IHSS Coordinated Care Initiative: Transition to Statewide Bargaining and County MOE Frequently Asked Questions

As part of the 2012-13 state budget, the Legislature and Governor approved major policy changes within the Medi-Cal program aimed at improving care coordination, particularly for people on both Medi-Cal and Medicare. Also approved as part of this Coordinated Care Initiative (CCI) are a number of changes to the In-Home Supportive Services (IHSS) program, including state collective bargaining for IHSS, creation of a county IHSS Maintenance of Effort (MOE), and creation of a Statewide Authority. The following are Frequently Asked Questions (FAQs) about the IHSS changes contained in SB 1036 (Senate Committee on Budget and Fiscal Review, Chapter 45, Statutes of 2012) and AB 1471 (Assembly Budget Committee, Chapter Number 439, Statutes of 2012), the follow-up clean-up measure.[1]

When will IHSS collective bargaining transfer to the state? SB 1036 and AB 1471 specify that collective bargaining will transfer to the state once the director of the Department of Health Care Services certifies that enrollment into CCI has finished, but no sooner than March 1, 2013. The transfer date is referred to as the "county implementation date". *[Welfare & Institutions Code §12300.7 (a)]* CCI enrollment in the initial counties is expected to conclude no sooner than March 1, 2014.

Which of the 58 counties are affected by the transfer? Eight counties: Alameda, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Mateo, and Santa Clara are part of the initial transfer, and while the Legislature has stated its intent to expand the CCI to 58 counties, further legislation is necessary to complete the transfer.[2]

Who will be the IHSS employer of record? The state will form a joint powers authority (JPA), the California In-Home Supportive Services Authority, to be the employer of record. The JPA will be comprised of two county officials appointed by the Governor, the Director of the Department of

[1] SB 1008 (Chapter 33, Statutes of 2012) is the companion bill that contains non-IHSS elements of the Coordinated Care Initiative.

[2] Welfare & Institutions Code 14132.275 (g) establishes the limit of 8 CCI pilot counties, however the specific counties are not designated in the statute. The 8 counties are specified in the state's Transition Plan and CMS/MOU.

Social Services, the Director of the Department of Health Care Services, and the Director of the Department of Finance. *[Government Code §6531.5]*

What happens to existing Memoranda of Understanding (MOU) in the 8 counties? A locally bargained MOU or contract that is in place on the county implementation date remains in effect until it would otherwise expire – unless the union and the Statewide Authority mutually agree to reopen the contract. The state inherits the responsibility to maintain the existing contract until a new contract is in place. After the county implementation date, once a locally bargained MOU or contract expires, the Statewide Authority and the union begin negotiations on a new agreement. *[Government Code §11011 (b)]*

Can the state make changes in IHSS provider wages or benefits? The state cannot reduce wages or benefits for IHSS workers in counties where the state inherits an MOU that is not expired. In counties where the local collective bargaining contract has expired, the state is required to meet and confer with the union but is not precluded from unilaterally imposing new terms and conditions (including lower wages or benefits) after completing impasse procedures. *[Government Code §11011 (c)]*

Will the collective bargaining process change in counties that are not part of the CCI pilot? The requirement for counties to act as or establish an employer of record for IHSS providers has not changed, except in the CCI pilot counties. *[Welfare & Institutions Code §12302.25 (a)]*

Will IHSS wages and benefits be the same in the 8 counties? That will depend on the outcome of collective bargaining between the state and the unions. The law permits the state to have different collective bargaining agreements in each county. *[Government Code §110010 (d)]*

Will counties continue to negotiate new MOUs until the transfer? All counties are required to meet and confer pursuant to the Meyers Milias Brown Act and are bound by the terms of their existing contracts until the responsibility to bargain transfers to the state. In addition to the current authority to review the economic terms of a local agreement, once a county begins the transition to state bargaining, AB 1471 gives the state authority to review the non-economic terms of labor contracts negotiated between the eight counties and representatives of IHSS recipients. If the state is concerned with a contract provision approved prior to the transfer of bargaining responsibility to the state, the state is authorized to contact the labor representative, no more than 180 days after the review, to directly to discuss the concerns. The state and the labor representative may negotiate a separate agreement regarding the non-economic term and that agreement would take effect after the county implementation date. If no agreement is reached, the non-economic term becomes inoperable after the county implementation date. All terms to which no objection is made are deemed accepted by the state. *[Government Code §11011]*

Does the state have authority to approve or deny local collective bargaining agreements? No; there can only be one employer for purposes of collective bargaining. When the local agency is responsible for collective bargaining, the state has no authority or role in the ratification of the collective bargaining agreement. However, the state can reject the Public Authority rate package.

What happens if the state does not approve the rates or other economic terms of a local agreement? The state continues to have the authority to review and approve the rates for wages, health benefits, and other economic terms of a local agreement. If the economic terms of the contract are not approved by the state, the county is required to pay the entire non-federal share of the cost increase. Some counties have included language in their labor contracts to ensure that if the state does not approve the rates or other economic terms, then the contract does not take effect and the county is not required to implement the related rate increases. Counties may wish to consider this issue when negotiating contracts prior to the transfer to the state.

What happens to the local public authorities? With the exception of collective bargaining, the eight counties will continue to administer the other functions of the IHSS program locally, including maintenance of the registry, background checks, and provider training. The eight counties may continue these functions through a public authority, bring the services into a county agency, or contract with another entity. Non-demonstration counties must continue to meet the requirements of Welfare and Institutions Code §12302.25 to act as or establish an employer of record for IHSS. The non-demonstration counties also continue to have immunity under the Welfare and Institutions Code from liability related to implementing the employer of record mandate if the county has a public authority or a nonprofit consortium. The eight counties are provided with immunity from liability for negligence or intentional torts of the individual provider once the counties transition the collective bargaining responsibilities to the State Authority. *[Welfare & Institutions Code §12300.5]*

How does the County IHSS MOE interact with the collective bargaining transfer? All 58 counties begin paying the MOE on July 1, 2012, regardless of the date of transfer of collective bargaining. The MOE replaces the county share of cost for IHSS, as long as the Coordinated Care Initiative (CCI) and state collective bargaining are in place. The MOE is based on each county's IHSS expenditures in 2011-12. Any negotiated wage and benefit increases for IHSS providers approved after July 1, 2012 and before the transfer of collective bargaining will increase the county MOE. However, once the transfer of collective bargaining occurs, the county MOE cannot be increased due to state negotiated wage and benefit increases. *[Welfare & Institutions Code 12306.15]*

How is the MOE calculated? The MOE base expenditures are based on each county's IHSS expenditures in 2011-12. The IHSS expenditures include IHSS county administration and public authority administration, defined as the amount actually expended by each county in fiscal year 2011-12, except that for administration the MOE base shall include no more or no less than the full match for the county's allocation from the state.

The MOE would only be adjusted for the following reasons:

- A county negotiates an increase in IHSS provider wages and/or benefits after July 1, 2012 and before the state takes over bargaining.
- An inflation factor of 3.5%. The inflation factor is applied annually beginning July 1, 2014.

In years when 1991 Realignment revenues decline (year-over-year negative growth), the inflation factor is zero. The Department of Finance shall provide notification to the appropriate legislative fiscal committees and the California State Association of Counties by May 14 of each year whether the inflation factor will apply for the following fiscal year. *[Welfare & Institutions Code 12306.15]*

How do the CFCO savings interact with the MOE and possible wages and benefits increases under the MOE? California's Community First Choice Option (CFCO) state plan amendment was approved by the federal government on September 4, 2012 and will result in enhanced federal financial participation of six percentage points for IHSS services (but not towards IHSS Administration nor PA Administration). This will result in a lower share of cost that will be applied to both State and county IHSS expenditures from December 1, 2011 through June 30, 2012. The savings will reduce the counties' expenditures for the 2011-12 fiscal year for those seven months, and thus will reduce the county's MOE base. Although CFCO was approved, the State continues to negotiate with the federal government to determine the total number of IHSS clients who will be in CFCO, and the commensurate savings that will result to counties. It is not known how long this process will take, nor when counties will know their exact level of savings resulting from CFCO.

What will happen with health benefits for IHSS providers? As stated above, the Statewide Authority will inherit the existing contracts for wages and benefits in the eight counties. State officials and labor representatives agree that issues around health benefits will be difficult to resolve. Public Authorities have arrangements for health benefits that vary widely. Additionally, the state will have to determine how federal health reform interacts with the providers (will they be eligible for the Exchange or Medicaid?). Once a locally bargained MOU or contract expires, the Statewide Authority and the union begin negotiations on a new agreement – which could include changes to health benefits.

What are the "poison pills"? There are two poison pills related to the CCI legislation.
SB 1036 contains a poison pill that would allow the state to end the CCI. If the CCI is halted, state collective bargaining would return to counties and the MOE would revert to the pre-existing 35% nonfederal county share of cost. The MOE would end at the end of a fiscal year.

Under this poison pill, if the federal government does not provide by February 1, 2013 federal approval – or notification indicating pending approval – of a mutual rate setting process, shared federal savings and a six-month enrollment period in the CCI, the act becomes inoperative on March 1, 2013. However, the demonstration could continue if these provisions are not met but the Department of Finance determines, in consultation with the Director of Health Care Services and the Joint Legislative Budget Committee, that an alternate methodology would result in the same level of ongoing savings. SB 1036 includes a methodology for determining shared federal savings.

SB 1008 contains a second relevant poison pill; this measure contains much of the detail on the CCI. SB 1008 allows the director of the Department of Health Care Services – after consulting with the Director of Finance, stakeholders and the Legislature – to halt all or part of the CCI at any time. This

determination can be made if the director determines the quality of care for managed care beneficiaries, efficiency or cost-effectiveness of the program would be jeopardized. If the CCI is halted, state collective bargaining would return to counties and the MOE would revert to the pre-existing share of cost. The MOE would end at the end of a fiscal year.

There is no specificity in the trailer bills about how the MOE would revert back to a share of cost. Likewise, there is no specificity about how the CCI would end. Outstanding questions include:

- Would counties have to pay for state-negotiated changes in wages and benefits under a reversion to a share of cost?
- How does Proposition 1A interact with a change from a MOE to a share of cost?
- Once the director of DHCS triggers the poison pill, can it be executed without additional legislation?

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