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**STANISLAUS COUNTY
IHSS ADVISORY COMMITTEE MEETING
MINUTES**

09/10/04

Committee Members Present:

Jeff Lambaren	Jose Acosta	Madelyn Amaral
Rose Martin	Connie Muller	Ora Scruggs

Committee Members Absent:

*Dwight Bateman	*Kenny Brown	*George Sharp
*Linda White		

IHSS Staff Present:

Maria Childers	Egon Stammer	Robert Taylor
Veronica Melgoza		

**Advance notice given.*

OPENING REMARKS by CHAIRMAN JEFF LAMBAREN

- Meeting called to order at 1:13 PM

PUBLIC COMMENT

- Announcement made for public comment by Chairman, Jeff Lambaren.
- None were presented.

ACCEPTANCE OF MINUTES

- August 13, 2004 minutes: Motion M/S/A to accept with no changes.

UNION UPDATE

- Jeff announced that we have made some good progress. We are talking about the terms of the agreement and a little bit of money. We pretty much agreed to health care, we are now working on the length of the contract and the dollar amount.



- Naria from the Union announce the dollar amount to the committee. The wage will be \$7.50 starting October 1, 2004, \$8.00 in January 05 and \$8.25 in December 06. The benefits part is still being worked on. Benefits are expected to take effect in March 05.

BUDGET UPDATE

- Jeff announced that we are pretty much through the budget cycle.

LEGISLATIVE UPDATE

- Jeff announced that the Matthews Bill is now on the Governor's desk, it's been there since the 28th of August. We have the 30-day window for the Governor to sign it, veto it or let it become law. The union has been so helpful with this.
- Maria announced that AB 1470 is requesting that State Controllers and the Department of Social Services determine the cost of developing and implementing a direct deposit program. They have tried to do this in the past, it didn't go through because of the cost. They are now saying that there is a third party non-governmental contractor that is willing to pick up the cost.
- Madelyn stated that a lot of people don't have a bank account.
- Maria announced that this would be optional to providers, it would not be mandatory.
- Christy from the union announced that a lot of people are in favor of direct deposit because they don't like their checks coming in the mail with all their personal information on it.
- Maria announced that AB 2783 is to authorize a fee of \$2.00 for every real estate transaction to develop a trust fund for eligible agencies to finance abuse prevention. It would bring more money into APS.
- Jeff announced that we did send out letters to our senators and assemblymen to support AB 2769.

SURVEY INFORMATION FOR BOARD PRESENTATION

- Jeff announced that the Board of Supervisor's meeting on September 14th is going to be the final budget hearing and they asked that there be nothing on the agenda except budgetary items. The September 21st is also not a good day for us to attend. We are tentatively slated for September 28th. This will be at 9AM; any of the members that can be present will be welcome.
- Egon stated that all the committee members should try to be at the Board of Supervisors meeting. The Board of Supervisor's get busy with all kinds of important things. The more the committee can get in front of them and let them see who you are and what our committee is all about is very important.

BYLAWS

- Jeff announced that if the Matthews Bill does not work out for us or if we just decide that we want to convert to a Public Authority, we have some examples of Bylaws from other Public Authorities. We can each go through the examples on our own. If someone sees something on one of the examples they can circle it and bring it back to the committee and it will be discussed.
- Jennifer asked if there was anything in the Bylaws about a leave of absence.
- Jeff said we could add a leave of absence to our Bylaws as long as the committee agrees on it.

PUBLIC AUTHORITY

- Jeff announced that we are at a point where the Public Authority is an option.
- Madelyn stated that she likes the idea of becoming a Public Authority but that it should be kept separate from the County.
- Jeff stated that the law specifically says you can not be an employee of the County and an employee of the Public Authority at the same time. The practice is that people do that all the time. They haven't changed the law and there are no regulations on it.
- Madelyn asked if we could hear from some of these counties that have a Public Authority.
- Jeff asked if it was still the desire of the committee to become a Public Authority. If we convert to a Public Authority we get the wage and health care benefits and the trade off is how do we handle the separation part.

The legal way is that we hire people who do nothing but Public Authority functions. Then we need to discuss how they would integrate with Community Services Agency and Adult Services.

- Jeff announced that if the Matthews bill does not pass and we are unsuccessful to any other kind of lobby efforts, our commitment is to convert to a Public Authority.
- Jeff stated that if we convert to a Public Authority there is nothing that says we could not convert back.
- Jeff announced that we have a side door now with the Matthews bill. If it passes we can still get the better wage and benefits and we don't have to convert to a Public Authority.
- Rose asked if it would be possible to have a meeting to concentrate on the pros and cons of a Public Authority.
- Jeff announced that we could have a special meeting for this. We did make a commitment to the union to convert to a Public Authority. One way or another we may get there but then it becomes a recommendation.

QUALITY ASSURANCE

- Handout was passed out on SB 1104.
- Maria went over the handout with the committee.
- Maria will bring new information as they receive it.

RECRUITING NEW MEMBERS

- Jeff announced that we have a vacancy for a provider on the committee.
- Jeff asked the committee if they would like to turn it over to the staff. We could have the staff do some preliminary work. How involved would the committee like to be in the process?
- The staff will contact the individuals that are on our waiting list and ask if they are still interested on being on the committee.
- For those who are still interested we will invite them to attend our October 22nd meeting.
- The committee can interview the candidates at that point and make a recommendation to the Board of Supervisors.

GENERAL UPDATE

- Connie brought a video of herself on channel 14. She gave information on IHSS and the phone number for anyone interested in the program.

AGENDA ITEMS FOR SEPTEMBER 24th MEETING

- Union Update
- Budget Update
- Legislative Update
- Bylaws (amending)
- Public Authority
- Quality Assurance
- Recruiting New Members
- General Update
- Agenda Items for Next Meeting

Meeting adjourned @ 3:10 PM
Veronica Melgoza, Recorder

01/12/04

IHSS/PCSP QA INITIATIVE TRAILER BILL DETAILS

The FY 2004/05 trailer bill (Senate Bill 1104) amends the following existing statutes:

1. California Welfare and Institutions Code (WIC) Section 12301.1

Summary: VARIABLE ASSESSMENT INTERVALS: Each individual county has the discretion to authorize exceptions to the established standard 12-month time interval for IHSS/PCSP service need reassessment.

- Requires that counties reassess any time the recipient requests an adjustment in authorized hours, or when there are other indications or expectations of a change in circumstances affecting a recipient's need for services.
- Allows, at individual county option, reassessment at an interval greater than 12 months but not longer than 18 months on a case-by-case basis if specified conditions are met that indicate that a stable situation exists in the case. The conditions are:
 - The recipient has had at least one reassessment since the initial program intake assessment.
 - The recipient's living arrangement has not changed since the last annual reassessment and the recipient lives with others or has regular meaningful contact with other people other than the recipient's IHSS/PCSP provider;
 - The recipient or, if a minor his or her parent or legal guardian, or if incompetent his or her conservator, is able to satisfactorily direct the recipient's care;
 - There has been no change in the recipient's supportive service needs within the previous 24 months;
 - No reports have been made to and there has been no involvement of Adult Protective Services agencies since the county last assessed the recipient;
 - The recipient has had the same provider(s) for six months;
 - The recipient has not reported a change in his or her need for supportive services that requires a reassessment;

- The recipient has not been hospitalized within the last three months.
- Provides that if some, but not all, of the specified conditions are met, the county may consider other factors in determining whether an extended assessment interval is appropriate, including, but not limited to, involvement of a social worker, case manager, or other similar representative from another human services agency, such as a regional center or county mental health program, in the care of the recipient, or communications or other instructions from a physician or other licensed health care professional that the recipient's medical condition is unlikely to change.
- Authorizes reassessment at an interval of less than 12 months where the county worker has information indicating that a recipient's need for services is expected to decrease in less than 12 months.
- Authorizes CDSS to implement the new provisions by All-County Letter (ACL) emergency regulations are issued.
- Requires CDSS to issue emergency regulations by 9/30/05. Emergency regulations are in effect for 180 days. If regulations are not going to be filed by 9/30/05 requires CDSS to notify the Joint Legislative Budget Committee.
- Requires adoption of regulations no later than and sunsets the implementing ACL on 6/30/06.
- Requires CDSS to obtain input from counties and program stakeholders while developing the regulations.

Note: Pursuant to WIC Section 12317.2 added by the 2004/05 Health and Human Services' Trailer Bill, in the event of a conflict between WIC Section 12301.1 as amended and the IHSS Plus Waiver authorized by WIC Section 14132.952 the IHSS Plus Waiver requirements will control for services covered by the Waiver once the Waiver is operational.

2. WIC Section 12301.2

Summary: HOURLY TASK GUIDELINES: Requires CDSS to develop statewide hourly IHSS/PCSP task guidelines that counties must use as a tool when assessing client service need. The guidelines are to include criteria to assist county social workers to determine when an individual's service need falls outside an established normal range of time

- Requires CDSS to work with the counties to develop the guidelines and to obtain input from program stakeholders while developing the guidelines.
- Requires that the following be among the factors considered in developing the guidelines:
 - Adherence to universal precautions, i.e., safe handling of blood and bodily fluids;
 - Existing utilization patterns;
 - Outcomes associated with different levels of utilization;
 - The need to avoid cost-shifting to other government program services.
- Authorizes CDSS to seek advice from health professionals such as public health nurses or physical or occupational therapists during the development of the guidelines.
- Subject to the existing 195 and 283 hour service limits, requires counties to authorize services in amounts outside of a range of time provided in the guidelines when warranted based on the client's individual assessment.
- Requires counties to document in the case file the need for services outside the guidelines.
- Requires implementing regulations by 6/30/06.
- Replaces existing law governing the use of time for task guidelines that are redundant of the new language or that are outdated.

The FY 2004/05 trailer bill adds the following new statutes:

1. WIC Section 12301.21

Summary: STANDARD STATEWIDE PROTECTIVE SUPERVISION MEDICAL CERTIFICATION FORM: Requires CDSS to develop a standardized, statewide medical certification form for IHSS Protective Supervision services.

- Requires CDSS to work in consultation with the counties to develop the form and to obtain input from program stakeholders while developing the form.

- Requires counties to request that the applicant complete and return the form at the time of initial assessment if Protective Supervision services are indicated or requested.
- Requires counties to determine the need to request the form at reassessment.
- Specifies that the form is not, in and of itself, determinative of a need for Protective Supervision, but is to be treated as one factor in the assessment of need for Protective Supervision.
- Requires CDSS to issue emergency regulations by 9/30/05. Emergency regulations are in effect for 180 days. If regulations are not going to be filed by 9/30/05 requires notification to the Joint Legislative Budget Committee.
- Requires regulations be adopted by and sunsets the implementing ACL on 6/30/06.
- Requires CDSS to obtain input from the counties and program stakeholders while developing any implementing regulations.

2. WIC Section 12305.7

Summary: Establishes requirements for STATE-LEVEL IHSS/PCPS QA AND PROGRAM INTEGRITY FUNCTIONS.

- Requires CDSS to conduct an **annual IHSS/PCSP payment error rate study beginning in the 04/05 FY** to provide baseline data for prioritizing and directing QA and program integrity efforts at the State and county levels.
- Requires CDSS and DHS to **conduct automated data matches between IHSS/PCSP paid hours data and Medi-Cal claims payment data** to identify potential service overlap, duplication, and third-party liability.
 - Requires CDSS to work with the counties to determine, define, and issue instructions to the counties describing the roles and responsibilities of the CDSS, the DHS, and the counties for resolving data match discrepancies requiring follow-up, defining the necessary actions that will be taken to resolve them, and the process for exchange of information pertaining to the findings and disposition of data match discrepancies.
- Requires CDSS to **develop methods for verifying recipient receipt of services** and work with the counties to determine, define, and issue instructions describing the roles and responsibilities of the Department

and the county welfare departments for evaluating and responding to identified problems and discrepancies.

- Requires CDSS to get input from counties and other stakeholders when developing the methods for verifying recipient receipt of services.
- Requires CDSS to **make available on its website specified information regarding IHSS/PCSP** including IHSS/PCSP QA and program integrity regulations, ACLs, program forms, IHSS/PCSP training and materials developed to implement the Trailer Bill's IHSS/PCSP program QA and program integrity provisions. Requires CDSS to notify program stakeholders of the availability of the information on the CDSS website.
- Requires CDSS to **notify IHSS/PCSP providers, recipients, and the general public about the toll-free Medi-Cal hotline and website** for reporting suspected fraud and abuse.
- Requires CDSS to work in consultation with the counties to **develop a statewide training program** for county IHSS/PCSP workers, managers, QA staff, State hearing officers, and Public Authority or Non-Profit Consortium staff on the IHSS/PCSP Uniformity System and other elements of IHSS/PCSP QA and program integrity as they are developed.
- Requires CDSS to obtain input from program stakeholders while developing the training. Specifically:
 - Authorizes CDSS to obtain a contractor to assist in developing and to conduct the training.
 - Requires that the design of the training afford reasonable flexibility to counties to use their preferred modalities arranging the training.
- Requires CDSS to **monitor county IHSS/PCSP QA programs**, including on-site visits.
 - Requires CDSS to work with the counties to develop protocols and procedures for monitoring county QA programs and protocols and procedures under which the Department will report its monitoring findings to a county, disagreements over the findings will be resolved, to the extent possible, and the county, DHS and CDSS will follow-up on the findings.
- Requires CDSS to **conduct a review of IHSS/PCSP regulations in effect on the date of enactment of this section and shall revise the regulations as necessary to conform to the changes in statute that have**

occurred since the regulations were initially promulgated and to conform to federally authorized program changes, such as the federal waiver.

3. WIC Section 12305.71

Summary: COUNTY QA FUNCTION Requires each county to establish a dedicated, specialized IHSS/PCSP QA function or unit and specifies activities the function is to perform.

- Requires the counties to **perform routine, scheduled reviews of supportive services cases to ensure that caseworkers appropriately apply the IHSS/PCSP uniformity system and other IHSS/PCSP rules and policies** for assessing recipients' need for services to the end that there are accurate assessments of needs and hours. Authorizes counties to consult with State QA staff for technical assistance.
- Requires CDSS and the counties to develop policies, procedures, implementation timelines, and instructions under which the county QA function will perform the following specified QA activities:
 - Receive, resolve, and **respond appropriately to claims data matches discrepancies** or other State-level QA and program integrity information that indicates potential overpayments to providers or recipients or third party liability for supportive services.
 - Implement procedures to **identify potential sources of third party liability for IHSS/PCSP services.**
 - **Monitor the delivery of supportive services in the county to detect and prevent potential fraud** by providers, recipients, and others and **maximize the recovery of overpayments** from providers or recipients.
 - **Inform IHSS/PCSP providers and recipients and the general public** that suspected fraud in the provision or receipt of supportive services can be reported using of the **toll-free Medi-Cal fraud hotline and website.**
- Requires each county to develop a schedule beginning with July 1, 2005, under which county QA staff will **periodically perform targeted IHSS/PCSP QA studies.**
- Provides that, in accordance with protocols developed by the CDSS and county welfare departments, county QA staff will conduct joint case review activities with State QA staff, including random post-payment paid claims

reviews to ensure that payments to providers were valid and were associated with existing program recipients; identify, refer to, and work with appropriate agencies in investigation, administrative action, or prosecution of instances of fraud in the provision of supportive services.

- o Requires that protocols take into account the relative priority of the activities required of county IHSS/PCSP QA functions and available resources.

4. WIC Section 12305.72

Summary: STAKEHOLDER MEETINGS: Requires CDSS to convene periodic meetings with counties and program stakeholders to provide information about and get input on the IHSS/PCSP QA and program integrity activities required by the budget trailer bill.

- Requires that topics addressed in the meetings include, but not be limited to:
 - o Implementation of variable assessment intervals;
 - o Development and implementation of statewide IHSS/PCSP hourly task guidelines;
 - o Development and implementation of the standardized Protective Supervision medical certification form;
 - o The development and implementation of the statewide training;
 - o The development and implementation of approaches to verifying recipient receipt of services;
 - o Alternatives to requiring that a full reassessment be completed in order to authorize a temporary increase in supportive services hours following the discharge of a recipient from a medical facility;

work groups

5. WIC Section 12305.8

Summary: Defines fraud and overpayment for purposes of IHSS.

- For purposes of IHSS defines 'fraud' as the intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or herself or some other person. It includes any act that constitutes fraud under applicable federal or State law.

- For purposes of IHSS defines 'overpayment' as the amount paid by the department or the Department of Health Services to a provider or recipient, which is in excess of the amount for services authorized or furnished pursuant to this article.

6. WIC Section 12305.81

Summary: Establishes IHSS/PCSP provider participation exclusions and requires that an IHSS/PCSP provider enrollment form be developed and used.

- Establishes in the IHSS/PCSP program specified criteria required in federal Medicaid law under which individuals are ineligible to receive payment for supportive services and are, therefore, excluded from participating as IHSS/PCSP providers. Specifically:
 - Requires the exclusion from IHSS/PCSP provider participation of persons convicted in the last ten years of a crime of fraud in specified government health care or supportive services programs, (specifically, Medicaid, Medicare, Maternal and Child Health Services, Social Services Block Grant, or the Children's Health Insurance Program).
 - Requires the exclusion from IHSS/PCSP provider participation of persons convicted in the last ten years of a crime involving abuse of a person under Penal Code sections 273a(a) or 368 or similar violations in another jurisdiction.
- Requires CDSS and DHS to **develop an IHSS/PCSP provider enrollment form that each person seeking to be an IHSS/PCSP provider must complete, sign under penalty of perjury, and submit to the county. Requires the enrollment form to:**
 - Inform the applicant that they are not eligible to enroll as a provider if they have a conviction in the last ten years for one of the specified crimes and require that the applicant certify to that they do not have such a conviction.
 - Require that the provider applicant agree to repay any overpayment and that an overpayment amount may be deducted from subsequent provider payments to applicant.
 - Include the text of subdivision (a) of Penal Code Section 273a and Penal Code Section 368 on the provider enrollment form.

- Requires a Public Authority (PA) and Non-Profit Consortium (NPC) to exclude an IHSS/PCSP provider from their registry when they are notified by the Department or DHS that the provider is ineligible.
- Requires PAs and NPCs that determine that an IHSS/PCSP registry provider is ineligible to report that finding to the Department.

7. WIC Section 12305.82

Summary: Establishes the authority and process for detecting, investigating, and preventing fraud and abuse in the IHSS/PCSP program

- **Authorizes DHS to investigate fraud and abuse in the IHSS residual program.**
- **Requires counties to refer suspected IHSS/PCSP fraud or abuse to DHS for investigation.**
- Provides for CDSS, DHS, and county QA staff to work together as appropriate to detect and prevent IHSS/PCSP fraud and abuse in accordance with State and federal law including appropriate due process requirements.
- Requires DHS to notify the Department, the counties, the PA or NPC when DHS has reliable evidence that an IHSS/PCSP provider has engaged in fraud in connection with IHSS/PCSP.

8. WIC Section 12305.83

Summary: Establishes the authority and allowable methods to recover overpayments made to IHSS providers.

- Establishes that overpayments to IHSS residual program providers can be recovered by CDSS or the county by offset to any payments due to the provider, subject to IHSS and Medi-Cal law and to the extent permissible under existing labor laws, through a repayment agreement or by civil court action.
- Requires CDSS, in consultation with the counties and stakeholders, to identify, define, and develop policies, procedures, and applicable due process requirements under which overpayments to supportive services providers will be identified and recovered.
- Requires counties to recover an overpayment to an IHSS/PCSP provider by offsetting future provider payments, executing a repayment agreement with the provider or by court action.

- Provides that entire amount of an overpayment can be recovered by offset to a future provider payment when the overpayment is due to fraud.
- Establishes limits on the amounts that can be recovered from each provider payment when the overpayment is due to an error. Specifically the amount that can be withheld to recover an overpayment is:
 - The amounts provided for in a repayment agreement negotiated with the provider; or
 - No more than 5% of each warrant, for errors caused by the government and no more than 10% of each warrant, for errors resulting for any other reason, until the full or negotiated amount is recovered.
- When the overpayment is due to fraud, requires the county to take appropriate action to suspend or exclude the provider as an enrolled provider and to prevent in the future any further payment of state or federal funds to the provider for up to 10 years following the fraud conviction.