



A coalition of Californians  
dedicated to preserving  
in home care for seniors  
and people with disabilities

May 19, 2008

The Honorable Sam Aanestad  
Member, California State Legislature  
State Capitol, Room 2054  
Sacramento, CA 95814

**RE: May Revision proposals for In-Home Supportive Services (IHSS)  
STRONG OPPOSITION**

Dear Senator Aanestad;

The undersigned organizations emphatically and totally oppose the Governor's May Revision for the In-Home Supportive Services (IHSS) program which would slash program funding by \$395.8 million (\$274.1 million from the State General Fund).

This is the most dangerous IHSS budget proposal 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 these devastating budget proposals.

The proposed cuts are:

- Permanent Elimination of IHSS Domestic and Related Services for Consumers with Functional Index Ranks Below 4<sup>i</sup>;
- Permanent increase in the Share of Cost Buy-Out for Consumers with Functional Index Scores below 4;
- Decrease in State Participation for IHSS wages and benefit to the minimum wage of \$8.00 per hour; and
- 10% reduction in county administrative costs for IHSS.

**Background**

IHSS is a statewide public program providing essential personal care and domestic services to approximately 408,000 aged, blind or disabled Californians who are unable to remain safely in their own homes without such assistance. There is ample evidence that the IHSS program is successful at keeping people out of more costly and less desirable out-of-home placement in nursing homes or other institutions. IHSS services include personal services such as bathing, dressing and assistance with walking and

transferring from bed to chair; domestic assistance such as meal preparation, shopping, heavy house cleaning; and protective supervision. A combination of state, county and federal funds through Medicaid support IHSS.

### **Why is IHSS a target?**

The Administration targets IHSS every year because the cost of the program is growing. The cost is growing for two reasons: people are living longer and the wages for home care workers have risen because of increases in the minimum wage and in legally negotiated labor contracts. With one hand, the Administration points with pride to the relatively low number of nursing home beds in California and credits it to the existence of the IHSS program. With the other hand, the Administration is threatening the IHSS program – and the 408,000 Californians who depend on it.

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 ruling**

The Governor's IHSS budget proposals are in direct conflict with the 1999 United States Supreme Court *Olmstead*<sup>ii</sup> decision, which affirmed that unnecessary institutionalization is illegal. The IHSS program is, by the state's admission, the foundation of California's *Olmstead* efforts (which to this date fall far short of implementation of the decision). Thus, any erosion of the IHSS program is an erosion of California's legal obligations to comply with *Olmstead*. It is likely that IHSS reductions would be challenged. Litigating *Olmstead*-related lawsuits would bring extra costs for the state.

### **Impact of the Proposed Cuts to IHSS**

#### **Permanent Elimination of IHSS Domestic and Related Services for Consumers with Functional Index Ranks Below 4**

- *Example: Mrs. Smith, an 86 year old widow, has been approved by the social worker to receive 21.6 hours per month for help with meal preparation and clean-up, housekeeping, grocery shopping, laundry, and errands. She has a Functional Index Rank of 3 for these activities (meaning the social worker has said she cannot do them without human assistance) but she will no longer receive any help with those services.*

“Domestic and related services” include preparing food, doing laundry, cleaning, dusting, changing linens, taking out garbage, grocery shopping, planning menus, setting a table and washing and putting dishes away. The Governor has replaced his January proposal to reduce domestic and related services by 18 percent. The new proposal would permanently eliminate domestic and related services for

consumers with average functional index *rankings* below 4 to take effect on October 1, 2008. When county social workers assess the need for IHSS, they assign a functional index ranking of 1-5 (NOTE: explanation of Functional Index is below.)

One of the great ironies of this proposal is that it completely undermines the recent IHSS Quality Assurance program, on which the state has spent millions of dollars. Having assured the quality of the IHSS assessments by training and re-training social workers, and having developed Hourly Task Guidelines for awarding hours for each IHSS task, the state proposes to disregard its own work and eliminate domestic and related hours which those social workers have determined are needed ***“ensure the health, safety, and independence of the recipient.”***

***The message from the Administration is this: we know you need the services to be safe in your home but you are not going to receive them.***

The Administration estimates that 84,000 Californians, all poor and all either seniors or people with disabilities, will lose services.

Many IHSS providers will lose their health benefits because the cut in hours could put them below the eligibility levels to qualify for health benefits through their Public Authority. These policy changes will contribute to the growing number of poor and uninsured people in California.

**Permanent increase in the Share of Cost for Consumers with Functional Index Scores below 4**

- *Example: Mr. Jones, a retired janitor, is 81 and survives on Social Security and a small pension, which total \$1,350 per month. He does not have any housing subsidy and pays \$750 per month for a small apartment. Although social workers have said that Mr. Jones needs 100 hours per month of help with meal preparation, grocery shopping, meal clean-up, bathing, dressing and bowel/bladder care, Mr. Jones has a Functional Index of 3.8, Under the May Revision proposal, he will have to pay \$480 out of his pocket for the help he needs. He uses that money now for food, utilities and transportation to medical appointments. If he cannot pay that share of cost because he cannot afford it, Mr. Jones will lose his eligibility for IHSS.*

While most IHSS recipients receive Medi-Cal services (including IHSS) at no personal cost because of their low income, some IHSS recipients with slightly higher family income may become eligible by paying a share of cost for the services. The original SOC buyout was enacted in 1998 and was designed to allow people with very low incomes to receive IHSS without any out-of-pocket expense for the program.

The IHSS Residual spenddown is to the SSI level, which is currently \$870 per month. The Medi-Cal spenddown is to \$600 per month. This \$870/600 is all of the money that people get to keep to pay for all of their food, clothing, shelter, transportation, Medi-Cal copayments, and anything else that they need other than medical care paid for by Medi-Cal and IHSS.

The shift to PCSP and IHSS Plus came with a promise. The promise was that people would not be worse off than before the shift. This proposal is taking advantage of the more restrictive Medi-Cal rule in order to make people worse off than they were under the IHSS program before it was shifted to Medi-Cal. Now Governor Schwarzenegger intends to break this promise.

The purpose of the buyout is to make sure that IHSS remains a needs-based program for both the IHSS services and for the money that people are allowed to retain for food and shelter. Creating a variation in the food and shelter amount based on the type of IHSS received, or the functional limitation of the recipient, is irrational, because it has nothing to do with the cost of food and shelter or other needs other than IHSS. We believe the distinction is a violation of the equal protection guarantee of the U.S. and California constitutions.

The revised 2008-09 budget proposes to cut \$27.7 million by requiring individuals with a functional index score below four to pay their own Medi-Cal share of cost, if they have one. Approximately 7,100 IHSS recipients would be required to pay a new monthly share of cost, averaging \$427, out of their own pockets. If these IHSS consumers can't afford the cost, they could lose home care services.

**Decrease in State Participation for IHSS wages and benefit to the minimum wage of \$8.00 per hour**

- *Example: Mrs. Brown is a home care provider in San Diego County and makes \$9.25 per hour. She gave up her job in a retail store to take care of her aunt, who is approved for IHSS services. Mrs. Brown works 40 hours per week for her aunt, and supports her own children on her wages from IHSS. San Diego County has a provision in their union contract that says that wages will be reduced when state or federal funds are withdrawn, so Mrs. Brown's wage would drop to \$8 per hour. She cannot support herself and her family on that wage. When the pay for home care workers in her county was \$8.00 per hour, Mrs. Brown's aunt was unable to find and keep quality providers.*

The Governor's May Revision proposal would decrease state financial participation in IHSS wages and benefits on a statewide basis to the current minimum wage of \$8.00 per hour plus 0.60¢ for health benefits on October 1, 2008. The revised budget proposal assumes a total of \$186.6 million in State General Fund savings associated with wage and benefit roll-backs.

There are three formulas, all of which the Governor proposes to repeal:

- a) In the counties that have an IHSS Public Authority or Non-Profit Consortium, current law requires the state to pay 65% of the non-federal costs of IHSS wages up to \$12.10 per hour (\$11.50 for wages plus an additional \$0.60 per hour for individual health benefits)
- b) In the counties that have neither a Public Authority nor a Non-Profit Consortium, the law provides for the State to share in the cost of wages only up to the State minimum wage plus 5.31 percent (\$8.42 per hour) with no State share in health benefits.
- c) For the counties that have a Contract Mode, current statute provides for state participation in the costs up to maximum allowable contract rate (MACR).

The Governor's state budget proposal does not literally reduce the wages paid to IHSS workers; rather, it limits state participation to the level of wages and benefits approved for each county on the effective date of the bill. However, its likely effect is the same: wage reduction. It would fall to the counties to make up for the lost state funding; most counties could not afford it. County costs could as much as double or triple to make up for the state contribution for increases in wages and benefits.

Most Public Authorities have provisions within their Employee Relations Ordinance or Memorandum of Understanding that specify that wages and benefits will be reduced if state or federal funding is decreased. If this proposal is implemented, the wages and benefits for IHSS providers would be decreased to the minimum wage plus \$0.60 per hour for health benefits.

Decreased wages and a lack of benefits means consumers will have a more limited supply of home care workers, making it difficult to remain safely in their homes and possibly forcing them into institutions such as nursing homes. The 2005 report, "Living Wages and Retention of Homecare Workers in San Francisco" by Candace Howes, shows that wages and especially benefits have a significant impact on the retention of workers; in San Francisco when the wages increased from \$5 per hour to \$10 per hour and health insurance was added between 1997 and 2002, the one year retention rate for new workers increased from 33 percent to 61 percent.

Many IHSS providers already live in poverty and are eligible for food stamps, and few have access now to health insurance. Because of the loss of income, many IHSS providers may seek work elsewhere. The analysis by the Legislative Analyst's Office of the Governor's FY 07/08 IHSS budget proposal suggests that retention will not fall quickly but over the long run problems will arise with retaining quality workers and that there will be a negative impact on the consumer. The experience of San Francisco corroborates that view and suggests that the effect on retention may occur sooner rather than later.

The Legislative Analyst's Office estimates that 98% of all home care workers now make more than the minimum wage. That would mean that approximately 375,000 IHSS providers could have their hourly wage cut to \$8.00.

**Questionable assumptions about estimated savings:**

There are several possible consequences to these budget proposals that may have costs for the state.

- For example, caregivers may need to find employment to replace the loss in IHSS income. In such situations it may be necessary to leave consumers without care or supervision during their hours of employment. Consumers who go without adequate care may experience deterioration, injuries, or worsening of their conditions. When the lack of adequate care results in a hospitalization, the state will assume one-half of Medi-Cal costs for this care for those not eligible for Medicare.
- Another possible adverse event may be increased vulnerability to neglect and hazardous living situations. These may result in increased utilization of Adult Protective Services (APS), a state program that helps maintain the health and safety of individuals with functional impairments who live in their homes. Ironically, the Governor is also proposing to reduce APS expenditures – a system that is already drastically underfunded.
- Individuals who require services beyond the care available to them through IHSS to remain living at home, will likely search for supplementary services. The state-funded programs and services that may experience increased caseload include: CDDS Regional Centers, Adult Day Health Care, the Linkages Program, the Multipurpose Senior Services Program (MSSP), and Medi-Cal's Early and Periodic Screening, Diagnostic and Treatment (EPSDT) program for children.
- It is inevitable that some consumers would be forced into nursing homes and other institutional care settings. The Legislative Analyst's Office has estimated that the state spends an average of \$10,000 per IHSS consumer versus \$60,000 a year for each nursing home resident.

**Background on Uniform Assessment and Functional Index Ranking & Scores**

The Uniform Assessment tool uses functional ranks for to evaluate a consumer's capacity to perform certain IHSS tasks safely. IHSS operates under a "safety" standard, not a "comfort" standard. State regulations (MPP 30-761.25) states: "no services shall be determined to be needed which the consumer is able to perform in a safe manner without an unreasonable amount of physical or emotional stress."

The Functional Index scale is hierarchical, meaning that a person who functions with a score of "4" or "5" is typically more dependent on assistance than a

consumer who functions at a level “3”. The purpose of these scales is to establish a common basis for the authorization of IHSS.

Problems in functioning are measured on a 0-5 (or sometime 0-6) scale as established in Welfare & Institutions Code 12309, as follows:

Description of Numeric Ranking	
Rank 1	Functioning is independent, and he or she is able to perform the function without human assistance, although the recipient may have difficulty in performing the function, but the completion of the function, with or without a device or mobility aid, poses no substantial risk to his or her safety.
Rank 2	Able to perform a function, but needs verbal assistance, such as reminding, guidance, or encouragement.
Rank 3	Can perform the function with some human assistance, including, but not limited to, direct physical assistance from a provider.
Rank 4	Can perform a function, but only with substantial human assistance.
Rank 5	Cannot perform the function, with or without human assistance.
Rank 6	Paramedical Services Needed

The “Functional Index Rank” is set for each task when the social worker evaluates the hours and type of care an IHSS consumers needs to remain independent. For example, a consumer can be ranked as a “3” for meal preparation and as a “4” for laundry.

The “Functional Index Score” is the average of the Functional Index Rankings as determined by the social worker.

The undersigned organizations urge the legislature to reject these proposed IHSS reductions.

Sincerely,

AARP-California

California Alliance for Retired Americans (CARA)

California Association of Public Authorities for IHSS (CAPA)

Californians for Disability Rights, Inc. (CDR)

California Disability Community Action Network (CDCAN)

California Foundation for Independent Living Centers (CFILC)

California In-Home Supportive Services Consumer Alliance (CICA)

California Senior Legislature

California United Homecare Workers (CUHW)

Congress of California Seniors

Gray Panthers California

Herbert M. Meyer, Consumer of IHSS Services, Marin County.

IHSS Public Authority of Marin County

Independent Living Services of Northern California  
John Wilkins, IHSS Coalition Chair (Fresno IHSS Consumer)  
Marin Center for Independent Living  
Northern California ADAPT  
Older Women's League California (OWL)  
Personal Assistance Services Council of Los Angeles County  
Protection & Advocacy, Inc.  
Quality Homecare Coalition  
Resources for Independent Living  
San Francisco IHSS Public Authority  
Service Employees International Union – State Council:  
    SEIU United Long Term Care Workers  
    SEIU United Healthcare Workers West  
    SEIU Local 521  
United Domestic Workers of America/AFSCME

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<sup>i</sup> The functional index rank provides a measure of the consumer's independence and need for human assistance for performance of IHSS tasks as authorized under Welfare and Institutions Code § 12309. A functional index score of 3 means that the consumer needs human assistance, either physical or verbal, to perform a task. The Administration's proposal means that although the assessment shows the consumer cannot do the task without human assistance, such assistance will no longer be provided. See Explanation on Functional Index.

<sup>ii</sup> *Olmstead, et al. v. L.C. et al.*, 527 U.S. 581, 1999