



**STANISLAUS COUNTY  
IHSS ADVISORY COMMITTEE MEETING  
MINUTES**

**08/23/02**

Committee Members Present:	Jeff Lambaren Ora Scruggs Connie Muller	Kenny Brown Rose Martin	Madelyn Amaral Jose Acosta
Committee Members Absent:	Toni Hector	Bonnie Cyphers	Dwight Bateman
IHSS Staff Present:	Jan Holden	Paul Birmingham	Shannon Jantz
CSA Staff Present:	Ted Martin	Les Cervantes	

**OPENING REMARKS by CHAIRMAN JEFF LAMBAREN**

- Meeting called to order at 1:10 p.m.
- Announcement made allowing for public comment.

**PUBLIC COMMENT**

- A union member commented that the committee is doing a good job.

**ACCEPTANCE OF MINUTES**

- August 9, 2002 minutes: Motion M/S/A to accept minutes with no corrections.

**BUDGET UPDATE by Paul Birmingham**

- A State Budget still has not been adopted.
- Paul Birmingham stated they received a call from an IHSS recipient concerned about a news broadcast stating that IP's may not be paid past a certain date. Paul Birmingham spoke to someone at the state and confirmed that this is not true. As far as we know, IP's in the IHSS Program will be paid.
- The question is will paychecks be held up? Paul Birmingham absolutely thinks this will not happen.
- Paul stated that the County Budget Board meeting will be September 17 and the committee will also be presenting their recommendation at that meeting.
- Jeff Lambaren asked about the possibility of going to the Board the week after September 17 because of the shortage of time.
- Paul said the concern is that the September 17 meeting could be an extremely long meeting and may run late. We are proposing that the committee's recommendation be first on the agenda because it may be difficult for the elderly/disabled to wait hours for the committee's recommendation to come up on the agenda.
- Paul stated that the other concern is that union providers and other provider and recipients, who may wish to attend, may not be able to safely or comfortably stay until late into the evening since this is a night meeting.



## **CENTER FOR SENIOR EMPLOYMENT PRESENTATION by Joann Waters**

- Paul Birmingham introduced Joann Waters, Director of the Center for Senior Employment and Susie Ramirez, Lead Registry Staff Worker.
- The program has been ongoing since 1992.
- Scope of Services includes completing the actual recruitment, screening, orientation, and background checks of possible caregivers. Successful applicant names are added to an ongoing list of caregivers.
- Once services are authorized, clients are provided with three names to choose from this list.
- The contracts and agreements with the County limit services and the scope of the program.
- Jeff Lambaren requested clarification on the following three points:
  1. Three names provided to client
  2. Individuals who think they are being hired to do housework and don't want to do the job when they realize personal care is involved, and
  3. By the time clients receive information, it can be old and the provider may not be available or has moved?
- Joann stated a standardized form is provided to clients with three names.
- The Center for Senior Employment requests notification when a caregiver is moving or is no longer available, but they don't always get the information. They also update the list from time to time.
- Madelyn Amaral raised the issue of people possibly taking caregiver jobs and quitting shortly thereafter as a way of receiving unemployment.
- Joann Waters stated that people may get excited about a position, but when it comes to meeting the actual challenge of a caregiver job they may realize they are not able to do the job because different clients have different needs.
- In April 2001, the Center began offering a 3-day training program to caregivers, which covers the scope of the job. A survey was also done regarding the reasons a caregiver may choose to leave.
- Jeff Lambaren asked if their database provided specific information regarding whether or not a caregiver can do personal care.
- Joann stated that the database is limited, but these issues are discussed in the orientation and also covered in the class.

## **MEMBERSHIP UPDATE**

- Handed out copies of a draft letter regarding frequent absences by a member for committee to review.
- Jan Holden stated that there is a list of previous applicants who may still be interested in joining the committee and some new applicants. A new recruitment could be conducted.
- Ora Scruggs suggested adding the phrase 'unexplained or unexcused absences' to the draft letter.
- Connie Muller suggested changing salutation to read Dear 'Sir or Madame'. The final letter will be personalized.
- Jeff Lambaren stated that committee should adopt by-laws before sending these letters out.
- Kenny Brown said that the committee should keep using Robert's Rules of Order regarding procedures.
- Jeff Lambaren has a copy of this book.
- Committee decided to hold off on the letter until by-laws are adopted. By-laws will be addressed in next meeting.

## **FINAL DRAFT OF THE "EMPLOYER OF RECORD" RECOMMENDATION**

- Handed out copies of the final version "Employer of Record" recommendation.
- Handed out copies of the budget graphs and charts.
- Committee reviewed the suggested changes in the recommendation.
- The recommendation and staff report will be attached to the agenda item as the report from the committee. It will be made into a folder identifying the names of committee members and brought to the next meeting.
- Jeff Lambaren pointed out capitalization issues in the recommendation.
- Jan Holden found a spelling error on the last page in third paragraph under Liability. The first sentence should have the phrase "the role".
- M/S/A to accept the final version of the "Recommendation". It was agreed that the capitalization changes and grammar changes could be made without bringing the document back to the committee.

## **FUTURE CONSIDERATION OF PUBLIC AUTHORITY**

- Jeff Lambaren stated that a public authority is fiscally dependent on the county for the “Rate”.
- Jan Holden stated that the policy of the Public Authority is really set by the Public Authority Board but that the Board of Supervisors would still have to agree to any wages.
- Paul Birmingham stated that some counties are setting up Public Authority with county employees.
- Madelyn Amaral wants to see what we have from other counties who are in the process of setting an ordinance. Jan Holden will contact San Joaquin and Merced County and request information.

## **QUESTIONS AND ANSWERS**

- Madelyn Amaral wanted to know if the committee could write a letter in support of the Public Health Nurses not being moved from Adult Services because of the budget.
- Ora Scruggs expressed praise for her Public Health Nurse and supported writing a letter.
- Madelyn Amaral will draft a letter in support of the Public Health Nurses and email it to co-chairman Kenny Brown for review. Kenny will forward the draft letter to Larry Baptista.
- Committee discussed whether or not they should meet on the 1<sup>st</sup> and 2<sup>nd</sup> Friday of September and concluded that they will meet on Friday, September 6<sup>th</sup> and September 13<sup>th</sup>.

## **ANNOUNCEMENTS**

- Jan Holden will be on vacation from 8-29-02 through 9-15-02, returning on Monday, 9-16-02.
- Jeff Lambaren clarified that the draft letter to the union regarding a meeting was not a draft. It has been sent out and the meeting took place 8/22/02.

## **AGENDA ITEMS FOR NEXT MEETING**

- Next meeting September 6<sup>th</sup>
- Budget Update
- Committee membership/bylaws
- Public Authority
- Board of Supervisors’ Meeting on September 17, 2002:
  - Who will be attending?
  - Who will need transportation? Can some committee members provide transportation for committee members who don’t drive or does CSA need to have staff provide transportation?
  - Who will say what during the Board meeting?

Meeting adjourned @ 2:45 pm  
Shannon Jantz, Recorder

**ANALYSIS OF AB 1682 OPTIONS  
AND  
RECOMMENDATIONS OF THE IHSS ADVISORY COMMITTEE  
FINAL VERSION  
AUGUST 13, 2002**

## **I. BACKGROUND INFORMATION**

### **The In-Home Supportive Services Program**

In-Home Supportive Services (IHSS) is a State-mandated program providing services to more than 4,000 aged, blind and disabled low-income individuals in Stanislaus County. IHSS provides in-home assistance in order to prevent premature nursing home or board and care placement.

In Stanislaus County, IHSS is provided through the Individual Provider (IP) mode. In the Individual Provider mode, the IHSS recipient is considered the employer and is responsible for hiring, firing, supervising and training his/her own provider of service. Stanislaus County provides an enhancement to the Individual Provider mode through its Supported Individual Provider option. The Supported Individual Provider option provides for increased support to the IHSS recipient via a contract for a registry of available providers and county staff to assist recipients in interviewing and hiring providers.

### **Employer of Record Legislation**

In July of 1999, the Governor signed AB 1682 (W&I Code 12301.3) which called for all counties to establish an employer of record for the IHSS program by January 2003. The law also required the formation of an IHSS advisory committee, which was to submit recommendations to the county board of supervisors on the preferred mode or modes of service to be used for IHSS. This advisory committee is also responsible for providing ongoing advice and recommendations regarding IHSS to the board of supervisors as well as to the administrative body responsible for IHSS.

The employer of record is a formal entity that can negotiate with a designated labor union for increased wages, health care benefits as well as for other terms and conditions of employment.

The law provides counties with several options to implement the mandate for an employer of record, including the establishment of a Public Authority or a Non-Profit Consortium, the contract mode, county personnel or county administration of the individual provider mode.

State law mandates that any county with 500 or more IHSS cases must maintain an individual provider mode. The only options that meet this requirement are the Public Authority, the Non-Profit

Consortium and the County Administration of the IP Mode. Any of those options can be used exclusively as the employer of record or in conjunction with another option under Mixed Mode.

By law, the County Board of Supervisors retains full responsibility for, and authority over, the approval and authorization of expenditures related to the In-Home Supportive Services (IHSS) Program. No contracts can be entered into and no increases in wages and benefits resulting from collective bargaining can be authorized without prior approval from the Board of Supervisors.

### **The IHSS Advisory Committee**

On September 13, 2001 the Stanislaus County Board of Supervisors established the IHSS Advisory Committee. By law, this committee must consist of no more than 11 individuals, with no less than 50% of the members being individuals who are current or past users of personal assistance services and two members who are past or present IHSS care providers.

The members of Stanislaus County's IHSS Advisory Committee are:

Jose Acosta, Consumer	Bonnie Cyphers, Provider
Kenny Brown, Consumer	Toni Hector, Provider
Rose Martin, Consumer	Madelyn Amaral, Advocate/Provider
Connie Muller, Consumer	Dwight Bateman, Advocate (DRAIL)
Ora Scruggs, Consumer	Jeff Lambaren, CEO's Office

This Committee has three major tasks:

1. To study and recommend to the Board of Supervisors an employer of record for IHSS Providers.
2. To provide guidance in establishing the employer of record selected by the Board of Supervisors.
3. To provide ongoing advice and recommendations regarding IHSS services to the Board of Supervisors and any agency charged with the delivery and administration of IHSS services.

The challenge for the IHSS Advisory Committee, the Board of Supervisors and the Community Services Agency is to develop an employer of record that protects the interests of the IHSS consumers, provides equity for the IHSS providers and performs its responsibilities in a fiscally responsible manner. The following recommendation is made keeping that balance in mind.

## II. RECOMMENDATIONS

The IHSS Advisory Committee has a strong commitment to promoting and implementing an IHSS mode that emphasizes and provides the opportunity for maximum consumer participation and control in the IHSS Program.

*The IHSS Advisory Committee considered both the PA option and the County Administration of the IP Mode in depth to arrive at their recommendation. The PA option had many attractive features, especially in the area of consumer participation that, at a future time, in a better budget climate could be considered an alternative to the present recommendation of County Administration of the IP Mode.*

The IHSS Advisory Committee looked at all aspects of the modes, not just consumer participation and control. In addition to consumer participation, the Committee also considered cost effectiveness, liability and the time needed to implement the Employer of Record portion of AB 1682.

The IHSS Advisory Committee's preference would have been to recommend a PA be the Employer of Record based upon consumer participation and control, however taking into account the following:

- The 2002/2003 state and county budget.
- The most cost effective option up until the time the \$7.11 IP wage cap is reached is a County Administration of the IP mode.
- The time involved in creating a PA is considerable and it is doubtful that a PA could be up and functioning by the deadline of 01/01/03.

The IHSS Advisory Committee recommends that the Employer of Record in Stanislaus County for the IHSS Program be the County Administration of the IP Mode.

The IHSS Advisory Committee's commitment to seeing a Public Authority Mode in Stanislaus County remains a priority. It is the Committee's intention to return to the Board of Supervisors with a recommendation of a PA once IP wages in the county reach \$7.11 per hour.

After careful consideration, the IHSS Advisory Committee makes the following recommendation for a unified series of County actions. These actions would represent the County's comprehensive response to the mandates of AB 1682.

The Board of Supervisors will direct that Stanislaus County change to the **County Administration of the IP Mode as specified in AB 1682. This action will address the issue of the employer of record.** The Board would direct that prior to January 1, 2003, the Chief Executive Officer (CEO) and the Community Service Agency (CSA) Director take the necessary actions to ensure that Stanislaus County is recognized as the employer of record of Stanislaus County IHSS Individual Providers for the purposes and provisions of statutory law regarding employer-employee relations. The CEO's and CSA Director's actions would include being ready by January 1, 2003, to conduct normal union management relations with any union representing or organizing IHSS Individual Providers.

This recommendation is conditioned on the concurrence of the CEO Risk Manager and the County Counsel with this action. The CEO Risk Manager and County Counsel must concur that a County Administered IP Program creates no new "special" or unreasonable county liability beyond that associated with the current operation of the IHSS Program.

The Committee recommends that the County continue the Supported Individual Provider mode enhancements in place in Stanislaus County. The Committee also recommends that the CSA be directed to work with the current Non Profit Organization providing IP registry service to monitor the quality of that service. That CSA and the registry vendor evaluate and if possible obtain proven software that matches IHSS Recipients and Providers in an advanced manner.

The Committee recommends that the Board of Supervisors establish the Homemaker Mode in Stanislaus County. This action will make Stanislaus County a mixed mode county. A limited use of the Homemaker Mode offers significant cost-effective enhancements to the IHSS program. These enhancements are in areas such as, emergency care, respite care, and the care of new clients. The recommended effective date of implementation of the Homemaker Mode is January 1, 2003.

The Committee recommends that the Board of Supervisors agree to revisit the issue of establishing a Public Authority once the IP wage cap of \$7.11 per hour is reached. The Board at that time should receive a report from this committee on the success of Public Authorities established under AB 1682, Public Authorities that existed prior to AB 1682, and the advisability of going forward with a Public Authority in Stanislaus County.

The Committee recommends that the Board adopt a position of advocacy for legislation that would require the State of California to treat equally all counties' IP wage rates or IP benefits arrived at through collective bargaining. This would require the State of California to participate in any wage or benefit arrived at in Stanislaus County through collective bargaining, as it would participate in any other county. In the opinion of the committee, this is an issue of "equal protection under the law" for residents of Stanislaus County.

*The Committee has received credible testimony that a County Administered IP Mode does not contain special or new unreasonable risks of liability for the county. The committee believes, on advice, that administering a county IHSS program in any fashion always poses great potential risk but that AB 1682 does not create new risks.*

### **III. RATIONALE**

#### **Employer of Record Options**

Six choices exist for consideration by the IHSS Advisory Committee in the selection of an employer of record for In-Home Supportive Services (IHSS) providers: Public Authority, Non-Profit Consortium, Homemaker Mode, Contract Mode, County Administration of the Individual Provider (IP) Mode and

Mixed Mode. Since AB 1682 requires that any county with 500 or more IHSS cases must offer the Individual Provider Mode the available options for Stanislaus County were a Public Authority, a Non-Profit Consortium, a County Administration of the IP Mode and Mixed Modes.

The IHSS Advisory Committee carefully studied the options of Public Authority, Non-Profit Consortium and County Administration of the IP Mode prior to arriving at their decision to recommend a mixed mode of the County Administration of the IP Mode and Homemaker Mode. The option of a Non-Profit Consortium was not considered a viable choice since no IHSS Non-Profit consortium exists in Stanislaus County or any other county and there is no statutory definition of a Non-Profit Consortium.

The IHSS Advisory Committee compared the options of Public Authority and County Administration of the IP Mode in the areas of advantages to consumers and providers or enhancements to the IHSS Program, costs, consumer participation, wages and liability issues.

### **Public Authority (PA)**

- A PA is a separate entity and is prohibited from being a County Agency or department. Prior to any negotiations for wages and benefits for IHSS Providers, a significant amount of money will be spent to set up this separate agency. Costs will include staffing and equipment for a new agency.
- A PA is required by AB 1682 to provide the following services:
  1. Employer of record for collective bargaining for all of the IHSS providers in the county
  2. Establish an IHSS provider registry and referral system
  3. Background checks of potential providers
  4. Provide for training for providers and consumers
  5. Ensure that requirements of the personal care option are met
  6. Perform any other functions related to the delivery of IHSS
- AB 1682 provides statutory language that appears to give some protection from liability claims against negligent providers.
- A PA is the “Employer of Record” for all of the IHSS providers in a county, even if the provider is not on the PA registry.
- The IHSS recipient retains the right to hire, fire and set working conditions for their IHSS provider.

### **County Administration of the IP Mode**

- The County is the “Employer of Record” of IHSS providers **solely for the purpose of bargaining for wages and benefits.**
- The IHSS recipient retains the right to hire, fire and set working conditions.

Stanislaus County currently provides an enhancement to the IP mode, the Supported IP option. Stanislaus County's enhanced IHSS program provides the following services:

- Registry service via a contract with the Center for Senior Employment.
- A local background check on providers who are on the Registry.
- Free training offered to all IP's.

## **FISCAL ANALYSIS:**

### **METHOD:**

Comparisons of ongoing annual costs for all of the employer of record options were developed by Accounting Analysts from the Community Services Agency. The IHSS Advisory Committee focused on the estimated annual costs associated with the PA, County Administration of the IP Mode and Mixed Mode.

### **ANALYSIS:**

Please see Attachment A for cost comparisons.

### **CONCLUSION:**

Upon review and consideration of the cost analysis developed by the Analysts, the IHSS Advisory Committee concluded that the County Administration of the IP Mode had the least impact upon county funding. The IHSS Advisory Committee also concluded that the Mixed Mode option of a County Administration of the IP Mode with the County Homemaker Mode provided a unique opportunity to provide a much needed enhancement that would directly impact the safety and health of the aged and disabled within our community at a reasonable cost.

## **Consumer Participation:**

AB 1682 guarantees on going consumer participation under both the PA and the County Administration of the IP Mode option. Even after the decision regarding the employer of record has been made, the IHSS Advisory Committee will continue to meet and make recommendations regarding the IHSS Program.

## **Community Forums:**

Community forums to address AB 1682 and the employer of record issue were conducted by members of the IHSS Advisory Committee in the following communities on the following dates:

Turlock      May 30, 2002

Oakdale        June 13, 2002  
Patterson      June 20, 2002

There were over 40 attendees at the Turlock forum and less than 15 attendee at each of the forums in Oakdale and Patterson. The majority of attendees appeared to be IHSS providers who expressed concerns about the low wages paid to providers.

### **Wages & Benefits:**

The potential for increased wages and benefits is significantly different for the PA and the County Administration of the IP Mode.

Legislation in 2001 allows full participation by the state, in IHSS provider wages and benefits for the PA counties up to \$9.10 per hour and the potential for full State participation in wages and benefits up to \$12.10 per hour in the future. The wages and benefits are funded by federal, state and county monies.

In counties that do not have a PA as the employer of record the State will not participate in wages and benefits above \$7.11 per hour.

If a County Administered IP county, through collective bargaining, agreed to pay providers above the \$7.11 per hour wage cap, the State would not pay any of their share of wages and benefits above \$7.11 per hour.

### **Liability:**

AB 1682 appears to provide the County and the State some statutory protection from liability if a PA is established as the employer of record. This issue has never been tested in court.

The liability protection granted a PA under AB 1682 has been in place for PA counties since 1993 when legislation approving the PA option was implemented.

There is no specific statutory protection from liability in AB 1682 if the County assumes the role of the employer of record. However, there is nothing to indicate that any of the other options available to meet the employer of record mandate in AB 1682 assumes additional liability, just because of the specific liability protection given to a PA in AB 1682.

The Stanislaus County IHSS Program's loss history goes back over 20 years and there is no instance where a recipient has sued a provider or Stanislaus County for negligent behavior.