expenditures by only \$100 million (GF). As part of this February Action, the Legislature directed the DDS to convene a diverse "workgroup" to assist in developing a cost reductions and efficiencies plan. Fifteen proposals were identified through this process. However, the state's fiscal status deteriorated and the Legislature was compelled by the Governor to reduce the DDS budget by another \$234 million (GF).

Ultimately, the DDS was instructed to make a \$334 million reduction. In conjunction with the workgroup, the DDS implemented a total of 25 proposals to generate the desired savings.

BACKGROUND

The 25 implemented proposals are as follows:

Proposal	Description	Anticipated Savings	Update
1. Expanded Federal Funding	(a) amending the 1915 (i) Medicaid plan, (b) adding services to existing waivers, (c) pursue the Department becoming an Organized Health Care Delivery System and (d) restricting regional centers from purchasing community care that does not qualify for federal Medicaid funds.	\$78.8 million General Funds	Savings will be achieved.
2. Changes to Developmental Centers	(a) Closure of Sierra Vista, (b) Delayed capital outlay, (c) transfer of 30 Porterville residents, (d) furloughs and (e) staff reductions	\$27.2 million General Funds	Savings will be achieved.
3. Changes to Regional Center (RC) General Standards	(a) Prohibit purchase of experimental treatments, therapeutic services or devices, (b) require RC's to use generic services when available, (c) Medical and dental services will not be purchased without denial from insurance, (d) use of least costly provider and (e) RC's will provide consumers a summary of cost and services each year	\$45.9 million General Funds	Savings will not be achieved, but it is difficult to tell which implementation is or is not on track.
4. Transportation Reform	(a) Requires RC to pursue lower cost transportation services that can meet the consumer's individual needs, including: public transportation and utilizing the family as the source of transportation.	\$16.9 million General Funds	Savings will be achieved.

5. Uniform Holiday Schedule	(a) This proposal standardized the holidays schedule for most day programs, look-alike day programs and work activity programs and (b) extended the number of holidays from 10 to 14 days.	\$16.3 million General Funds	Savings will be achieved.
6. New Service for Seniors at Reduced Rates	This proposal required most day programs, look-alike day programs and work activity programs to offer a senior component to their current program design. *This was an optional new service.	\$1 million General Funds	Savings have not been achieved.
7. Custom Endeavors Option	This proposal expanded (through day programs, look-alike day programs and work activity programs) options for consumers to gain employment, work experience through volunteerism, and/or start their own business. *This option is provided to consumers through their Individual Program Plan (IPP).	\$12.7 million General Funds	No savings have been achieved. (Only 11 participants have enrolled.)
8. In-Home Supportive Services (IHSS)	Requires RC's to use generic services such as IHSS by: (a) requiring providers to help consumers get IHSS within 5 days of moving into supported living and (b) paying providers the IHSS rate for IHSS type services, while the consumer is waiting for IHSS services.	\$1.3 million General Funds	Savings will be achieved.
9. Supported Living Services (SLS)	(a) RC's will work with SLS providers on rates of payment no higher than the rate on July 1, 2008, (b) unless needed to implement the consumers IPP RC's are not allowed to pay a consumer's rent, and (c) as long as needs are met, the RC will attempt to have consumers who share a home use the same SLS provider.	\$6.9 million General Funds	Savings will be achieved.
10. Utilization of Neighborhood Preschools	Supports a different service delivery model whereby families, can have their toddler's attend local preschools with the RC's also providing the necessary supports.	\$8.9 million General Funds	Savings will be achieved.
11. Group Training for Parents on Behavioral Intervention Techniques	Required RC's to consider providing group training to parents in lieu of providing some or all of the in-home parent training component of the behavior intervention services.	\$6.4 million General Funds	Savings will be achieved.

12. Behavioral Services	Established RC to: (a) purchase Applied Behavior Analysis (ABA) or Intensive Behavior Intervention (IBI) services if the service provider uses evidence-based practices and the service promotes positive social behaviors; (b) in order to purchase ABA or IBI parents of children must participate as described in the intervention plan; (c) ABA or IBI may not be used for purposes of providing respite, day care, or school services, or solely as emergency crisis services; (d) RC's will discontinue purchasing particular ABA or IBI when the consumer's treatment goals are achieved; (e) ABA or IBI hours will be evaluated at least every 6 months.	\$19.3 million General Funds	Savings will be partially achieved.
13. Early Start – Eligibility Criteria	Elimination of eligibility for "at risk" infants and toddlers age 24 months or greater who are 'developmentally delayed' or have a risk of a developmental delay.	\$15.5 million General Funds	Savings will be achieved, but it may be due to population decreases.
14. Early Start Program Proposals (Prevention Program)	Established a limited services program for those no longer eligible for Early Start. Services are restricted to case management, and information and referral to other agencies. RC's are also not required to provide: child care, diapers, dentistry, access to an interpreter and translator, genetic counseling, music therapy, and respite hours.	\$19.5 million General Funds	Savings will be achieved.
15. Early Start – Use Private Insurance	Required parents of children under 3 to ask their private insurance or health providers to cover medical services.	\$6.5 million General Funds	Savings will be achieved.
16. Expansion of In-Home Respite Agency Worker Duties	Allowed respite workers to assist consumers with colostomies/ileostomies, catheters and gastronomies.	\$3.0 million General Funds	Savings will not be achieved. No applications were received.
17. Parental Fee Program	Established a monthly fee that varies by family size and income.	\$900,000 General Funds	A \$500,000 savings has been achieved. The Department notes that the state of the economy has impacted a family's ability to pay.

18. Individual Choice Budget	This proposal would implement the ICB, which would give consumers flexibility. It would save money in purchase of service expenditures.	No savings until implemented	This proposal has not been implemented.
19. Respite Program – Temporary Service Standards	The proposal limited out of home respite to a maximum of 21 days per year and in-home respite to a maximum of 90 hours per quarter (30 hours per month). It also prohibited the use of respite for Day Care services. *This proposal will be lifted upon certification of the Individual Choice Budget.	\$4.8 million General Funds	Savings have been exceeded.
20. Temporary Suspended Services	Temporarily suspended: (a) social/recreational activities, (b) camping services, (c) educational services for minor, school-aged children, and (d) non-medical therapies.	\$27.4 million General Funds	Savings have not been fully realized. This may be due partially, because the proposal was implemented after the summer and the number of exemptions granted through the fair hearing process.
21. Quality Assurance Consolidation	Combined quality assurance studies.	\$2.0 million General Funds	Savings will be achieved.
22. Suspended Wellness and Physician Training Program	Suspended training for consumers, families, providers and physicians.	\$1.3 million General Funds	Savings will be achieved.
23. Eliminate Triennial Quality Assurance Review	Eliminated funding for triennial reviews, but maintained quarterly consumer visits and an annual facility monitoring visit.	\$1.0 million General Funds	Savings will be achieved.
24. Reduction in One Time Regional	Further reduced funding for RC's.	\$3.5 million General Funds	Savings will be achieved.

Center Funding			
25. Additional Regional Center Operations Budget Savings	This this was an additional reduction to the 3 percent reduction in Operations funding.	\$7.0 million General Funds	Savings will be achieved.

STAFF COMMENT

At the DDS Work Group meeting on April 19, 2010, the DDS provided an update on current year implementations. The conclusion was that some of the proposals yielded the savings intended, others did not, and some exceeded the intended savings. Up to date data is not available to the Department, therefore it has been difficult for the Department to determine the exact reason for outcomes. The Department notes that a decreasing birth rate and various other interrelated factors could be responsible, but notes that those solutions which were optional, did not achieved the estimated reduction.

Overall, the pressing issues for the Committee to consider are the following:

1. Notification of Exemptions: Savings have been exceeded in Respite and in the area of Suspended Services, savings have not been achieved. Issues related to these areas include the process and consistency for notifying consumers of exemptions to these and other implemented reductions. In some cases, consumers have been verbally noticed by regional centers of termination of services and in other cases; consumers have not been informed of exemptions or the fair hearing process. Specifically, the Committee should consider clarification on what constitutes "adequate notice." Adequate notice should inform the applicant, recipient, and authorized representative in writing of the action the agency proposes to take, whether the individual is eligible for an exemption waiver, exceptional funding, or other exceptions. It is recommended that the committee adopt placeholder trailer bill language, such as that proposed in **attachment 1**.
2. Intermediate Care Facilities-DD Billing Issue: In order for the Department to achieve the intended savings for the Expansion of Federal Funding, the approval of the Medicaid State Plan Amendment (SPA) requires Trailer Bill Language. Language provided by the DDS allows for payment of Intermediate Care Facilities for Transportation and Day Treatment Costs, modeled to the process of the Department of Health Care Services. The Department notes that the language has not been finalized. Please see **attachment 2** for the most recent version.

PANELISTS

Please provide a high-level overview of the implemented proposals and fiscal outcome, but provide specific information on the highlighted proposals. For the highlighted proposals, please comment on why they were effective, why they were not effective and the impact to consumers.

- DDS –Please direct your comments to the request above and respond to the questions below.
- DOF
- LAO
- Public Comment

Questions:

Please explain the proposed trailer bill language for the technical billing issue on the ICF-DD. (Attachment 2). Do you have updated language?

Can the Department describe how exemptions are communicated to consumers and information about the fair hearing process is shared with consumers?

Will the Department be on budget?

Staff Recommendation: Adopt placeholder trailer bill language to clarify what constitutes notification of exemption and adopt in concept the necessary trailer bill language to resolve the ICF-DD billing issue.

Attachment 1

Notification of Exceptions

Section 4701 of the Welfare and Institutions Code is amended to read:

4701. "Adequate notice" means a written notice informing the applicant, recipient, and authorized representative of at least all of the following:

(a) The action that the service agency proposes to take, including a statement of the basic facts upon which the service agency is relying, and whether or not the individual is eligible for an exemption, waiver, exceptional funding, or other exception to the action;

(b) The reason or reasons for that action.

(c) The effective date of that action.

(d) The specific law, regulation, or policy supporting the action including any relevant exemption, waiver, exceptional funding, or other exception.

Attachment 2**Intermediate Care Facilities**
Payment for Transportation and Day Treatment Costs
Proposed Amendments

Section 1. Section 4646.55 is added to the Welfare and Institutions Code to read:

4646.55 (a) Notwithstanding any other provision of law or regulation to the contrary and to the extent federal financial participation is available, effective July 1, 2007, the California Department of Developmental Services is hereby authorized to make supplemental payment to enrolled Medi-Cal providers that are licensed intermediate care facility/developmentally disabled-habilitative, licensed intermediate care facility/developmentally disabled-nursing or licensed intermediate care facility/developmentally disabled for day treatment and transportation services provided pursuant to Sections 4646, 4646.5 and applicable regulations and 14132.95, to Medi-Cal beneficiaries residing in a licensed intermediate care facility/developmentally disabled-habilitative, licensed intermediate care facility/developmentally disabled-nursing or licensed intermediate care facility/developmentally disabled. These payments shall be considered supplemental Medi-Cal payments to the enrolled Medi-Cal provider and paid accordingly (without a separate DDS contract).

(b) Notwithstanding any other provision of law and to the extent federal financial participation is available, and in furtherance of this section and 14132.95, the Department shall amend the regional center contracts for the fiscal year 2007-08 to extend the contract liquidation period until June 30, 2011. The contract amendments and budget adjustments shall be exempt from the provisions of Article 1, (commencing with Section 4620) of Chapter 5 of Division 4.5 of the Welfare and Institutions Code.

Section 2. Section 14132.925 is added to the Welfare and Institutions Code to read:

(a) Notwithstanding any other provision of law or regulation to the contrary and to the extent federal financial participation is available, and in furtherance of Section 14105.06 and subdivisions (a) and (c) of Section 14132.92 effective July 1, 2007, a licensed intermediate care facility/developmentally disabled-habilitative, a licensed intermediate care facility/developmentally disabled-nursing or a licensed intermediate care facility/developmentally disabled shall be responsible for providing day treatment and transportation services consistent with 14105.06 and subdivision (a) of Section 14132.92 that are selected and authorized through the individual program plan process pursuant to Sections 4646, 4646.5 and applicable regulations for each beneficiary receiving such services who resides in that licensed intermediate care facility/developmentally disabled-habilitative, licensed intermediate care facility/developmentally disabled-nursing or licensed intermediate care facility/developmentally disabled. These services shall be arranged by the regional center pursuant to Sections 4646, 4646.5 and applicable regulations, and the licensed intermediate care facility/developmentally disabled-habilitative, licensed intermediate care facility/developmentally disabled-nursing or licensed intermediate care facility/developmentally disabled, shall reimburse the regional center for the costs incurred in arranging for such services. Nothing herein shall authorize the licensed intermediate care facility/developmentally disabled-habilitative, licensed intermediate care facility/developmentally disabled-nursing or licensed intermediate care facility/developmentally disabled

disabled to substitute day treatment or transportation services not selected and authorized through the individual program plan process pursuant to Sections 4646, 4646.5 and applicable regulations.

(b) The State Department of Developmental Services shall be responsible for reimbursing a licensed intermediate care facility/developmentally disabled-habilitative, licensed intermediate care facility/developmentally disabled-nursing or licensed intermediate care facility/developmentally disabled for the costs incurred pursuant to subdivision (a), (a reasonable coordination fee shall be provided – method of payment TBD). This payment shall be a supplement to the Medi-Cal payment from the Department of Health Care Services described in 14105.06 and 14132.92. A licensed intermediate care facility/developmentally disabled-habilitative, licensed intermediate care facility/developmentally disabled-nursing or licensed intermediate care facility/developmentally disabled may authorize the regional center to invoice the State Department of Developmental Services on its behalf for the services described in subdivision (a). The licensed intermediate care facility/developmentally disabled-habilitative, licensed intermediate care facility/developmentally disabled-nursing or licensed intermediate care facility/developmentally disabled shall dispense payment to the regional center within 30 days of receipt of payment from the State Department of Developmental Services pursuant to instruction from the State Department of Developmental Services. Failure to pay the regional center within 30 days shall result in (TBD).

(c) A licensed intermediate care facility/developmentally disabled-habilitative, licensed intermediate care facility/developmentally disabled-nursing or licensed intermediate care facility/developmentally disabled shall report the costs incurred pursuant to subdivision (a) according to instruction from the Department of Health Care Services. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department may implement this subdivision by means of a provider bulletin or similar instruction from the Department of Health Care Services.

(d) If services meeting the conditions of subdivision (a) have been provided to a Medi-Cal beneficiary on or after July 1, 2007, and, notwithstanding Section 14115, an invoice for the day treatment and transportation services is submitted, the services shall be reimbursed. The department shall seek federal financial participation, including American Recovery and Reinvestment Act money, pursuant to a federally approved state plan amendment authorizing reimbursement for these services provided during that period. Upon approval of the amendment the payments made pursuant to this section shall be subject to the Quality Assurance fee provided for in Health and Safety Code Sections 1324 through 1324.14. If federal financial participation is not made available for that period, the services nonetheless shall be reimbursed from the General Fund by the Department of Developmental Services. (Note: This subsection is placeholder language that may need DHCS edits)

Section 3. Due to a change in the availability of federal funding that addresses the ability of California to capture additional federal financial participation for day treatment and transportation services provided to a Medi-Cal beneficiary residing in a licensed intermediate care facility/developmentally disabled-habilitative, a licensed intermediate care facility/developmentally disabled-nursing or a licensed intermediate care facility/developmental disability, as specified in Section 4646.55 and 14132.925, funds appropriated in Item 4300-101-0001, Budget Act of 2007 (Chapters 171 and 172, Statutes of 2007), shall be available for liquidation until June 30, 2011.

**5180 DEPARTMENT OF SOCIAL SERVICES
0530 OFFICE OF SYSTEMS INTEGRATION****ISSUE 1: IHSS –RELATED CHANGES IN SFIS**

This issue was considered at the April 21, 2010 Subcommittee hearing and was held open at that time.

To recap, the Governor's budget for 2009-10 includes, in a Budget Change Proposal, an increase in OSI spending authority of \$8.2 million (\$4.4 million GF) for the use of SFIS to collect fingerprint images from In-Home Supportive Services (IHSS) recipients. These funds were already included in the DSS budget, but there was no conforming authority for SFIS or for OSI's project management role. The Administration is awaiting a formal response from the federal government with respect to its willingness to financially participate in these proposed expenditures, and future, ongoing anticipated costs. The total SFIS budget for 2009-10 includes \$20.1 million (\$9.5 million GF).

The administration also requests position authority for four new SFIS-related positions at OSI. Two of the positions would replace 1.5 contract staff who provide training coordination and application support for the use of SFIS in the CalWORKs, Supplemental Nutrition Assistance, and General Assistance/General Relief programs. The state has contracted these duties out for the last decade. Funded as part of the \$8.2 million mentioned above, the other two positions would support new sites and equipment to begin the use of SFIS for IHSS recipients. OSI currently has five permanent staff members assigned to SFIS and oversees six additional contract staff who work the equivalent of three full-time positions.

BACKGROUND

SFIS is a statewide automated system that was created in response to the requirements of SB 1780 (Chapter 206, Statutes of 1996) for applicants and recipients of California Work Opportunity and Responsibility to Kids (CalWORKs) and Food Stamp program benefits to be fingerprint imaged as a condition of eligibility for those programs. OSI provides state-level project management and oversight for SFIS. The state recently entered into a new contract for its maintenance and operations for eight years from September 2009 until September 2017. The fingerprint images contained in SFIS are used to verify eligibility and to check for duplicate aid applications by one individual. The Administration states that the existence of the fingerprint requirements and of the SFIS system deter a significant amount of fraud.

A 2003 audit by the Bureau of State Audits found that DSS "implemented SFIS without determining the extent of duplicate-aid fraud throughout the State," and that "Social Services did not implement SFIS in a manner that would allow it to collect key statewide data during its implementation of SFIS." The auditor was therefore "unable to determine whether SFIS generates enough savings from deterring individuals from obtaining duplicate aid to cover the estimated \$31 million the State has paid for SFIS or the estimated \$11.4 million the State will likely pay each year to operate it..."

This issue was discussed in the May 5, 2010 Subcommittee agenda in the context of all of the IHSS program changes adopted as part of the 2009-10 Budget agreement. Outstanding questions and areas of concern were outlined in the agenda and discussed in the hearing.

Recipient Fingerprinting Requirements. Among these program changes made in 2009 was the requirement, beginning April 1, 2010, for finger imaging of IHSS consumers. Under the requirements of ABx4 19 (Chapter 17, 4th Extraordinary Session, 2009), this fingerprinting must take place in the new consumers' homes at the time of their initial assessment for eligibility. Current consumers (460,000) were to be finger imaged at their next reassessment, conducted annually and also in the home. These statutes included exemptions for minors and those physically unable to provide fingerprints due to amputation. They do not require a picture image to be taken of the consumer. Finally, the statutes require DSS to consult with county welfare departments to develop protocols to carry out these requirements.

As discussed in the aforementioned April 21 and May 5 hearings, the administration is currently conducting pilots to test mobile fingerprint imaging devices, each costing \$5,000, that would allow for implementation of these requirements by gathering fingerprints and photo images in recipients' homes, to later be uploaded into SFIS. DSS has stated that it intends to utilize social worker and consumer feedback gathered during the pilots to inform its policies and protocols for larger-scale implementation of the new fingerprinting requirements; however, the timelines, specifics, and costs of the ultimate roll-out are still unknown.

PANELISTS

- DSS and OSI – Please be prepared to address the following in your testimony:
 - What efforts did the Administration undertake to measure the occurrence of duplicate aid fraud in the IHSS program prior to proposing the requirements for recipient fingerprinting?
 - On what did the Administration base its estimates for the costs and savings from implementing these fingerprint requirements?
- Department of Finance
- Legislative Analyst's Office
- Public Comment

Staff Recommendation:

Staff recommends rejection of the \$8.2 million (\$4.4 million GF) in OSI spending authority for 2009-10 and \$5.65 million (\$2.9 million GF) included in 2010-11, and any additional associated funding, for the purposes of fingerprinting IHSS recipients. Furthermore, sweep any funds in the DSS budget that have not yet been spent (or obligated for reimbursement). Adopt corresponding placeholder trailer bill language to repeal the statutory requirement for fingerprinting recipients and the requirement for fingerprints on timesheets (Sections 12305.73 and subdivision (c) of 12301.25 of the Welfare and Institutions Code, respectively). Hold open the requested conversion of contract authority to state staff for future action.

This action conforms to the Senate action taken on May 6, 2010.

ISSUE 2: DSS SPRING FINANCE LETTER – STATE HEARINGS

DSS is proposing, in an April 1 Finance Letter, statutory changes to "modify the existing penalty structure for state hearings, providing more flexibility when there are sudden increases or decreases in caseload, and ensure that penalty payments are only provided to recipients who have gone without benefits while awaiting a state hearing" and to "allow all state hearing requests to be held by video conference, unless a finding of good cause is made to require face-to-face hearing." If the Legislature does not adopt these program changes, the administration seeks additional funding for unbudgeted penalty costs and personnel costs to travel to each county hearing location for face-to-face hearings, which DSS states that it is unable to absorb within its existing resources.

BACKGROUND

The State provides due process to recipients of California welfare benefits through state hearings conducted by DSS. These requirements are mandated by statute and regulations. The State Hearings Division (SHD) is required to provide full, impartial, and timely state hearings to recipients and applicants of various California public assistance programs who have disputes with their local county welfare departments or with a state program administering the benefit. The primary programs include CalWORKs, the Food Stamp program, Medi-Cal, In-Home Supportive Services, and Foster Care/Adoption Assistance Program. Federal mandates require that all requests for hearings be adjudicated within 90 days of a recipient's request, except Food Stamp cases which must be completed within the federally mandated timeframe of 60 days. Two court orders, *King v. McMahon* and *Ball v. Swoap*, impose financial penalties on DSS for failure to adjudicate 95 percent of all hearing decisions within the 60 to 90 day time frame. The daily penalty rate starts at \$5.00 per day.

PANELISTS

- DSS – Please briefly outline the proposal and then address the questions listed below.
- Legislative Analyst's Office
- Department of Finance
- Public Comment

Possible Questions

- How much is each proposed change expected to save? What is the methodology for this? Does it account for the additional costs of videoconferencing and training?
- How is good cause defined? Who determines this? How does SHD and DSS ensure that this is a uniform standard? How is it evaluated?
- Has there been an increase in claims by either claimants or counties? If so, in which programs?

- Is there a relationship between the hearing limits requested by DSS and the actual cause of the increase in penalties?
- To what degree are the DSS proposals a result of the highly controversial changes made last year in CalWORKs, IHSS, Medi-Cal, child welfare, Healthy Families and other health and human service programs?
- If equipment and maintenance is not available, as well as the ALJs to go with it, could this proposal lead to extensive delays in getting hearings scheduled, and then started in a timely manner, leading to even higher penalty costs as well as an additional burden on the claimants?
- What percentage of the caseload are Aid Paid Pending? What ensure timely decisions in these cases under the proposal?

Staff Recommendation:

Due to the scope of the changes being proposed, the lack of detail in the proposal, and the questionability of proposing these changes in a budget context, staff recommends that the Subcommittee reject the State Hearings Spring Finance Letter on the basis that this proposal requires careful, thorough consideration through the policy process.

In light of the increased demands for state hearings, assumed to be due in part to the programmatic changes adopted as part of the 2009-10 Budget and limited state resources, provide funding in 2010-11 for three additional ALJs (\$450,000 total funds, approximately \$215,500 GF), to assist with workload.

ISSUE 3: BCP #3 – CWS WEB PROJECT

To support the development of CWS/Web, the Governor's 2010-11 budget for DSS requests, in a budget change proposal, \$436,000 (\$199,000 GF) to: 1) establish one two-year limited-term position, 2) extend an existing managerial position for another two-year limited term, and 3) augment by \$240,000 DSS contracts with county consultants. As the Committee discussed on April 21, 2010, the Governor's budget for CWS/Web project management by Office of Systems Integration (OSI) additionally requests \$1.8 million (\$827,000 GF) for 10 new positions.

The 2009-10 budget for CWS/Web is \$7.1 million (\$3.2 million GF). OSI estimates a total cost of \$202.8 million (\$91.9 million GF) between 2012 and 2014 to complete implementation of CWS/Web and enter its maintenance and operations (M&O) phase.

BACKGROUND

Stated Rationale for Additional Resources. The federal Department of Health and Human Services, Administration for Children and Families (ACF) has expressed concerns that the CWS/Web project is significantly understaffed in terms of programmatic and technical resources. DSS currently has seven staff members to assist with its programmatic support for CWS/Web planning. The Department anticipates that their workload will increase dramatically as the project advances into its design and implementation phases.

The Department intends for one of the requested positions to be filled by an individual with knowledge of the adoptions process who can participate in the design, development, testing, training, and implementation activities of the adoptions component of the new CWS/Web system. The request to extend authorization of the second position is for a manager to provide supervision to this individual, as well as three other staff members.

PANELISTS

- DSS – Please briefly describe the requested resources and related communications with ACF.
- Legislative Analyst's Office
- Department of Finance
- Public Comment

Staff Recommendation:

Consistent with the Subcommittee's vote on April 21, 2010 regarding the requested resources for additional OSI staff to support CWS/Web development, staff recommends holding this issue open pending May Revision.

ISSUE 4: DSS BCP #4 – EBT SYSTEM ONGOING MAINTENANCE

The overall budget for the EBT system in 2009-10, including project management, is \$47.3 million (\$27.0 million GF/TANF). The Administration requests, in a Spring Finance Letter dated April 1, 2010, a decrease of \$10.3 million (\$2.4 million GF) in that same year to both the Department of Social Services Local Assistance budget and corresponding OSI spending authority. The proposed 2009-10 decrease is a result of cost reductions under a new contract. The Administration also requests a decrease of \$20.9 million (\$5.4 million GF) in DSS Local Assistance and a corresponding reduction of \$19.7 million in OSI Spending Authority for 2010-11. The proposed 2010-11 decrease includes contract cost changes, as well as the expiration of limited-terms for staff and the completion of other transition-related tasks.

The Governor's budget for 2010-11 also proposes \$177,000 (\$66,000 GF) to extend, for another two years, two existing limited-term positions that support the EBT system at DSS. One position would continue to provide program support to the counties and the other to OSI. DSS has sought, and been granted authority for, extensions of these two limited-term positions six times since the EBT system was mandated in 1997.

BACKGROUND

The EBT system eliminates the need for coupons or checks to deliver Supplemental Nutrition Assistance Program (food stamps) and cash aid benefits. Instead, the EBT system provides benefits through automated teller machines (ATMs) and point-of-sale terminals (e.g., in grocery stores). The EBT system works by automating benefit authorization, delivery, redemption, and settlement processes through computers, plastic debit cards, and telecommunications technology. OSI provides state-level project management and oversight for the system.

Changes in EBT Contract Costs: The proposed cost reductions in 2009-10 and 2010-11 are due to the transition of EBT services to a new contract (from J. P. Morgan Electronic Financial Services, Inc. [JPMorgan EFS] to ACS State and Local Solutions, Inc. [ACS]). The lowered costs are reflective of decreased costs for EBT services nationwide since 2000, when California executed its first EBT contract with Citicorp (later taken over by JPMorgan EFS). They also reflect a change from an "unbundled" cost structure (with differing rates for food benefits only, cash benefits only, and combined food and cash benefits, along with various other costs for related services and equipment) to a "bundled" rate (e.g. eliminated some costs for related services and equipment and are bundled in the benefit costs).

PANELISTS

- DSS and OSI – Please briefly outline the proposal and then address the questions listed below.
- Legislative Analyst's Office
- Department of Finance
- Public Comment

Possible Questions

- Have there been any system issues that have caused benefits to be denied to recipients? What are the problems due to?
- Is there a plan to fix and what is it? Is there a corrective action plan from the vendor, ACS?
- How many times did this problem or others occur in implementation? How many times has it occurred since the system change in September?
- Please walk through how a recipient could be affected if there is a system-related benefit denial at a grocery check-out.
- What communication and/or contract changes have occurred with the vendor to ensure that disruptions in service are minimized?
- What communications occur with the county, banks, and grocery vendors on these issues?
- What communications occur with the recipients to inform them of the problems? How does the state and vendor ensure that recipients calling in distress receive the most up to date and relevant information?

Staff Recommendation:

Staff recommends approving the requested budget decreases contained in the OSI request, as well as the proposed extension of the two limited-term positions at DSS.

Adopt Supplemental Report Language requiring OSI and DSS to provide an update to the Legislature and to stakeholders, including CWDA, CSAC, WCLP, and the California Food Policy Advocates, on (1) efforts with the vendor to limit disruption in EBT benefit access, (2) communications with counties about any problems and resolutions as they arise, and (3) how consumers are being informed of issues and recourse when disruptions do occur.