

February 24, 2017

The Honorable Dr. Joaquin Arambula, Chair

Assembly Budget Subcommittee #1

State Capitol

Sacramento, CA 95814

The Honorable Dr. Richard Pan, Chair

Senate Budget Subcommittee #3

State Capitol

Sacramento, CA 95814

**RE: IHSS Budget: FLSA Exemptions**Dear Assembly Member Arambula and Senator Pan;

The In-Home Supportive Services (IHSS) Coalition is requesting the budget subcommittees to take action to address concerns about the exemption policy established by CDSS for the FLSA. We believe the current exemption policy is too narrow which potentially risks the health and safety of some IHSS consumers. The exemption policy is also flawed because consumers and providers were not notified about it and there is no appeals process if a county denies the exemption request.

The IHSS Coalition is composed of fifty organizations representing IHSS consumers, providers and advocates. Our goals are (1) to ensure sufficient funding for In-Home Supportive Services and its interrelated aspects (2) to develop potential improvements for the program, (3) to disseminate information on homecare issues through public events, and (4) to preserve and enhance consumer-directed services.

IHSS keeps Californians with disabilities, including seniors, in their own homes and saves taxpayers hundreds of millions of dollars in doing so. The IHSS program provides personal care and domestic services to approximately 500,000 individuals who are aged, blind or have disabilities, which allow these individuals to live safely at home rather than in unnecessary, not desired and more expensive out-of-home placement facilities. IHSS is a critical component of long-term care services in California.   
  
By definition, IHSS consumers are very poor; the vast majority have monthly incomes less than $1,000 and $2,000 in personal assets. According to the California Department of Social Services (CDSS), approximately 85% of all IHSS consumers receive SSI/SSP. The FY 16/17 monthly SSI/SSP grant for elderly and disabled individuals is $895.72 per month and the grant for couples is $1,510.14. The average IHSS consumer is projected to receive 105.2 hours of service a month in FY 17/18.

In 2013, the United States Department of Labor (DOL) published the Final Rule on the application of the FLSA to domestic service workers. That Final Rule essentially requires that personal care workers be afforded the same minimum wage and overtime protections as most other workers in the country. California implemented SB 855 and SB 873 (2014) to ensure the IHSS program conforms to the new federal ruling. The state IHSS/FLSA rules prohibit providers with one consumer from working more than 70.45 hours and workers with multiple consumers from exceeding the 66 hourly cap per week regardless of the number of recipients they serve.

A small number of IHSS providers care for more than one consumer with highly specialized needs; the overtime limit means that they cannot continue to provide that care if the consumers’ combined hours exceed 66 per week. These providers are parents with more than one child with disabilities, an adult caring for two parents with dementia; an adult caring for a spouse and a child, both with disabilities. There may not be a suitable additional provider available to avoid an overtime situation. When no other provider is available, the consumer cannot receive the services which were authorized as needed for safety in their homes.

CDSS recognized this issue and established narrow exemption criteria to address this administratively. Beginning May 1, 2016, two exemptions were established for limited specific circumstances that allow the maximum weekly hours to be exceeded.

• Exemption 1- Live-In Family Care Provider (this category is closed): Was to be granted for live-in family care providers residing in the home for two or more disabled minor or adult children or grandchildren for whom they provide IHSS services and who meet specified requirements on or before January 31, 2016. An estimated 1,200 providers that meet the specific criteria for this exemption will be allowed to work up to 12 hours per day, or 90 hours per week, not to exceed 360 hours per month.

• Exemption 2- Extraordinary Incurable Circumstances: To be granted on a case-by-case basis for providers who work for two or more IHSS recipients that have extraordinary circumstances including complex medical and behavioral needs, living in a rural or remote area, or language barriers that place the recipient(s) at imminent risk of out-of-home institutionalized care.

PROPOSED SOLUTION: The IHSS Coalition is proposing to address Exemption 2 concerns by: (1) modestly expanding the exemption criteria, (2) require notification to consumers and providers about the criteria and process to request an exemption, and (3) establish a fair and reasonable appeals process.

Regarding the exemption criteria, protections are needed to allow for situations when a provider can work above the CDSS cap of 66 hours/week in certain, limited situations, including:

* Providers who are the parent, step-parent, grandparent or legal guardian of two or more children (including providers approved after Jan 31, 2016);
* Spouses, domestic partners, adult children caring for parents, adult siblings, and adult grandchildren, when no other suitable provider is available; and
* Individual consumer situations when there is no other suitable provider is available, the recipient would be at risk of out-of-home placement, or the recipient¹s health (including physical, psychiatric or emotional) or safety would be at risk.
* In addition, statute should allow some providers to work over 90 hours/week in limited situations based on individual consumer needs when there is no other suitable provider is available, the recipient would be at risk of out-of-home placement, or the recipient¹s health (including physical, psychiatric or emotional) or safety would be at risk.

**Closing Comments:**

We anticipate these changes will reduce harm to a relatively small group of IHSS consumers and providers as they try to comply with the new overtime rules. While we are still developing a fiscal estimate for these changes, our proposal may be absorbable within the current IHSS budget. The state’s estimated 5,000 providers could meet the specific criteria for this exemption and could be allowed to work up to 12 hours per day, or 90 hours per week, not to exceed 360 hours per month. Funding based on this estimate was included in the final FY 16/17 state budget. However, as of December 29, 2016, there were 52 providers approved, 68 denied, and 11 pending for Exemption 2. This data validates our view that the criteria for Exemption 2 is too narrow.

Sincerely,

AARP-California   
Access to Independence   
ACLU of Southern California  
Alzheimer's Association, California Council  
Bet Tzedek Legal Services  
California Alliance for Retired Americans (CARA)  
California Association of Public Authorities (CAPA)  
California Church IMPACT  
California Council of Churches  
California Council of the Alzheimer’s Association  
California Council of the Blind  
California Disability Community Action network (CDCAN)  
California Foundation for Independent Living (CFILC)  
California IHSS Consumer Alliance (CICA)   
California Senior Legislature  
Californians for Disability Rights, Inc. (CDR)  
Communities Actively Living Independent & Free (CALIF)  
Congress of California Seniors (CCS)  
Dayle McIntosh Center for the Disabled  
Disability Rights California (DRC)  
East Bay Community Law Center  
Educate.Advocate  
FREED Center for Independent Living  
Friends Committee on Legislation  
Gray Panthers  
IN SPIRIT  
Independent Living Resource Center Inc.   
Independent Living Services of Northern California (ILSNC)   
Justice in Aging (formerly the National Senior Citizens Law Center)  
Marin IHSS Public Authority  
Nevada-Sierra Connecting Point Public Authority  
Northern California ADAPT  
Older Women’s League   
Personal Assistance Services Council of Los Angeles  
Resources for Independent Living  
San Francisco IHSS Task Force  
San Francisco Public Authority  
SEIU Local 2015  
Senior & Disability Action (SDA)  
Service Employees International Union – State Council  
Silicon Valley Independent Living Center (SVILC)  
Southeast Asia Resource Action Center | California Office  
The Arc and United Cerebral Palsy in California   
The San Diego IHSS Coalition  
Tri-County Independent Living Center, Inc.  
UDW /AFSCME Local 3930  
Westside Center For Independent Living (WCIL)

cc: Gail Gronert, Office of the Assembly Speaker   
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