

SUBCOMMITTEE #3: Health & Human Services

Chair, Senator Mark Leno

Senator Elaine K. Alquist
Senator Roy Ashburn



May 13, 2010

9:30 a.m. or
Upon Adjournment of Session

Room 4203

Committee Staff: Jennifer Troia

Agenda II

(Vote-Only Items indicated by *)

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Please note: The Committee will discuss only the items contained in this agenda at this hearing. Please see the Senate File for dates and times of subsequent hearings. The Committee will discuss the issues in the order noted in the agenda, unless otherwise directed by the Chair.

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Vote-Only Agenda

DSS Issue 1: Resource Family Approval Pilot (AB 340)

Budget Issue: The Governor's proposed budget for 2010-11 included trailer bill language (TBL) to suspend implementation of statutes enacted by AB 340 (Chapter 464, Statutes of 2007). Under the proposed TBL, existing law would have been implemented when "the Department of Finance determines that sufficient state operations resources have been appropriated" (emphasis added). On March 22, 2010, the Subcommittee voted (2-0) (Ashburn absent) to reject the proposed TBL, which would have transferred Legislative authority to determine the sufficiency of funding for the pilot program to the Administration. During that same hearing, the Subcommittee held open the budget for AB 340.

Background on AB 340: The resource family approval pilot established by AB 340 requires a three-year pilot program in up to five counties to establish a single, comprehensive approval process for foster care and adoptive families. This pilot was intended to make the licensing process less cumbersome and to prevent unnecessary delays in finding permanent families for foster children. The current licensing process divides caregivers into relatives, foster family homes, and adoptive homes. All caregivers must meet the same health and safety standards, but the processes for each vary and can be duplicative. This pilot was also included in the state's Program Improvement Plan in response to the 2002 federal review.

The Assembly and Senate Appropriations Committees' analyses of AB 340 estimated approximately \$150,000 GF in the first year for state personnel costs to oversee development and implementation of this pilot (and in one analysis, additional funds for its final evaluation). These analyses also recognized that the pilot should lead to some offsetting savings. Local assistance funding of \$717,000 (\$242,000 GF) was appropriated in 2008-09. DSS also submitted a BCP requesting 4.0 limited-term state positions at a cost of \$440,000 (\$278,000 GF) to implement AB 340 in 2008-09; however, no state operations resources were included in the budget that year. DSS never allocated the 2008-09 local assistance that the Budget Act appropriated to the counties.

In 2009-10, the Governor's budget included \$1.8 million (\$786,000 GF) in local assistance funding for AB 340 implementation. As part of the 2009 May Revision, this 2009-10 funding for the program was suspended.

Administration Actions: The Administration has recently stated that its elimination of local assistance funding for AB 340 was warranted by a reference in the existing statute authorizing the program. Specifically, Section 16519.5 (q) of the Welfare and Institutions Code states that AB 340 "shall be authorized to continue through the end of the 2010-11 fiscal year, or through the end of the third full fiscal year following the date that funds are made available for its implementation, whichever of these dates is later" (emphasis added). According to the Administration, because no funds had been

appropriated for the state-level activities, the Administration determined that no corresponding local pilot activities would take place.

Subcommittee Staff Comment and Recommendation: It appears that the Administration may have overstepped its bounds by assuming that the Administration itself was authorized to determine the sufficiency of funding appropriated for this program (i.e., the very same authority the Administration explicitly sought in the 2010-11 budget and that the Subcommittee recently rejected). Staff recommends that the Subcommittee restore, in 2010-11, local assistance funding for this program. Staff should be directed to work with the Administration, Legislative Analyst's Office (LAO), and County Welfare Directors Association (CWDA) to determine the amount of this restoration. In addition, to ensure appropriate implementation of the pilot, staff further recommends that the Subcommittee authorize some, but not all, of the previously requested limited-term positions at DSS. Specifically, limited-term state operations costs shall not exceed \$150,000 GF annually.

DSS Issue 2: In-Home Supportive Services (IHSS) – Local Augmentations from 2009-10

Budget Issue: Of the \$54.2 million (\$21.9 million GF) in new funding for DSS and county IHSS anti-fraud/program integrity efforts in 2009-10, \$10 million GF was set aside for “additional fraud prevention, detection, referral, and investigation” at the local level. With matching federal and county funds, the total amount available statewide for those additional local efforts was \$26.4 million. (For more information on overall IHSS anti-fraud/program integrity efforts statewide, please see the March 18, 2010 Agenda.) The Governor's 2010-11 budget proposes an additional \$28.3 million (\$10.0 million GF) to provide this augmentation again in the budget year.

Budget Bill Language (BBL) Authorizing 2009-10 Augmentation: This augmentation was enacted by Section 576 of ABx4 1 (Chapter 1, Fourth Extraordinary Session, Statutes of 2009), which added Section 18.55(b), copied below, to the Budget Act of 2009:

(b) The sum of \$10,000,000 is hereby appropriated from the General Fund in augmentation of Schedule (2) of Item 5180-111-0001 of Section 2.00 of the Budget Act of 2009 for the purpose of fraud investigations and additional program integrity efforts related to the In-Home Supportive Services Program. The amount appropriated in this subdivision represents the total allowable to be claimed for these purposes within this section. The State Department of Social Services shall allocate funding based on a distribution method developed in consultation with the counties. Each county shall submit a plan to the department that includes the program integrity and fraud investigation activities that the

county plans to pursue, and the department must approve the plan prior to distribution of the funds appropriated in this subdivision.

Background: As discussed at the hearing on May 6, 2010, forty-five counties submitted plans for these additional fraud prevention and investigation funds. Those plans were developed by County Welfare Directors and District Attorneys' (DAs) offices and reviewed by Boards of Supervisors and DSS.

With some minor exceptions when federal or state funds are available, local District Attorneys' offices are principally funded on a discretionary basis out of county General Funds. According to the California Department of Justice, approximately \$1.2 billion total was spent on prosecution activities statewide (based on 2006-07 data).

Other Anti-Fraud/Program Integrity Measures in the 2009-10 Budget: In addition to these local funding augmentations and the recipient fingerprinting discussed on May 6, 2010, as well as previously existing IHSS quality assurance efforts, the 2009-10 budget included the following IHSS reforms, with varying implementation dates:

1. Criminal background checks and appeals processes for IHSS providers;
2. The requirement for providers to attend an orientation;
3. Authorization to send targeted mailings to providers and recipients and to conduct unannounced home visits, pursuant to developed protocols and in targeted cases, when there is cause for concern about program integrity;
4. Limits on the use of P.O. boxes by providers to receive paychecks;
5. Training for social workers on fraud prevention;
6. Notification to providers about their clients' authorized hours and service levels; and
7. Certifications on timesheets, after notice of possible criminal penalties for fraud.

Subcommittee Staff Comment & Recommendation: The BBL quoted above included a one-time appropriation of funds for this local augmentation in 2009-10. Given the fiscal crisis facing the state and the lack of analysis regarding savings that can be expected to result from these expenditures, staff recommends rejecting the proposed funding to continue this one-time augmentation of local activities in 2010-11.

Discussion Agenda

DSS Issue 1: Proposed Changes to State Hearing Procedures and Penalties

Budget Issue: DSS proposes, in a Spring Finance Letter dated April 1, 2010, two changes to the state hearings process. The first change would modify the existing

structures for when the state pays penalties to benefit recipients whose state hearing decisions are not issued in a timely manner. The second would allow state hearings to be held by video conference, unless there is a finding of good cause for a face-to-face hearing. In the alternative, if these changes are not approved DSS seeks \$1.4 million (\$931,000 GF) in additional resources [\$900,000 (\$431,000 GF) for 6.0 new Administrative Law Judge (ALJ) positions and \$500,000 GF for penalty costs].

Background on State Hearings and Penalties for Untimely Decisions: California provides due process to recipients of welfare-to-work, Supplemental Nutrition Assistance Program (food stamps), Medi-Cal, In-Home Supportive Services (IHSS) and Foster Care/Adoption Assistance benefits through state hearings conducted by ALJs who work for DSS's State Hearings Division. Federal mandates require that the state adjudicate these claims within 90 days for most programs, or 60 days for food stamps.

Existing court orders (from *King v. McMahon* and *Ball v. Swoap*) require the state to pay a daily penalty to the claimant for each day over 60 or 90 days, as applicable, that an ALJ issues a written decision in a claimant's favor. The penalty rate starts at a minimum of \$5.00 per day. In each month that 95 percent of all decisions are not completed within 90 days, the daily penalty rate increases by \$2.50. In each month that 95 percent of cases are timely decided, the rate decreased by \$2.50. The penalties are paid with 100 percent GF, as no federal financial participation is available.

In 2008-09, timeliness was 95.6 percent overall. The most recent information available indicated that the average timeliness rate for state hearings was 93.9 percent overall. The current daily penalty rates are \$7.50 for CalWORKs, \$5 for food stamps, \$35 for Medi-Cal, and \$5 for other non-CalWORKs. DSS paid \$251,000 GF in penalties in 2008-09, and \$192,000 GF from July 2009 through March 2010. DSS projects that penalty payments in the current year will likely exceed \$500,000 GF. According to DSS, this increase in late decisions and resulting penalties is attributable to an increase in caseload without a corresponding increase in staff with which to adjudicate cases. For example, from 2005-06 to 2008-09, DSS indicates that there was a 23 percent increase in the number of hearing requests statewide (from 69,825 to 86,079) and a 26 percent increase in the number of hearings held. The Department also states that recent furloughs have placed additional strain on its state hearings capacity.

Proposed Changes to Hearing and Penalty Procedures: DSS maintains four offices throughout the state. However, in some cases, ALJs still have to travel overnight for hearings. To minimize travel, ALJs have recently conducted approximately four percent of hearings by videoconference and another seven percent by telephone. To participate in a videoconference currently, the parties to the claim still appear at a county hearing facility. The claimants are currently given the option to have an in-person hearing. According to DSS, less than one percent of claimants given that choice to have a face-to-face hearing have exercised it under the current system. The Department now seeks to clarify the law to formalize its authority to continue use of video-conferencing to facilitate hearings. Under the proposal, claimants could continue to request a face-to-face hearing; however, the request would only be granted if they could show "good

cause” for the ALJ’s physical presence. According to the Department, good cause would be defined in regulations, after consultation with advocates and counties.

Under the proposal, the timeliness standard would also be codified and reduced from 95 to 90 percent. The proposal would additionally establish exemptions for when penalties do not apply. Specifically, there would be no penalties in cases: 1) that do not involve a question related to current benefits or services (approximately 60 percent of cases), 2) in which the person received benefits at or above the level they were entitled to receive pending the hearing decision, or 3) where the application of a recent change in state or federal law (within the last 12 months) is an issue in the case.

Concerns Expressed by Advocates: Some advocates have expressed opposition to this proposal. Their main concerns center on the ways that they believe the proposal undermines and defeats due process. In addition, they raise questions about a number of changes included in the proposed trailer bill language – e.g., the elimination of reporting requirements established by the courts.

Subcommittee Staff Comment & Recommendation: Given the due process-related and other significant policy questions at issue in this Spring Finance Letter, staff recommends that the Subcommittee reject the proposed trailer bill language at this time. Staff does, however, recommend that the Subcommittee approve approximately \$450,000 total funds (\$215,500 GF) (final amount to be determined after consultation with the Administration) for three additional ALJs to alleviate workload-related demands.

Questions for DSS:

- 1) Please briefly summarize the reasons for the recent increases in late decisions and corresponding penalties. How much of the increased delays is likely due to furloughs (which may be about to end)?
- 2) To what extent have you tracked the impact of hearings held by video conference on the timeliness of hearing decisions? To what extent have you sought advocates and participants’ feedback on these “pilot” activities?
- 3) How prepared would the Department be for the proposed, significant increase in the use of video conferencing? Does the state already have the necessary quantity of equipment and technical support?
- 4) What are the circumstances the Department might expect to constitute good cause for face-to-face hearings? How would participants know that they had the right to request those face-to-face hearings?