



**Overview of In-Home Supportive
Services (IHSS)
Senate Budget - Sub 3 Committee
April 28, 2016**

California Department of Social Services



IHSS

The IHSS Program has a long rich history of service and has been in operation for over 40 years. It is the largest program of its kind in the United States.

- » Key cornerstone of IHSS: It affords consumers the ability to remain safely in their homes/communities in lieu of institutionalization.

California is a leader nationwide in providing home and community based services. It is one of only three states that has successfully “rebalanced” long-term supports and services to home and community based care.

- » CA spends over 54% on long term care costs for home and community-based services (HCBS).
- » IHSS represents over 95% of these services.

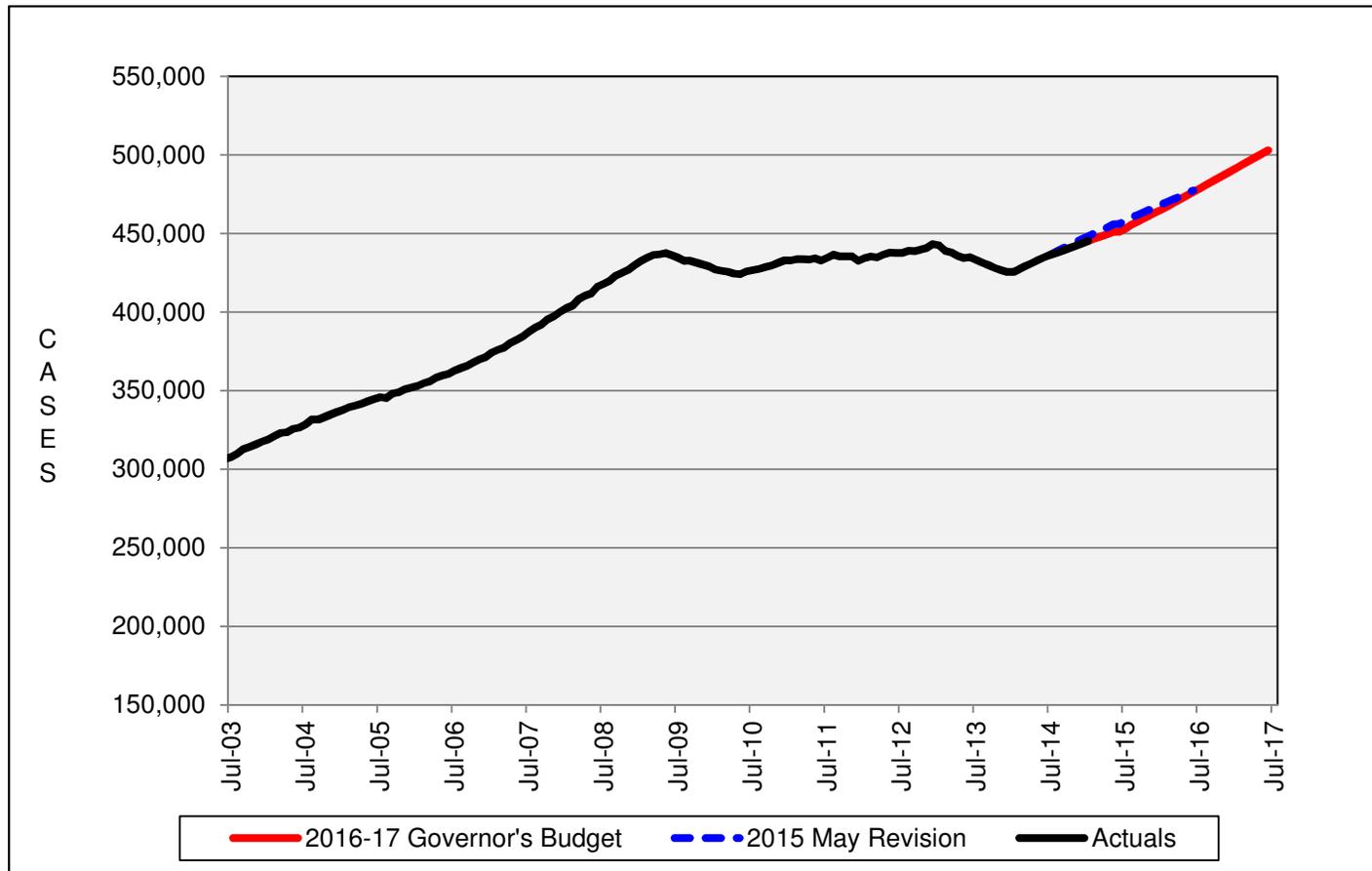


IHSS (continued)

- » FY 15/16 estimates approximately 463,537 IHSS consumers who receive an average of 101.9 hours per month at an average monthly cost of \$1,291.96 (absent the cost impacts of overtime)

- » These IHSS consumers:
 - 16% are 85 years of age or older
 - 41% are ages 65-84
 - 36% are disabled adults
 - 7% are under the age of 21

IHSS (continued)



The 2016-17 Governor's Budget projects the average monthly caseload for FY 2015-16 will increase 4.5 percent from the previous FY and the caseload for FY 2016-17 will increase by 5.7 percent from FY 2015-16. The 2016-17 Governor's Budget projections are increasing at a slightly slower rate compared to past years.



IHSS Budget

Today -

- 99% of the IHSS Program receives federal funding of
 - * 50% for the Personal Care Services Program (PCSP) (1993) and IHSS Plus Option (IPO) (2010)
 - * And 56% for the Community First Choice Option (CFCO) (December 2011)
- Less than 1% of the IHSS program remains in the IHSS Residual Program which is State and County Funded (65/35)
- As of July 1, 2012, county participation became a fixed maintenance of effort (MOE) level of spending



IHSS Budget

COST ASSUMPTIONS TO CALIFORNIA:

- Implementation of the U.S. Department of Labor regulations that require overtime pay for domestic workers effective February 1, 2016 is estimated to cost \$942 million (\$443.8 million GF) in FY 15-16.
- Baseline cost estimates for FY 16-17 reflect an increase of \$396.9M in funding due to increases in caseload growth, higher cost per hour and higher hours per case.
- Based on these estimates, the estimated total IHSS budget for FY 16-17 is \$10.4 billion.



IHSS and FLSA

Application of the Fair Labor Standards Act (FLSA) to Domestic Services

The U.S. Department of Labor (DOL) published the Final Rule on October 1, 2013. A series of court actions subsequently delayed its effective date.

The Final Rule:

- Prohibits third-party employers from claiming exemptions from minimum wage and overtime compensation requirements.
 - ✓ Third-party employers are employers other than the individual receiving services or his/her family or household.
- Narrows the definition of “companionship services.”
- California implemented the Final Rule effective February 1, 2016.



IHSS and FLSA

2014 State Legislation Regarding Overtime

» SB 855

- Established provider **maximum weekly work hours** of 66 (61, under the prior 7 percent reduction).
- Allowed **travel time** up to 7 hours per week for certain providers.
- Authorized a new service known as "**wait time**".
- Established a **three-month transition period** to learn the new rules (no violations are established, and counseling and training occur, as well as assistance with multiple providers)
- Required an IHSS provider to inform recipients of the number of hours he/she is available to work for that recipient. **Workweek agreements** were established for this purpose.

» SB 873

- Allowed an IHSS recipient with a single provider to request his/her provider to work in excess of the recipient's weekly authorized hours with county approval if the additional overtime hours of work that result from the request do not exceed the total number of hours that the provider would be authorized to work in that month. This is known as "**flexibility**" or "exceptions".

OVERTIME IMPLEMENTATION

All-County Letters (ACLs) / Mailers / Notices

- October 15, 2015: Issued mailers/notices for all IHSS recipients and providers to **inform** them of the overtime, workweek, and travel time requirements.
- December 1, 2015: ACL 15-97 was issued to inform counties of FLSA implementation as of **February 1, 2016**. Additionally, mailers were sent to providers & recipients early December 2015 through January 2016.
- Dec. 17, 2015: ACL 14-99 issued to provide counties with detailed instructions on how to enter information on the new FLSA screens in CMIPS. Additionally, CDSS conducted webinars to walk through the screens with the counties.
- January 7, 2016: ACL 16-01 issued to provide counties with instructions, including the policies and procedures for implementation of the overtime and workweek requirements. These included the revised forms and notices.
- January 21, 2016: ACL 16-07 issued to provide counties with information for implementing **Exemption 1** (Live-In Family Care Provider Overtime Exemption).
- Jan. 22, 2016: ACIN I-08-16 was issued to provide counties with information and instructions on modified screens and forms needed in Case Management, Information and Payrolling System II (CMIPS II) beginning February 1, 2016, with regard to the implementation of SB 855 and SB 873.



OVERTIME IMPLEMENTATION

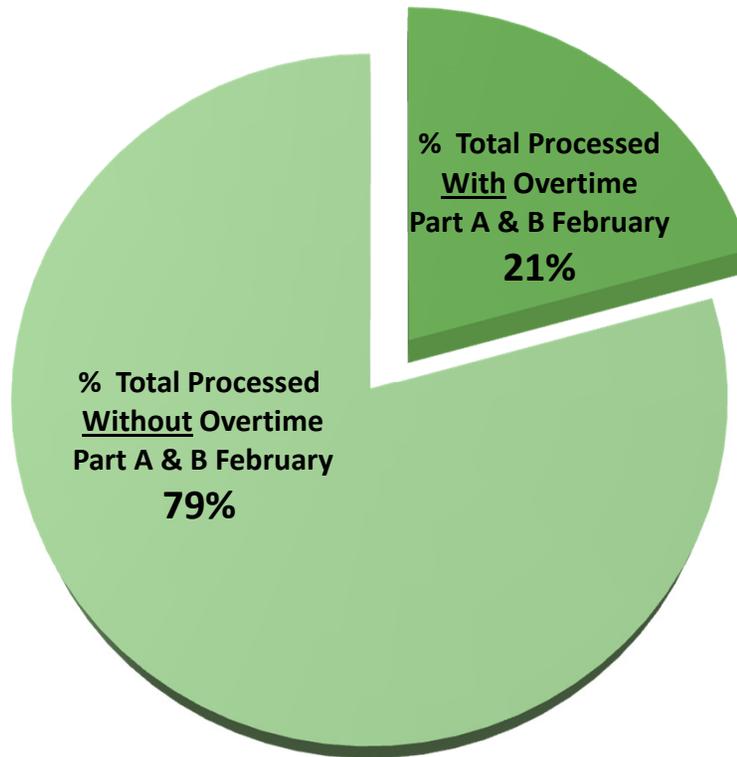
ACLs/Mailers/Notices

- January 18, 2016: Notices were mailed to all recipients and providers identified in CMIPS as potentially eligible for Exemption 1.
- March 14, 2016: ACIN I-20-16 was issued that provided information on modifications made to the IHSS Timesheet and Travel Claim Form, and provided guidance on the **travel claim form** payment process.
- April 1, 2016: ACL 16-22 was issued to provide counties with information for implementing Overtime **Exemption 2**, for extraordinary circumstances.
- April 19 & 20, 2016: CDSS conducted two webinars to review the new screens in CMIPS related to travel claim payment and processing.
- April 22, 2016: ACL 16-36 issued to provide counties with specific information and instructions related to the implementation of violations of the workweek and travel time limitations.
- April 22, 2016: An Informational Notice was sent to counties making available lists with information on providers who returned requests for Exemption 1.

February IHSS Timesheets Processed Overtime Percentage For Month of Feb. 2016

Overtime Total Paid
\$117,531,355.21

Overtime Total Hours
9,402,508



OVERTIME IMPLEMENTATION TIMELINE

ACLs/Mailers/Notices In Process

- » April 18, 2016: Released draft ACL providing information regarding the modifications made to the Case Management, Information and Payrolling System (CMIPS), including the overtime violations business process, new/modified screens for violations, exemptions from workweek limitations, and management of recipient flexible hours.
- » April 22, 2016: Released draft ACL with information regarding modifications to the Case Management, Information and Payrolling System (CMIPS) to implement and manage workweek limitations and travel time violation disputes and the State Administrative Review (SAR) process for In-Home Supportive Services (IHSS) and Waiver Personal Care Services (WPCS)
- » Collaboration with counties and labor organizations continues on additional training, and education for county staff, providers, and recipients, and on other job aids such as flow charts of various processes.

Contextual Facts about IHSS

There were approximately 436,000 active providers at the end of March 2016, up from the 404,000 providers who received notices in early December 2015.

Payroll is issued for two-week periods, and over one million paychecks are issued through CMIPS II each month. (A provider may have a timesheet for each of multiple recipients.)

For many years, roughly 35,000 errors have been made each month on timesheets that require human effort to resolve. These errors can include failing to sign the timesheet, damaged paper, illegible writing, claiming hours worked beyond the authorized hours of a recipient, writing outside the boxes, and so forth. Once resolved, these timesheets are paid after any necessary error corrections.

Last year in each month, roughly 15,000 providers worked more than 300 hours. Because the 66 hours per week provider limitation is based upon the IHSS recipient's maximum monthly authorized hours total of 283, all 15,000 providers working more than 300 hours now must have a workweek agreement.

Approximately 70,000 workweek agreements are recorded in CMIPS II, reflecting how providers are meeting the needs of his/her IHSS recipient(s). These agreements help a provider serving multiple recipients, and recipients served by multiple providers.

FLSA Exemption Policies

The United States Department of Justice requires states implementing the Final Rule to provide **individualized exemptions to provider limitations**, for Olmstead and Americans with Disabilities Act (ADA) purposes. California has two exemptions for these situations:

- Live-In Family Care Providers (Exemption 1)

An exemption to the weekly limitations under the FLSA for providers serving multiple live-in recipients. This includes providers who, as of January 31, 2016, are live-in family care providers (including, parent, grandparent, adoptive parent, step-parent or legal guardian), residing in the home and caring for two or more disabled minor or adult children or grandchildren for whom they provide IHSS. An IHSS provider who meets these requirements may work up to 90 hours per workweek, not to exceed 360 hours per month. This exemption is expected to apply to approximately 1,200 IHSS providers.

FLSA Exemption Policies

- Extraordinary Circumstances (Exemption 2)

The provider must work for two or more IHSS recipients whose circumstances put them at serious risk of placement in out-of-home care. All recipients that the provider works for must meet at least one of the following conditions:

- A. Have complex medical and/or behavioral needs that must be met by a provider who lives in the same home as the recipient.
- B. Live in a rural or remote area where available providers are limited and as a result the recipient is unable to hire another provider.
- C. Be unable to hire a provider who speaks his/her same language in order to direct his/her own care.

The provider need not live in same home as the recipient(s) to qualify for Exemption 2 if the recipients meet conditions B and/or C above.

Potential Exemption 2 situations are being identified to the CDSS by counties as they work through identified timesheet errors and workweek agreements.

- ❖ The CDSS makes final determinations on all exemption requests.

FLSA Timesheet Errors

If the program's FLSA rules are not followed, there is a statutory four-step process for education, training, assistance, and error correction. This process was designed specifically to: (1) protect the health and safety of recipients beyond the statutory three-month transition period, by avoiding abrupt changes in a provider's availability; and (2) in recognition of FLSA's complexity.

At each step in the process, counties have time to review errors and correct them before a notice is issued. Counties and labor organizations receive weekly lists of providers with errors on their timesheets for this purpose. These notices will be sent to both the provider and his/her recipient. They then may contact the county as well to further identify errors for any appropriate corrections. The four steps are:

1. Warning letter from the county. County staff shall be available to assist the providers to understand the workweek, overtime, and travel requirements; correct any errors that are identified; assist with arrangements for an additional provider(s) whenever possible; or proceed with an exemption request, as applicable.

FLSA Timesheet Errors

2. Formal notice of second error. Counties are required to work with the provider and/or recipient to avoid the error, including adjusting schedules, finding additional providers, or identifying potential exemption situations. A provider has a one-time option to complete training and return the training completion certification to cancel the violation.
3. Provider program eligibility is suspended for 90 days. This error notice can be disputed at the county level – and also disputed at the State level.
4. Provider program eligibility is terminated for one year, and the provider must re-enroll thereafter. This error notice can be disputed at the county level – and also disputed at the State level.

*During this whole process, providers continue to work and be paid until a final decision has been made.

FLSA Statistics – as of 4/22/2016

Timesheets & Travel Claim Forms:

- Timesheets Processed – Feb. 2016
 - 1,014,055 total timesheets processed – represents 97% of all possible timesheets
 - 21% of timesheets were paid overtime
 - 98 hours - Average number of OT hours claimed by providers

An average of 97% of total timesheets continue to be processed successfully each month. The most common reasons for the 3% are due to timesheets being too damaged to process or photocopied timesheets were submitted.

- Travel Claim Forms
 - Feb. 2016: 2,037 processed, with 86 errors such as exceeding the 7 hour weekly limit, or the 28 hours monthly cap, incomplete information, etc.

Errors:

- Total Errors – Feb and March 2016
 - Providers with one recipient --12,081 total errors observed
 - Providers with multiple recipients -- 12,949 total errors observedTotal = 25,030 total errors identified to counties and labor organizations for follow-up

Exemption 1:

1,279 requests received: 775 approved, 331 denied, 136 in various review, 61 just received. Note: During the review process no errors will be applied,

Exemption 2:

This exemption is relatively new. Six requests so far: one approved, one denied, two identified as unnecessary, one pending, one is Exemption 1 instead.

FLSA Upcoming Milestones

- » Approved exemptions are implemented, and providers with pending exemption requests will have assessed violations cancelled.
- » May 2016—lists of providers with timesheet errors continue to be provided to counties and labor organizations, for purposes of awareness, education and training.
- » June 2016—formal enforcement of violations begins for the month of May.
- » September 2016—First potential instances of violations 3 and 4 will occur.
- » January 1, 2017—report due to the Legislature on the impact of FLSA on the IHSS program.

FLSA Changes to IHSS Case Management and Information Payrolling System (CMIPS II)

- Initial Implementation – Prior to Jan 2015
 - 35 Change Requests completed for January 2015, including:
 - Pay overtime and travel time
 - Workweek agreements and calculation of weekly authorized hours
 - Timesheet changes, changes to reporting & downloads,
 - Changes to Timesheet Processing Facility
 - Two mass mailings to all recipients and providers
- Additional Work Completed – Jan 2015 to Apr 2016
 - 13 Change Requests
 - Additional modifications to timesheet and travel claim form
 - Identification, tracking and enforcing of violations 1 and 2
 - Adding provider and recipient informational notifications of authorized weekly hours
 - Termination of providers for lack of compliance was coded but not deployed (SOC 846)

FLSA Changes to IHSS CMIPS II (cont'd)

- Additional Work Planned – May 2016 and beyond
 - 10 Change Requests
 - Forms and notices related to violations 3 and 4
 - Overtime weekly flexibility (AB 873) and exemptions
 - Implementation of functionality, forms and letters related for provider disputes
 - Modifications for processing violations for WPCS recipients
 - Changes to advance pay timesheets and processing
 - Changes to reporting and data downloads
- Additional Work Planned – **Non-FLSA**
 - 137 Change Requests

IHSS and CCI

» 2012 - Coordinated Care Initiative (CCI) Enacted

Senate Bill 1036 (Chapter 45, Statutes of 2012)

- Between April 2014 and July 2015, seven CCI counties entered into Cal MediConnect: Riverside, San Bernardino, San Diego, San Mateo, Los Angeles, Santa Clara, Orange.
 - IHSS is identified as a Long Term Services and Support (LTSS) under the Duals Demonstration Project
 - Establishes new roles and relationships with Managed Care Health Plans, CDSS, Counties and Public Authorities

IHSS and CCI

2015 - 2016

» Continue integration and monitoring of CCI requirements:

- Governor's budget extends CCI funding into FY 2016-17
- CDSS collects monthly and quarterly statistics from the CCI counties regarding integration of IHSS into managed health care plan (MHCP) operating procedures
- CCI counties and CDSS monitor effectiveness of MHCP Care Coordination Teams

Universal Assessment Tool (UAT)

CDSS, DHCS and CDA (Advisory Team) continue to work with Design Team from the UCLA Boren School of Gerontology to prepare draft UAT for focus group, pre-pilot and pilot testing.

- Original 316 draft items, developed by Design Team from participant responses to 2014 stakeholder retreat, have been reduced by half toward development of a 90-minute assessment of the needs of applicants for/recipients of HCBS.
- 68 core items have been identified, which directly assess the need for assistance with activities of daily living (ADLs) and instrumental activities of daily living (IADLs).
- A Pre-Assessment Telephone Interview (PATI) has been developed to allow collection of preliminary information at the time of request for HCBS, thus reducing the time necessary to administer the in-home interview.
- UAT focus group testing could begin in June 2016, and pre-pilot testing in early 2017.

The Statewide Authority

- » Statewide Authority was formally established on February 23, 2015 for collective bargaining in the CCI counties
- » Six counties have transitioned to the Statewide Authority
 - > San Mateo on February 23, 2015
 - > Los Angeles, Riverside, San Bernardino and San Diego on July 1, 2015
 - > Santa Clara on January 1, 2016
 - Orange will transition on August 1, 2016

The Statewide Authority

- » The Statewide Authority appointed a 13-member **IHSS Stakeholder Advisory Committee (SAC)** on August 6, 2015
- » The SAC provides ongoing advice and recommendations regarding the IHSS program to the Departments of Social Services and Health Care Services and the Statewide Authority
 - > The SAC does not provide input to collective bargaining
- » Meetings convened: October 23, 2015 and January 15, 2016
- » Next meeting: July 15, 2016 in Sacramento