

# In-Home Supportive Services Training

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Thursday, November 4, 2021

11:00 a.m. – 12:00 p.m.

# Speakers

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Justin Garrett, Senior Legislative Representative, CSAC

Eileen Cubanski, Deputy Executive Director, CWDA

Karen Keeslar, Executive Director, CAPA

Roshena Duree, Associate Legislative Representative, CSAC

# Agenda

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- I. Significant IHSS MOE Changes
- II. 2019 IHSS MOE Overview
- III. County and Public Authority Administration
- IV. IHSS Wages and Benefits
- V. IHSS Collective Bargaining
- VI. 1991 Realignment Caseload Growth Funding
- VII. Wrap Up and Questions

# **I. Significant IHSS MOE Changes**

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# Timeline of IHSS MOE Changes

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First County IHSS Maintenance of Effort (MOE) and Coordinated Care Initiative (CCI) implemented

2012-2014

CSAC negotiated new County IHSS MOE included in 2017-18 budget (SB 90); included mitigations to offset increased costs and reopener provision

June 2017

Jan. 2017

Governor Brown ended CCI and discontinued County IHSS MOE; proposed shifting IHSS costs to counties based on historical sharing ratio

# Advocacy for Sustainable Structure

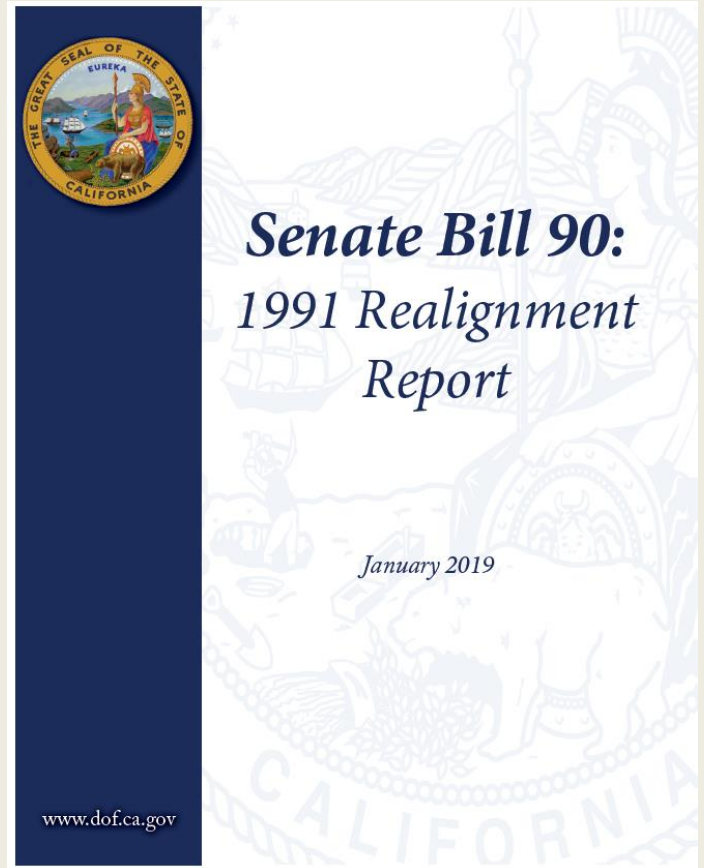
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- Significant and sustained county advocacy with the Administration and the Legislature for two years
- Three key advocacy points for counties:
  1. Significant and growing gap between the IHSS costs that counties are responsible for and the available revenues
  2. Negative impacts on other Realignment programs, including public health and mental health, due to IHSS cost pressures
  3. Additional revenues are needed to ensure the sustainability of IHSS and other critical services that counties administer on behalf of the state

# 1991 Realignment Report

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- Major finding that 1991 Realignment Revenues cannot support the costs of programs that are realigned
- Makes specific recommendations so that counties do not have to use significant county General Fund for IHSS costs and Health and Mental Health subaccounts can receive general growth



# Timeline of Major IHSS Changes

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Department of Finance released 1991 Realignment Report; Governor Newsom proposed new County IHSS MOE

Jan. 2019

Modifications to IHSS wages and bargaining provisions enacted in 2021-22 budget (AB 135)

July 2021

June 2019

New IHSS MOE enacted in 2019-20 budget (SB 80)



## **II. 2019 IHSS MOE Overview**

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# 2019-20 IHSS MOE Proposal

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- Followed recommendations of 1991 Realignment Report
- Significantly increased State General Fund (SGF) for IHSS costs by hundreds of millions of dollars per year and is ongoing and growing commitment
- Recognition that county IHSS costs were growing unsustainably by hundreds of millions of dollars per year and were negatively impacting other safety net programs

# 2019-20 IHSS MOE Provisions

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- Lowered County IHSS MOE base to \$1.56 billion
  - Would have been \$2.06 billion with partial offsetting revenue
- Reduced MOE inflation factor from seven to four percent
  - Does not include a provision to suspend or reduce if Realignment revenues decline
- Enacted changes to wages/benefits/bargaining
- County MOE amount only increases by four percent inflation factor and county share of local wage and benefit increases
- Funded IHSS administration costs through GF allocation

# 2019-20 IHSS MOE Provisions

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- Ended all of the offsetting revenue complications that existed with the 2017 MOE
- Stopped redirection of VLF growth funds to social services from health, mental health, and CMSP
- Ended State General Fund mitigation
- Returned to original method of caseload growth for IHSS and no longer utilized accelerated caseload growth

# IHSS MOE County Amounts Methodology

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- Developed by IHSS MOE Subcommittee of CSAC IHSS Working Group
- Consensus on methodology and county amounts by Subcommittee, CSAC officers, CAOs, Department of Finance and Department of Social Services
- Removed increases from end of SGF mitigation (\$330 million) and 7% inflation factor (\$134.8 million) in same county-by-county manner
- Provided every county with 2.01 percent decrease for remaining \$32.1 million

# IHSS MOE County Amounts Methodology

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2018-19 MOE after GF Mitigation	\$1.523 billion
2018-19 Annualized MOE Adjustments	\$72.4 million
Increase to MOE from end of State GF Mitigation	\$330 million
Increase to MOE from 7% Inflation Factor	\$134.8 million
<b>Total 2019-20 MOE Prior to Rebase</b>	<b>\$2.06 billion</b>
Remove GF Mitigation Increase	-\$330 million
Remove Inflation Factor Increase	-\$134.8 million
<b>Starting Point for Determining Rebased Amounts</b>	<b>\$1.595 billion</b>
2.01 Percent Decrease to Rebased 2019-20 MOE	-\$32.1 million
<b>Rebased 2019-20 MOE</b>	<b>\$1.563 billion</b>

# **III. County and Public Authority Administration**

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# Administration Funding Under IHSS MOE

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- County IHSS Administration and Public Authority (PA) Administration excluded from IHSS MOE beginning in 2019-20
- State General Fund (GF) provided to cover the total estimated nonfederal IHSS administrative costs – capped at amount appropriated in annual Budget Act
- No statutorily required county share of cost for County IHSS Administration or PA Administration
- BUT if county or PA spending exceeds capped allocation amount, then 100 percent county cost for nonfederal expenditures above county or PA allocation – this overspending does not count toward new IHSS MOE
- Annual state GF allocations for County IHSS Administration and PA Administration



# 2021-22 County IHSS Administration Funding

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- \$317.0 million state General Fund (GF) provided for County IHSS Administration for 2021-22 – this is \$14.5 million more than 2020-21
- Total County IHSS Administration funding covers estimated costs of the base plus estimated costs of new administrative activities imposed in recent years - funding for the base comprises the majority, \$314.4 million
- Increase in funding covers IHSS caseload growth for 2020-21 and projected for 2021-22
- County IHSS base administration costs are estimated based on a recently changed statewide budget methodology – that methodology accounts for caseload growth changes, but does not provide any funding increases for increases in counties' costs of doing business

# 2021-22 County IHSS Base Administration Allocation

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- Only the \$14.5 million of growth is subject to allocation methodology – every county's base funding amount for 2021-22 is equal to county's 2020-21 total nonfederal allocation
- One-half of the growth funding distributed to those counties that would have received higher allocations in 2021-22 based on the statewide budget methodology than they actually received in 2020-21
- The other half of the growth funding distributed to all counties based on the calculated amount of growth funding each county would otherwise have received based on the statewide budget methodology

# 2021-22 Public Authority Administration Funding

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- \$26.1 million state General Fund (GF) provided for Public Authority Administration for 2021-22 – this is \$1.2 million more than 2020-21
- Increase in funding covers IHSS caseload growth for 2020-21 and projected for 2021-22
- As with County IHSS Administration, Public Authority administration costs are estimated based on a recently changed statewide budget methodology – that methodology accounts for caseload growth changes, but does not provide any funding increases for increases in counties' costs of doing business

# 2021-22 Public Authority Administrative Allocation

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- Only the \$1.2 million growth funding was allocated; every Public Authority's base funding amount for 2021-22 is equal to the nonfederal allocation for 2020-21.
- Public Authorities are grouped by caseload size to compare the distribution of 2020-21 nonfederal funds. The amount of growth funding is distributed based on these county groupings to address funding disparities among the Public Authorities within each grouping and continue making some progress towards equity.
- All Public Authorities received growth in their allocation for 2021-22 compared to their 2020-21 nonfederal allocation.
- Public Authority approved administrative rate needs to be sufficient to draw down full GF allocation – if administrative rate is too low, county will pay 100 percent of any Public Authority administration costs in excess of the rate approved by the state (even if there is still available GF allocation).

# **IV. IHSS Wages and Benefits**

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# Timeline of Significant Wage and Benefit Provisions

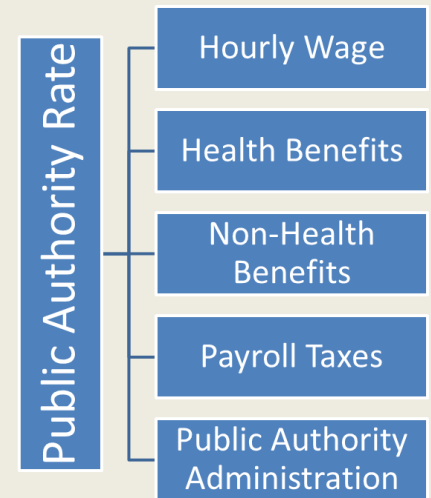
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2017 – SB 90	<ul style="list-style-type: none"><li>• Established wage supplement tool</li><li>• Established ten percent over three years tool</li></ul>
2019 – SB 80	<ul style="list-style-type: none"><li>• Enacted changes to sharing ratio and state participation cap that would occur in 2022</li><li>• Established health benefit premium MOE adjustment</li><li>• Determined state participation in non-health benefits</li></ul>
2021 – AB 135	<ul style="list-style-type: none"><li>• Eliminated changes to sharing ratio and state participation cap that would have occurred in 2022</li><li>• Extended use of ten percent over three years tool</li></ul>

# State Approval of the Public Authority Rate

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- State Approval is required for any change to the Public Authority rate.
- The process for submitting PA rate change requests has not changed.
- Increases to the hourly wage and benefits will not take effect until both CDSS and DHCS have reviewed and approved the Public Authority rate.
- County is required to pay the full cost for any increase in wages or benefits if the state does not approve the rate change.
- A request to change the Public Authority rate must be made at least 60 calendar days prior to the requested effective date of the change.
- Changes go into effect on first day of the month after state approval.



# State Participation Level

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- State participates in 65% of non-federal share of costs of wage and benefit increases that are locally negotiated, mediated, imposed, or adopted by ordinance
- State participates in all increases up to state participation cap for wages and health benefits
- Cap is \$1.10 above state minimum wage and remains \$1.10 above as state minimum wage increases (\$15.10 currently, rising to \$16.10 on January 1, 2022)
- Tool available for securing state participation in a limited amount of increases above the cap (ten percent over three years)



# Coalition Budget Proposal

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- Under 2019 IHSS MOE legislation, changes to the county share of costs for wage and benefit increases would have occurred on January 1, 2022
- This would have resulted in county costs for wage and benefit increases nearly doubling and would have stalled bargaining progress
- Our organizations sponsored a coalition budget proposal that included provider unions to prevent these changes from occurring and provide continuity for collective bargaining funding mechanisms
- Successfully included in AB 135

# AB 135 Wage and Benefit Details

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	What would have happened on Jan. 1, 2022 (SB 80)	What will occur on Jan. 1, 2022 (AB 135)
Sharing Ratio	65% county/35% state for wages, health benefits, and non-health benefits	35% county/65% state for wages, health benefits, and non-health benefits
State Participation Cap	Ended	Continue at \$1.10 above state minimum wage
Ten Percent Over Three Years Tool (State Participation Above the Cap)	Tool no longer effective as state would have participated in all increases but at lower rate	Extended with two new uses starting on or after Jan. 1, 2022

# Wage Supplement Overview

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- No changes since established by 2017 IHSS MOE legislation
- All wage increases can be done as wage supplement
- All counties can utilize the wage supplement whether at minimum wage, above minimum wage, or above state participation cap
- Can be used in conjunction with ten percent over three years/state participation above the cap tool

# Wage Supplement MOE Adjustment

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- Indicate wage increase is a wage supplement when submitting rate change
- County MOE will be adjusted for the county share of the wage increase
- County share determined by whether county is below the state participation cap and whether county is utilizing tool to secure state participation above the cap

# Wage Supplement Subsequent Applications

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- Wage supplement subsequently applied when state minimum wage equals or exceeds county wage absent the wage supplement amount
- No new MOE adjustments for subsequent applications
- No limit or end date on subsequent applications

# Wage Supplement Example #1

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County at minimum wage

	January 1, 2021	January 1, 2022
State Minimum Wage	\$14.00	\$15.00
County Provider Wage	\$14.00	\$15.00
Wage Supplement	\$0.50	\$0.50
Total Amount IHSS Provider Paid	\$14.50	\$15.50

# Wage Supplement Example #2

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County above minimum wage

	January 1, 2021	January 1, 2022
State Minimum Wage	\$14.00	\$15.00
County Provider Wage	\$14.25	\$15.00
Wage Supplement	\$0.75	\$0.75
Total Amount IHSS Provider Paid	\$15.00	\$15.75

# Ten Percent Over Three Years/ State Participation Above the Cap

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- Tool established by 2017 IHSS MOE legislation
- Can be utilized in conjunction with wage supplement
- County must indicate using tool when submitting rate change
- All counties can utilize once total of wages and health benefits reaches state participation cap
- Allows for state participation of 65% of the non-federal share of costs for increases up to a maximum ten percent amount over a three-year period



# Ten Percent Over Three Years/ State Participation Above the Cap

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- Ten percent amount can be used at one time or over multiple increases
- Ten percent amount is for wages and health benefits
- County responsible for any amount of increase above ten percent amount within that three years
- Ten percent amount is ten percent of total of county wages and health benefits at time the tool is used

# Ten Percent Over Three Years/ State Participation Above the Cap

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- Two uses allowed for three-year periods that begin prior to January 1, 2022 per 2017 IHSS MOE legislation
- All counties can utilize the tool for two additional three-year periods that begin on or after January 1, 2022 per AB 135
  - It does not matter how many times a county utilized tool prior to January 1, 2022
- A subsequent three-year period can only begin after a prior three-year period has ended

# 10% Over 3 Years Example #1

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County below state participation cap

State Participation Cap in 2021	\$15.10
County Wage in 2021	\$14.00
County Health Benefits in 2021	\$0.75
County Total	\$14.75
Amount Available for State Participation from Being Under the Cap	\$0.35
Amount Available for State Participation from Ten Percent over Three Years Tool	\$1.51

# 10% Over 3 Years Example #2

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County above state participation cap

State Participation Cap in 2022	\$16.10
County Wage in 2022	\$16.50
County Health Benefits in 2022	\$0.50
County Total	\$17.00
Amount Available for State Participation from Ten Percent over Three Years Tool	\$1.70

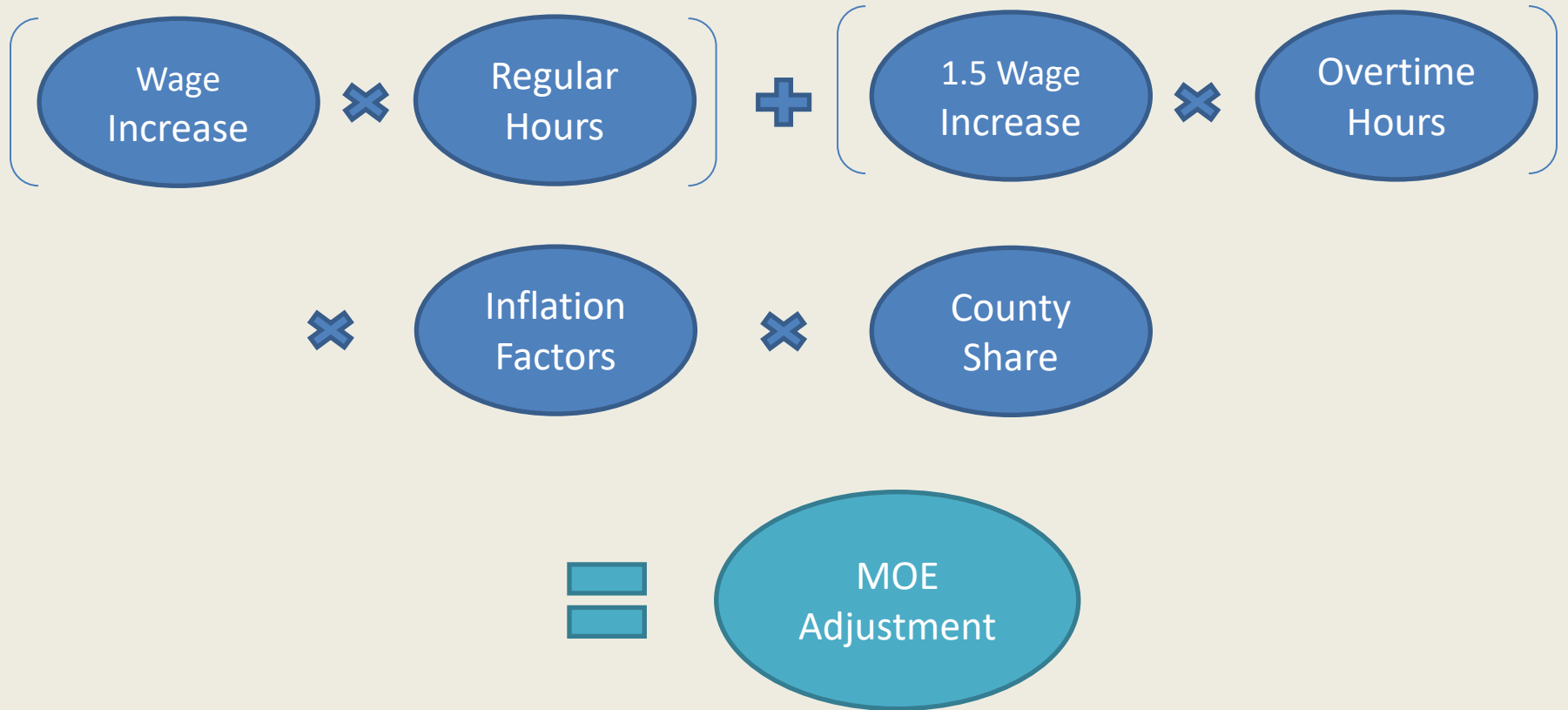
# MOE Adjustments

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- MOE adjustment calculations use same formula as 2017 MOE
- Applies to all wage increases including wage supplements any increases done with ten percent over three years tool
- 2019-20 paid IHSS hours will be used
- For increases after first year, applicable inflation factors will be applied to 2019-20 hours
- Cost for overtime hours for wage increase is 1.5 times increase amount
- County share becomes permanent addition to county MOE and subject to annual inflation factor

# MOE Adjustments Calculation

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# Health Benefits

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- Under the IHSS MOE, if a county locally negotiates, mediates, imposes, or adopts by ordinance an IHSS provider health benefit increase, then the county will have an IHSS MOE adjustment for the county's share of the cost of the health benefit increase
- The state pays 65 percent of the nonfederal costs of a health benefit increase up to the state participation cap; a county will pay for an increase to IHSS provider health benefits above the state participation cap

# Health Benefit Premium Costs

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- The IHSS MOE also includes an MOE adjustment for increased IHSS provider health benefit premium costs
- The state pays 65 percent of the nonfederal costs of a health benefit premium increase
- Health benefit premium cost increases are outside of the state participation cap (i.e., there is no cap on the amount of the premium increase in which the state will participate)
- MOUs or collective bargaining agreements that were submitted to the California Department of Social Services prior to July 1, 2019 are “grandfathered in” with no IHSS MOE adjustments for health benefit premium increases until the MOU or collective bargaining agreement expires



# Non-Health Benefit Costs

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- ACL 21-29 contains the most recent guidance from CDSS about non-health benefits and includes information on which benefits are eligible for state and/or federal financial participation.
- CDSS has the authority to determine that the state will not participate in certain non-health benefits but must do so in consultation with CSAC.
- The county IHSS MOE is adjusted one-time by 35% of the nonfederal cost of approved non-health benefit increases.
- Non-health benefits are not included in the state participation cap.
- Counties/PAs receive reimbursement for non-health benefit costs through the PA claim (SOC 448). The state will not reimburse claimed costs that exceed the approved non-health benefit rate.

# Allowable Non-Health Benefits

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State and Federal participation allowed  
MOE adjusted for 35% of the annualized nonfederal new costs  
Claim as a service cost on PA claim (like health benefits)

Job Related Safety Equipment (e.g. gloves, masks, sanitizer)

Transportation Vouchers

Life Insurance

Tuberculosis Testing

Vacation/Holiday Pay

*Note: CDSS cannot currently implement vacation/holiday pay benefits through CMIPS and the county would have to manually administer the benefit until CMIPS changes are made*

# Non-Allowable Non-Health Benefits

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## State and federal participation not allowed

Paid Union Release Time

Pensions

*Exception for any county currently providing a negotiated pension benefit identified in their current collective bargaining agreement*

Provider Training Stipends

*Exception for county PAs that included stipends for provider training in collective bargaining agreements negotiated between March 22, 2018 and March 11, 2021*

# **V. IHSS Collective Bargaining**

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# Timeline of Significant Bargaining Provisions

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2017 – SB 90	<ul style="list-style-type: none"><li>• Enacted impasse procedures with sunset date</li></ul>
2019 – SB 80	<ul style="list-style-type: none"><li>• Reenacted impasse procedures with sunset date</li><li>• Enacted Realignment withholding with sunset date</li></ul>
2021 – AB 135	<ul style="list-style-type: none"><li>• Reenacted impasse procedures</li><li>• Reenacted modified Realignment withholding</li></ul>

# Procedures to Resolve Differences in Collective Bargaining

## Mediation

- Either party can request mediation from State Mediation & Conciliation Services
- Mediation must take place no later than 15 days after the request is submitted
- Can be waived by mutual consent

## Factfinding

- If no agreement is reached in mediation or mediation is waived, the parties move on to factfinding
- The factfinding panel must prepare a report within 30 days of being appointed by the Public Employment Relations Board

## Release of Factfinding Report & Board of Supervisors Hearing

- If no agreement is achieved in post factfinding mediation, the BOS is required to hold a public hearing on the factfinding report within 30 days of the release of the report.

## Post Factfinding Mediation

- Either party can request post factfinding mediation after the report is prepared
- Post factfinding mediation must be held within 15 days from the date request is submitted
- Factfinding report is not made public if the parties proceed to post factfinding mediation.

# Realignment Withholding Overview

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- AB 135 contains a provision for a one-time Realignment withholding that could potentially apply to counties without a collective bargaining agreement in place
- CSAC opposed this provision given the significant progress on reaching new collective bargaining agreements and hundreds of millions of dollars in county investments for IHSS wage and benefit increases in recent years
- Were successful in ensuring the withholding is one-time

# Realignment Withholding Overview

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- Effective, October 1, 2021, all of the following must occur prior to any withholding:
  1. County and provider union complete full mediation and factfinding process
  2. Factfinding recommendations are more favorable to union
  3. Expired IHSS collective bargaining agreement
  4. No agreement within 90 days after release of factfinding recommendations
- Any county that met #1-#3 prior to June 30 had 90 days to reach agreement prior to withholding on October 1, 2021



# Realignment Withholding Details

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- Withholding is seven percent of County 2020-21 MOE
- Adjustment to social services subaccount base
- Withholding amount distributed as one-time general growth to other subaccounts
- Social services subaccount base restored following year

# PERB Process for Withholding

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- PERB must receive written request from union, who also must notify the county
- PERB will make a determination if all four conditions were met
- This includes evaluating if factfinding recommendations are more favorable to union
- PERB is required to notify county, union, Department of Finance and Controller of a withholding

# **VI. 1991 Realignment Caseload Growth Funding**

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# Overall Social Services Caseload Growth – Timing

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- Caseload growth for a fiscal year is calculated based on expenditures from the prior fiscal year compared to expenditures from the two-years prior fiscal year
- Caseload growth for a fiscal year is paid in the following fiscal year
- Example: 2020-21 caseload growth is 2019-20 expenditures over 2018-19 expenditures; 2020-21 caseload growth is paid in 2021-22

# IHSS Costs in Overall Social Services Caseload Growth

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- The IHSS costs included in the social services caseload growth calculation will only include IHSS services costs
- IHSS administration costs have no required county share of cost; therefore no county costs to include in caseload growth calculation
- For the 2019-20 and 2020-21 calculations, IHSS costs were treated differently in the caseload growth calculation – IHSS costs were added to the net caseload growth amount calculated for all the non IHSS programs
- Beginning with the 2021-22 caseload growth calculation, IHSS costs will be included in regular social services caseload growth in same manner as other social services programs

# 2020-21 Caseload Growth

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- \$29.3 million in caseload growth owed for IHSS from 2019-20 (\$60.8 million total caseload growth owed for all programs)
- \$35.9 million in caseload growth for IHSS for 2020-21 (\$53.0 million total caseload growth for all programs)
- Payments for both fiscal years will be made soon
- IHSS caseload growth costs for both years reflects only cost increases due to wage and benefit increases for those counties that negotiated increases – beginning with the calculation for 2021-22 the costs of the annual four percent inflator will be included

# **VII. Wrap Up and Questions**

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# Resources

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- CSAC website – [www.counties.org/ihss-moe](http://www.counties.org/ihss-moe)
  - [IHSS Wages and Bargaining Brief](#)
  - [Overview of 2019-20 MOE](#)
  - [2019-20 IHSS County Amounts Methodology Brief](#)
- CDSS Guidance
  - IHSS MOE and AB 135 guidance ([ACL 21-132](#))
  - Non-health benefits guidance ([ACL 21-29](#))
  - Final 2020-21 MOE amounts ([CFL 20/21-20](#))
  - 2021-22 County and PA Admin allocations ([CFL 21/22-37](#))
- Department of Finance
  - [1991 Realignment Report](#)
  - [2019-20 Caseload Growth](#) and [2020-21 Caseload Growth](#)



# Questions

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