

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, California 95814



September 20, 2000

ALL-COUNTY LETTER NO: 00-68

TO: ALL COUNTY WELFARE DIRECTORS
ALL IHSS PROGRAM MANAGERS**REASON FOR THIS TRANSMITTAL**

- State Law Change
- Federal Law or Regulation Change
- Court Order or Settlement Agreement
- Clarification Requested by One or More Counties
- Initiated by CDSS

SUBJECT: IMPLEMENTATION OF ASSEMBLY BILL (AB) 1682

This All-County Letter (ACL) provides additional information regarding the implementation of Assembly Bill (AB) 1682 (Chapter 90, Statutes of 1999). As you know, AB 1682 requires that each county, on or before January 1, 2003, act as an employer of record or establish an employer of record for In-Home Supportive Services (IHSS) Program providers for specific legal purposes. Specifically, this ACL answers a second set of questions from an October 7, 1999 meeting where approximately 70 questions and issues were raised by counties. ACL 00-36 addressed the first set of questions and has already been released.

Counties should also be aware of Senate Bill 288, which was enrolled with an urgency clause and sent to the Governor on August 30, 2000. If enacted, this bill would limit State reimbursement of administrative costs for local IHSS program advisory committees. This means that if a county has or establishes a Public Authority and were also to create an AB 1682 advisory committee, only the administrative costs of either the Public Authority's advisory board or the AB 1682 advisory committee could be funded. The State would not be permitted to reimburse counties for the costs of both advisory bodies.

If you have questions or concerns, you may contact Alan Stelmack, Adult Programs Branch, at (916) 229-4583.

Sincerely,

***Original Document Signed By Leonard Tozier For
Donna L. Mandelstam on 9/20/00***

DONNA L. MANDELSTAM
Deputy Director
Disability and Adult Programs Division

Attachment

RESPONSE TO AB 1682 QUESTIONS

Note: The question numbers referenced in parentheses are the original numbers assigned to these questions at the October 7, 1999, meeting of the Department of Social Services with the counties.

1. Is the relationship between Public Authority (PA) mandates and Supported Individual Provider (SIP) impacted by this legislation? (Question 35)
 - A. AB 1682 does not change the provisions of SIP. Counties should continue to report allowable SIP activities as described in the current County Expense Claim process and in accordance with the federally approved County Welfare Department Cost Allocation Plan. We do not see any problems with SIP coexisting with a PA as long as counties take steps to ensure that PA activities do not duplicate any SIP activities performed by the county in accordance with ACL 98-20.

2. Is SIP money an unfair allocation of one county over another? (Question 36)
 - A. We cannot speak for the counties; however, at the present time there is no plan to discontinue this funding arrangement.

3. Did AB 1682 eliminate SIP money and General Fund transfers? (Question 37)
 - A. No.

4. This bill only addresses cost sharing with regards to wages and not for benefits or administration costs. (Question 9)
 - A. Under the fiscal year 2000/01 budget the sharing ratio for all provider wage and benefits costs is 65% State and 35% county of the nonfederal share of the costs. The sharing ratio for administrative costs was unchanged by AB 1682 and continues to be 70% State and 30% county of the nonfederal share.

With the enactment of the 2000/01 Budget Act, there is now \$109.7 million from the General Fund for the State's share of cost for an hourly wage increase to \$7.50 (\$1.75 above minimum wage) for PA providers. The budget also includes \$34.2 million from the General Fund for the State's share of cost in up to \$0.60 per hour for health benefits for PA providers.

Prior to the 2000/01 Budget Act, State law limited In-Home Supportive Services (IHSS) providers in non-PA counties to the minimum wage. The 2000/01 budget includes \$3.7 million from the General Fund for up to a 3 percent wage increase

for these providers at county discretion. State participation in the cost of the wage increases for non-PA providers is effective January 2001.

Wage increases and benefits for IHSS providers are not mandated. Counties have the discretion to provide or not provide wage increases to their providers. Even when wage increases or benefits are collectively bargained the county's Board of Supervisors must adopt the bargaining agreement. The Department will be issuing a subsequent ACL to tell counties how to claim for PA and other budgeted wage and benefits costs.

Funding was also provided in the 2000/01 budget for the State share of the cost of contracting counties electing to increase their contract rates to the Maximum Allowable Contract Rate (MACR). Funding was also provided for the State share of increasing the existing MACRs by 10 percent. Additionally, the budget includes State funds to allow the number of IHSS cases under the contract mode to increase by 40 percent statewide.

5. Can we do anything that will ensure the timeliness of State approval of rates? (Question 18)

A. There are several considerations for a county to ensure a more timely response for the State approval of wage rates:

- Close communication between the county and State is essential;
- A county should obtain any needed clarification from the State on the documentation that is required to approve a rate, including certification from the county's Board of Supervisors that the rate has been approved by the board; and
- A county should allow reasonable lead-time for the approval by the California Department of Health Services and implementation of a new PA rate. Under AB 2876, the Budget Trailer Bill, new PA rates are effective the month following the month in which they are approved although rates may be approved conditionally subject to funding availability.

6. What is the county process in establishing a contract rate and what are the financial considerations? (Question 27)

A. Counties that elect to use the contract mode should pursue the following process:

1. Make a written request to the Adult Programs Branch asking the Branch to calculate a MACR and to advise the county if funds have been included in the State budget to cover the cost of the county's anticipated contract(s). (Once calculated by the Department, the California Department of Finance must approve the MACR.) If sufficient budgeted funds are not available the county runs the risk of being required to absorb the costs of their IHSS

contract(s) until additional funds are budgeted unless deficiency funding is approved. (See below for more details.)

2. Conduct a competitive bid process to award the IHSS contract(s).
3. Inform the Adult Programs Branch in writing to implement the rate into the Case Management, Information and Payrolling System (CMIPS).

The State's share in the costs of county IHSS contracts is available only within the constraints imposed by the State's annual Budget Act and Welfare and Institutions Code (WIC) section 12300, et seq. Counties that incur IHSS contract costs for which budgeted funds are not available run the risk of not receiving full reimbursement if the costs in excess of budgeted funds were due to non-State mandated costs (i.e., costs within county control, or using more expensive modes of service delivery.) As noted above, the Fiscal Year 2000/01 State budget provides funding for the State share of counties increasing their contract rates up to 10% above their current MACR, and to expand the number of IHSS cases statewide under the contract mode by up to 40 percent.

7. Is IHSS a continuously appropriated entitlement or is it capped in the State budget and is there a process for over-expenditures? (Question 28)
 - A. Each county's IHSS administrative allocation is a capped amount. Additionally, the administrative costs of a PA are capped at the PA's approved hourly administrative rate component. If a county exceeds its administration budget, the State would look at the total State allocation for a surplus to absorb any overrun.

The IHSS service component is budgeted as an entitlement. If the appropriation were exceeded, it would have to be handled as a budget deficiency. AB 1682 does not change the current funding arrangement or eligibility requirements for the PCSP or the IHSS Residual programs.

8. How does this law impact the realignment formula? (Question 32)
 - A. AB 1682 does not change the realignment formula.
9. Are there any county administrative costs that are reimbursable? (Question 33)
 - A. The administrative costs of AB 1682 are reimbursable provided that the county remains within their IHSS administrative allocation. The costs would be claimed in accordance with the federally approved California Welfare Department (CWD) Cost Allocation Plan. Claiming questions should be directed to the California Department of Social Services (CDSS) Fiscal Policy Bureau. The AB 1682 advisory committee requirement is a State mandate. The reasonable costs of

county AB 1682 advisory committees are reimbursable and no county share is required.

10. Will counties have mandated costs incurred under WIC, Section 12301.3, which require funding? (Question 38)

A. Yes. See answer to question 9.

11. Is the county civil service mode budgeted by the State as administrative or service money and what is the funding ratio? (Question 44)

A. State funding for the county IHSS civil service (“homemaker”) mode is budgeted as local assistance as are IHSS services. The sharing ratio for the nonfederal share of the local assistance costs of the IHSS program is 65% State and 35% county.

12. Do we need a way to control the costs that may be incurred by this legislation? (Question 51)

A. AB 1682 creates the potential for increased county costs for IHSS provider wages and benefits and for administering an employer of record. Ultimately, each county’s Board of Supervisors will determine what the county will spend on wages above minimum wage and for provider benefits. In so doing, we presume that counties will be cognizant of the limits on State and federal sharing in PA and contract rates and the funds provided in the State budget for the contract mode. The State and federal government will share in costs that are at or below the cost limits as long as the costs have been approved through the budget process. Additionally, it is presumed that, in selecting their approach for meeting AB 1682 requirements counties will consider the administrative costs of the various options for complying with this law. Notwithstanding any cost increases, AB 1682 does not permit necessary service hours to be reduced for any recipient.

13. Are the “start-up” costs categorized as direct or indirect charges or are they considered a combination? (Question 61)

A. All costs incurred by the counties in the compliance with AB 1682 will occur in the context of their administrative allocation. Counties should claim these costs consistent with established claiming instructions and direct cost claiming decisions and approvals for their county.

- 14.** How long does it take for the county to receive funding when it identifies the costs and the fiscal mechanism? (Question 62)
- A.** The claiming and State reimbursement for the allowable, budgeted costs of AB 1682 will occur under the existing, established claiming process and time frames. Other costs must be met within each county's existing IHSS/PCSP administrative allocation.
- 15.** Does the State provide money to the county for the planning of a Public Authority? (Question 67)
- A.** Except for the funding budgeted for the cost of the AB 1682 advisory committees; no State funds are budgeted for the planning of a PA. Counties must undertake this activity within their established IHSS program administrative cost allocation.
- 16.** How do we educate or brief the county Board of Supervisors? (Questions 1 &2)
- A.** WIC, Section 12301.3, provides for an advisory committee that the county Board of Supervisors will utilize prior to implementing an employer of record. Presently, there are counties operating PA, contracts, Individual Provider and mixed modes of service delivery that could give valuable insight into an employer of record option. We suggest that counties consult with one another as they consider their options under AB 1682. If we can be of assistance to a county in educating a county Board of Supervisors we would be happy to assist in any way we can.
- 17.** The Bureau of State Audits report raises numerous issues related to the bill. (Questions 4 & 20)
- A.** The Department believes that all ambiguities or issues brought forward by the Bureau of State Audits report have been addressed by the release of this ACL and ACL 00-36. If further issues remain, please contact us.
- 18.** What AB 1682 implementation efforts can be made that will help minimize system impact? (Question 11)
- A.** This answer presumes that by use of the term "system", this is referring to CMIPS. CMIPS must be programmed and tested for each new wage change requested by a county. The critical issue is the updating of wage rates as counties convert to either the contract or PA modes of IHSS delivery, or enact wage increases for their non-PA Individual Providers between now and January 1, 2003. The more counties concurrently requesting an update to their provider wage rates in CMIPS, the greater the potential for delays as we attempt to update the CMIPS with multiple counties' new provider rates. Counties need to be conscious of this and provide for plenty of lead-time. The individual decision

of when counties will comply with AB 1682 before the statutory deadline is out of the State's control.

- 19.** Can we break out different employer functions and identify which entity is performing the employer functions? (Question 16)

 - A.** We are unsure how to separate the employer/employee relationship. This seems like a matter for discussion with your county counsels. The employer/employee relations requirements for public agencies, such as PAs, are governed by the Meyers, Milias, Brown Act. Other labor relations laws including the National Labor Relations Act govern the employer/employee relations requirements for non-public entities, such as IHSS contractors.

- 20.** We need to educate the Legislature about what the bill means to consumers and providers. (Question 19)

 - A.** The requirements of AB 1682 were again the topic of extensive discussion involving the Department, consumers, and consumer advocates, providers and organized labor at the legislative subcommittee hearings on the budget for Fiscal Year 2000/01. The legislature not only heard from the State, but also from PA representatives and counties.

- 21.** Is it possible to receive more than the EDS information regarding the hours cap elimination? (Question 24)

 - A.** There were additional provisions in AB 1682 other than the requirement to establish an employer of record for IHSS providers. One of those provisions changed WIC, Section 12303.4 eliminating the wage rate formula for determining maximum service hours for recipients served in either the contract or homemaker mode of service delivery. This formula was commonly called the "hours or dollar cap". ACL 99-91 provided information and instructions to the counties regarding the implementation of this provision of the bill. Prior to this ACL, in October 1999, the Department provided counties with a CMIPS generated list that identified the recipients who were entitled to additional service hours because of the change in statute.

- 22.** What authority does the State have in enforcing cost neutrality regulations if a county opts to move to the contract mode? To what extent is the regulation valid? (Question 26)

 - A.** During this year's budget hearing, cost neutrality was extensively discussed and has not changed. Current IHSS statute and regulations interpret cost neutrality to mean that counties that change from the Individual Provider mode to the contract mode during the Budget Year cannot obtain State sharing in any costs

that have not been included in the State Budget for that Budget Year. If budgeted funding is not available to cover the added costs of the contract mode; a county would have to pay the difference with county funds. However, the Fiscal Year 2000/01 budget has modified this limitation. The budget appropriated \$14.675 million for a 40% expansion in the caseload for the contract mode. Any county may opt to establish the contract mode. Therefore, State funding will be available to enable counties to change to or expand the contract mode within the amount appropriated by the annual Budget Act.

23. What are the legal ramifications and financial liabilities to local government if a Public Authority (PA) or Joint Powers Agreement (JPA) administration is cross-jurisdictional? (Question 46)

A. The county financial liability has not changed. Under AB 1682, the employer of record whether, PA or JPA, is legally charged with collective bargaining for wages and benefits. The ultimate decision rests with the county Board of Supervisors to the extent that they approve and allocate funds required by the PA or JPA.

WIC Section 12301.6(f)(3) expresses legislative intent with regard to potential liability arising from the implementation of the section. This provision, among other things, is intended to make a PA or Non Profit Consortium solely responsible for the obligations the PA enters into in implementing the WIC Section 12301.6, regardless of whether the obligations are statutory, contractual or otherwise.

Counties are advised to consult with their legal counsel in regards to any legal ramifications.

24. Are there Title XIX plan amendment implications? (Question 50)

A. No State Plan amendment implications have been identified so far. The Department though, is continuing to research this possibility and will meet any requirements to assure continued Medicaid Title XIX participation.

25. What things need to be fixed in the bill for next year? (Question 55)

A. At the present time, the CDSS is not considering any changes to AB 1682. We would appreciate being notified if counties are contemplating proposing changes.

26. Are there changes or issues with respect to contract procurement that need to be examined to meet the employer of record provisions? (Question 63)

A. No, there have been no changes resulting from AB 1682.

- 27.** To what extent does a county’s Board of Supervisors have to take the recommendations of the advisory group and what recourse does the advisory group have if they are ignored? (Question 66)
- A.** The advisory committee is advisory only and makes recommendations to the county Board of Supervisors. The board may act on the advisory committees’ recommendations as they see fit.
- 28.** Will the increase in program costs due to the implementation of AB 1682 “trigger” the “poison pill” language in AB 1682 as it relates to Title XIX funding?
- A.** We do not anticipate that the “poison pill” would be “triggered” by implementing AB 1682. State General Fund expenditures for the IHSS program will not exceed the current level of federal financial participation, which is the criterion used for “triggering” the bill’s language.
- 29.** Federal Medicaid law requires that provider rates are to be set at a level sufficient for program recipients to access services. Therefore, the federal government will not approve rates that are either too low or too high for recipients to gain equal access to them. How does local collective bargaining relate to the federal approval of Medicaid rates?
- A.** California has an approved Medicaid (Medi-Cal) State Plan amendment regarding the IHSS/PCSP program which describes in great detail California’s policies and procedures for setting and approving Individual Provider wage rates, PA rates, and contract rates. The State Plan specifically governs the extent to which the federal government will share in the cost of this program. Collectively bargained wages and benefits will be subject to the existing limits of federal financial participation set forth in the State Plan as they are subject to statutory limitations on State financial participation.