

**AGENDA
SUBCOMMITTEE No. 1
ON HEALTH AND HUMAN SERVICES**

ASSEMBLYMEMBER PATTY BERG, CHAIR

**MONDAY, APRIL 23, 2007
STATE CAPITOL, ROOM 127
4:00 P.M.**

ITEMS TO BE HEARD

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ITEMS TO BE HEARD

4265 DEPARTMENT OF PUBLIC HEALTH

ISSUE 1: FISCAL ACCOUNTABILITY

At its March 12th hearing, the Subcommittee directed LAO to work with the Department of Finance (DOF) and DHS to develop language to improve transparency and fiscal accountability in the budget. LAO had pointed out that the department will need to take additional steps to be transparent in its administration and budgeting. In past years, the administration provided supplemental schedules that gave detailed information about federal fund and local assistance expenditures, a local assistance appropriation summary, and a vacant position report soon after the budget was released. LAO also pointed out that staffing information by division and branch is critical when evaluating whether or not the new department will be able to adequately perform its core functions and whether or not requested positions are justified.

LAO Recommended Language

After discussions with staff in both houses, LAO recommends adoption of the following language to improve and assure fiscal accountability and transparency in future budgets:

Trailer Bill Language

(a) The Department of Finance shall revise the Governor's budget documents display for the state Department of Public Health to include a display of the supplemental local assistance appropriation summary, including actual past year, estimated current year, and proposed budget year expenditures for each branch in the department.

(b) No later than January 20, the Department of Public Health shall annually provide expenditure information for actual past year, estimated current year, and proposed budget year for the following: (1) Proposition 99, (2) statewide AIDS/HIV programs, (3) AIDS Drug Assistance Program, (4) Title V Maternal, Child, and Adolescent Health Grant funds, (5) Women, Infants, and Children Supplemental Nutrition Program, (6) Health Resources and Services Administration Bioterrorism Grant funds, and (7) Centers for Disease Control and Prevention Public Health Emergency Preparedness Grant funds.

Supplemental Report Language

No later than January 20, the Department of Public Health (DPH) shall annually

provide a vacancy report effective December 1 of the previous calendar year to the Joint Legislative Budget Committee and the chairs of the fiscal committees in both houses. This report shall identify both filled and vacant positions within DPH by center, division, branch, and classification.

ISSUE 2: RESTORATION OF REDIRECTED PROGRAM STAFF

As discussed at the Subcommittee's March 12th hearing, the administration proposes to establish 57 new management and administrative positions at DPH. The cost for these positions is approximately \$5 million. The department indicates that \$3.6 million of these costs will be absorbed by redirecting 57 positions from a variety of programs and functions throughout DHS. (The 57 new positions cost \$5 million because they are at higher pay levels generally.) While some of the redirected positions are simply vacant (and unfunded) positions, most of the redirections will result in added workload to be absorbed by the remaining staff in the programs losing those positions. Information provided by the department indicates that 27 of the 57 redirected positions will be from DPH programs.

At the March 12th hearing, the Subcommittee directed LAO and the department to identify any opportunities to use available federal funds or special funds to backfill some of the redirected positions. This would mitigate the adverse programmatic effects of redirecting staff to establish the new department.

LAO Identifies Nine Positions for Potential Restoration. After examining the list of positions proposed to be redirected, LAO has determined that nine could be restored using available special funds (without requiring any fee increases) or federal funds. Of these, four are scientific positions and five are support or administrative staff in the affected programs.

Staff Comments

1. LAO will provide a handout identifying the nine positions, their functions, and funding sources.
2. LAO should provide the Subcommittee with an estimate of the amount of funding needed to restore these positions.
3. The Department should indicate to the Subcommittee whether any language regarding the budget neutrality requirement of the reorganization legislation is necessary to restore these positions.

ISSUE 3: LICENSING AND CERTIFICATION (L&C) FEE INCREASES

The Licensing and Certification (L&C) Division within the Department of Public Health (DPH) is responsible for ensuring and promoting a high standard of medical care in approximately 7,000 public and private health care facilities throughout the state. These facilities include hospitals, skilled nursing facilities, and home health agencies. The division's primary responsibilities are to:

- Conduct annual certification surveys of facilities for participation in the federal Medicare and Medicaid (Medi-Cal) programs.
- Conduct state licensing reviews and ensure compliance with state law.
- Issue state citations and federal deficiencies, impose sanctions, and assess monetary penalties on those facilities that fail to meet certain requirements.
- Investigate consumer complaints about health care facilities and incidents that are self-reported by the facilities. These complaints may be received via telephone, mail, personal contact, or during a facility inspection.

Major Expansion in the Current Year and Phase-out of General Fund Support. The *2006-07 Budget Act* authorized 141 new positions in the L&C Division for increased workload. Additionally, budget trailer legislation established a fee structure to require state-regulated facilities to pay a greater share of licensing costs through fees in order to phase-out most General Fund support for licensing and certification functions. There was an understanding that the General Fund was to provide \$7.2 million in 2007-08 and \$3.6 million in 2008-09. Existing law requires elimination of General Fund support by 2009-10.

Budget Proposes Accelerated Phase-Out of General Fund Support. The Governor's Budget proposes to increase L&C support from \$154.7 million in the current year to \$210.8 million in 2007-08, an increase of 36 percent. Funding provided by fee revenue in the L&C Fund increases from \$51.7 million in the current year to \$77.9 million in 2007-08, an increase of 51 percent. The reason why fee funding increases more than overall spending is that the Governor's Budget proposes to accelerate the phase-out of General Fund support in order to shift \$7.2 million of spending from the General Fund to the L&C Fund. The large increase in overall spending primarily results from the following changes:

- a) Budget Change Proposals, primarily to implement recent legislation, total \$11.5 million from the L&C Fund.
- b) Baseline adjustments for employee compensation and for operating expenses total \$3.7 million from the L&C Fund.
- c) Consistent with statewide policy, the L&C Fund will incur a \$4.2 million pro-rata charge (Pro-rata is paid by special funds to reimburse the General Fund for their

share of general state costs (e.g., retiree health care, costs of the Controller, Governor and Legislature).

Under Section 1266 of Health & Safety Code, DPH developed a workload and cost allocation methodology to determine the individual health care facility fees needed to provide the funding proposed in the budget. The table below reflects the proposed L&C fee schedule.

Administration's Proposed L&C Fee Schedule

| Facility Type | Fee Category | 2006-07 Fee (Budget Act 2006) | Proposed 2007-08 Fee | Difference (+/-) |
|------------------------------------|--------------|----------------------------------|-------------------------|-----------------------|
| Referral Agencies | per facility | \$5,537.71 | \$6,798.11 | \$1,260.40 |
| Adult Day Health Centers | per facility | 4,650.02 | 4,390.30 | -259.72 |
| Home Health Agencies | per facility | 2,700.00 | 5,568.93 | 2,868.93 |
| Community-Based Clinics | per facility | 600.00 | 3,524.27 | 2,924.27 |
| Psychology Clinic | per facility | 600.00 | 3,524.27 | 2,924.27 |
| Rehabilitation Clinic (for profit) | per facility | 2,974.43 | 3,524.27 | 549.84 |
| Rehabilitation Clinic (non-profit) | per facility | 500.00 | 3,524.27 | 3,024.27 |
| Surgical Clinic | per facility | 1,500.00 | 3,524.27 | 2,024.27 |
| Chronic Dialysis Clinic | per facility | 1,500.00 | 3,524.27 | 2,024.27 |
| Pediatric Day Health/Respite | per bed | 142.43 | 139.04 | -3.39 |
| Alternative Birthing Centers | per facility | 2,437.86 | 1,713.00 | -724.86 |
| Hospice | per facility | 1,000.00 | 2,517.39 | 1,517.39 |
| Acute Care Hospitals | per bed | 134.10 | 309.68 | 175.58 |
| Acute Psychiatric Hospitals | per bed | 134.10 | 309.68 | 175.58 |
| Special Hospitals | per bed | 134.10 | 309.68 | 175.58 |
| Chemical Dependency Recovery | per bed | 123.52 | 200.62 | 77.1 |
| Congregate Living Facility | per bed | 202.96 | 254.25 | 51.29 |
| Skilled Nursing | per bed | 202.96 | 254.25 | 51.29 |
| Intermediate Care Facility (ICF) | per bed | 202.96 | 254.25 | 51.29 |
| ICF-Developmentally Disabled (DD) | per bed | 592.29 | 701.99 | 109.70 |
| ICF—DD Habilitative, DD Nursing | | 1,000 per facility | 701.99 per bed | 3,211.94 per facility |
| Correctional Treatment Centers | per bed | 590.39 | 807.85 | 217.46 |

As required by statute, the administration published a list of the above *estimated* fees on February 1, 2007 and has provided additional background to several constituency groups regarding how the fees are calculated. However, since this is the first year for implementation of a new methodology, several organizations are not clear on how their particular health care category of fees was fully determined.

Background—Budget Act of 2006 Provided Major Staffing Increase. The Budget Act of 2006 added a total of 155 positions, including 96 Health Facility Evaluator Nurse (HFEN) positions, 16 HEFN Supervisors, and 8 Pharmacy Consultants were provided. These increases were intended to resolve a serious understaffing problem at the division, which was not meeting standards for ensuring patient safety and medical quality, and not responding to complaints at nursing homes on a timely basis. Generally, the staffing increase restored positions that had been reduced as a result of vacancy sweeps and unallocated reductions from 2000-01 through 2003-04. The budget package also created a revised fee system based, in part, on a comprehensive timekeeping system to track HFEN surveyor work and “billable” time.

Vacancies and Process Shortcomings Have Resulted in Performance Problems. The L&C Division has historically had difficulty filling positions, some of which is due to a persistent nursing shortage. The department has taken several steps to recruit nurses to fill vacancies, including the use of new proactive recruitment strategies. In addition, they have shortened the length of time it takes to get a newly hired nurse trained and tested from 18 to 24 months to 12 to 18 months. However, as noted by the LAO and a recently released Bureau of State Audits Report (*Department of Health Services: It's Licensing and Certification Division is Struggling to Meet State and Federal Oversight Requirements for Skilled Nursing Facilities*, April 12, 2007), L&C Division is still having difficulty filling vacancies. In addition, audits and comments from provider groups indicate that more streamlining and coordination and consistency across the L&C Field Offices are needed.

Current-Year Vacancies Result in Unused Fee Revenue

High Vacancy Rates for Nursing Positions. For the first quarter of the current fiscal year, the division had more than 100 vacant HFEN positions—a vacancy rate of over 25 percent. As a result of the efforts that the department has made to recruit and retain staff, the number of vacancies declined to around 75 for the next two quarters—a vacancy rate of about 18 percent, still far higher than a “normal” vacancy rate of 5 percent. One result of these vacancies has been ongoing backlog of health facility applications and surveys, especially for home health agencies. By the end of September 2007, the department now expects to eliminate the backlog of applications that it had in hand as of October 2006.

Savings Can Reduce Fee Increases. As a result of the vacancies, the L&C Fund will spend less than the amount estimated in the Governor's Budget in the current year. The department estimates that this savings may be in the neighborhood of \$7 million. These

unbudgeted funds will be available to support L&C Fund expenditures in 2007-08, reducing the amount of fee revenue needed to meet 2007-08 spending needs. The resulting fee levels would be about 9 percent less than proposed and roughly equivalent to the fees levels that would have resulted if the Governor's Budget had continued General Fund support.

Suggested Budget Bill Language to Reduce Fees

Generally, existing law provides for the department to revise the L&C fee schedule after enactment of the budget in order to reflect changes to the Governor's Budget. In order to ensure that this process includes an adjustment to reduce fees due to current-year savings, staff suggests adoption of the following Budget Bill language:

The final list of Licensing and Certification Program fees published by the department for the 2007-08 fiscal year pursuant to Subdivision (e) of Section 1266 of the Health and Safety Code shall include an adjustment to reduce the amount of the estimated fees published by the department in February 2007 pursuant to Subdivision (c) of that section. The cumulative amount of the reduction shall be equal to the estimated reduction in 2006-07 expenditures from the Licensing and Certification Fund compared with the expenditure amount estimated in the 2007-08 Governor's Budget.

ISSUE 4: FLEXIBILITY TO MODIFY PROPOSED FEE STRUCTURES

Several groups of providers have pointed out problems with the proposed structure of the fees (in addition to concerns over their size). For example, the California Association for Health Services at Home (CAHSAH) has pointed out that under the department's proposal the same fee (\$5,569) would apply to all L&C functions for home health agencies—from the licensing and certification of an entirely new agency to the renewal of a license with no survey of an existing branch location. Instead, CAHSAH has proposed a revised fee schedule that has larger fees for more extensive services and smaller fees for less extensive services. The proposal is intended to be budget-neutral. A similar proposal has been made by the California Association of Adult Day Services for adult day health centers.

The department agrees that these proposals may have merit, but it does not believe that it has flexibility under existing law to revise the structures of the fees that it published in its February report until 2008-09. (The department believes that its adjustment authority is limited to moving the overall fee levels up or down to be consistent with budget actions.)

Staff Comments

Trailer Bill Language. The proposed fee structures for 2007-08 represent a major departure from prior fees, not only because they are larger, but also because they embody the department's first effort to implement the new fee methodology. Accordingly, it seems reasonable to adopt placeholder Trailer Bill language to provide the department with flexibility to consider proposals for revisions to the fee structures that could be implemented during 2007-08, provided that the department makes the following determinations:

1. The revised structure addresses a significant problem and makes a significant improvement.
2. It is feasible to implement the change prior to the next fiscal year.
3. The revision will be budget-neutral—it will produce the same estimated revenue as the original fee structure proposed by the department.

Supplemental Report Language. Adoption of the following Supplemental Report Language would help ensure that the Legislature is kept informed of any revisions:

The Department of Public Health shall report in writing to the Joint Legislative Budget Committee and the fiscal committees in each house on any changes in fee structures or methodology that it has adopted for implementation during the 2007-08 fiscal year. The department shall report by September 1, 2007 if it has adopted any revisions at that time. The department also shall provide a report of any 2007-08 fee revisions by February 1, 2008, which may be included in the annual fee report required by Section 1266 (c) of the Health and Safety Code.

ISSUE 5: L&C DIVISION BUDGET REQUESTS

The 2007-08 Governor's Budget includes a number of proposals to improve the licensing efforts of DPH. Two proposals add staff for existing programs:

1. 8.5 positions and \$888,000 in federal and special funds for increased legal and administrative support for the 141 new L&C staff added in the 2006-07 Budget Act.
2. 2.5 positions and \$57,000 from a special fund to investigate complaints and citations of nursing home administrators

The Governor's budget also proposes resources to implement the following recent legislation:

1. Chapter 647, Statutes of 2006 (SB 1301, Alquist). The budget proposes 45 positions (including 21 HFENs) and \$7.1 million from the Licensing and Certification Fund to implement Chapter 647, which requires the reporting of serious medical errors to DPH and establishes timeframes for both reporting and follow-up investigations.
2. Chapter 895, Statutes of 2006 (SB 1312, Alquist). The budget proposes 16 positions (including 10 HFENs) and \$2.5 million from the Licensing and Certification Fund to implement Chapter 895, which requires DPH to reinstate the periodic licensing of long term care facilities using state standards and to improve patient safety by authorizing financial penalties when a hospital commits a serious health and safety violation.
3. Chapter 775, Statutes of 2006 (AB 2373, Aghazarian). Four positions and \$592,000 in special funds are requested to implement Chapter 775 which adds nursing facilities to the list of facilities that can use an automated drug delivery system.
4. Chapter 755, Statues of 2006 (AB 774, Chan). The budget proposes 1.5 positions (including one HFEN) and \$195,000 from the Licensing and Certification Fund to implement Chapter 755 which ensures hospitals apply fair pricing to uninsured and underinsured patients.

Legislative Analyst's Recommendations

The LAO believes that some of the administration's position requests lack justification on a workload basis. In addition, LAO points out that the high vacancy rate now being experienced by L&C for HFENs calls into question whether the addition of the 32 new

HFEN positions included in these proposals is appropriate at this time. Consequently, LAO recommends an alternative to the requested HFEN positions and several reductions in the number of positions requested by the administration. Specifically, LAO makes the following recommendations:

Alternative to Health Facilities Evaluator Nurse Positions. LAO believes that a number of the HFEN positions should be reclassified to Health Facility Evaluator I (HFEI) positions for two reasons. First, HFEI positions can be filled by licensed vocational nurses or psychiatric technicians, whereas HFEN positions may only be filled by registered nurses. Second, the training and certification required of HFEIs is the same as that required of HFENs. Both would undergo training in state licensing and federal certification requirements and would have to successfully pass a minimum qualifications test. Some of the 32 requested positions must be HFENs, given that a HFEN must be on every survey team, but the use of HFEIs is a potential means of accomplishing the Legislature's goal of timely and thorough inspections of health care facilities because these positions are likely easier to fill. Therefore, LAO recommends that the department report at budget hearings on the feasibility of using HFEIs and the number of HFEN positions that would be required for survey teams.

Department Plans Pilot. The department indicates that it intends to implement a pilot program to test the performance of survey teams that include Health Facility Evaluator positions. The pilot is planned for the East Bay and will be conducted as part of the state's larger pilot of the federal Quality Improvement System. This effort will compare the results of surveys performed by traditional teams of HFENs with the results of surveys using teams that include HFEIs by using a consistent set of standards and measurements.

Health Facilities Reporting and Inspection Requirements. The Governor's Budget proposes two associate information system analysts to provide desktop support and system training to the staff added to implement Chapter 647, regarding the reporting of medical errors. LAO recommends deletion of one associate information system analyst (\$93,000) on a workload basis because the budget has overestimated the number of hours necessary for system training.

Department Argues Against Reduction. The department contends that it requires both information systems positions in order to ensure the accuracy and data integrity of the medical error, adverse event, and inspection reports that it is required to post on the Internet.

Automated Drug Delivery System Recommendations. The Governor proposes 4 positions--two one-year limited term pharmaceutical consultants, one permanent pharmaceutical consultant, and one office technician to implement Chapter 775, which allows nursing facilities to use automated drug delivery. LAO had recommended the deletion of two of the positions on a workload basis.

LAO and DHS Agree on Reduction. There is now agreement between LAO and the department that the proposal can be reduced to two positions (versus four)—one 4-year limited-term pharmacy consultant and an office technician for a savings of \$302,000 from the L&C Fund in 2007-08.

Additional Salary Savings Should be Budgeted. As noted earlier, the department has had difficulty hiring HFEN positions and keeping the positions filled. This has resulted in relatively high vacancy rates. The Governor's Budget proposes a total of 32 new HFEN positions for the L&C Division. Although the department has made progress recently in improving its hiring process, it is unrealistic to expect that all of the 32 new nurse positions will be filled on July 1, which is the assumption made in the budget. A more realistic assumption might be that, on average, it will take three months to fill the new nurse positions, with some being filled sooner and others taking longer. This budgeting assumption would result in roughly \$1 million of savings to the L&C Fund.

LAO Estimate. The LAO has indicated that they expect to have an estimate of additional salary savings that should be budgeted to reflect a more realistic hiring pattern.

ISSUE 6: HEALTH-CARE-ASSOCIATED INFECTIONS

The Governor's budget includes \$2 million (\$1.6 million General Fund) and 14 positions to implement Chapter 526, Statutes of 2006 (SB 739, Speier). The new program will consist of three units: one in the Division of Communicable Disease Control (DCDC) Infectious Disease Branch (IDB), one in the DCDC Microbial Diseases Laboratory Branch (MDLB), and one in L&C program. The governor proposes to fund DCDC activities with General Fund and L&C activities with the L&C special fund.

Background. Health-care-associated infections (HAI) are a major public health problem in California. According to DPH, in California's 450 hospitals, HAIs account for an estimated 240,000 infections, 13,500 deaths, and \$3.1 billion in excess health care costs annually. Chapter 526 requires DPH to implement a HAI surveillance and prevention program for acute care hospitals.

LAO Recommends Shift to L&C Fund. Based on the "beneficiary pays" principle—individuals or groups who directly benefit from government services should be charged fees for those services—LAO proposes a funding shift. LAO contends that the HAI surveillance and prevention program will directly benefit hospitals. This new program will help ensure that the health of patients will be protected to a greater extent from the threat of HAIs and will save hospitals the costs associated with HAIs. On that basis, LAO recommends that activities of the IDB and MDLB be primarily funded by the L&C fund, instead of General Fund as proposed by the administration. This would result in a \$1.4 million General Fund savings. Accordingly, we recommend the adoption of trailer bill language that adds HAI surveillance and prevention program as one of the allowable uses of the L&C fund. HAI surveillance activities in state facilities would require General Fund support of \$170,000.

Staff Comments

It can be argued that the HAI surveillance program includes some components that primarily serve a general public health purpose and others that directly serve individual hospitals. For example, a portion of the program will maintain databases on hospital infections statewide and monitor the characteristics of the organisms that cause these infections. However, most of the program will concentrate on inspections of hospitals to ensure compliance with infection prevention and reporting requirements, enforcement, and development of hospital infection policies and guidelines.

Funding Shift of \$723,000 Would Reflect Allocation of Benefits. At staff's request, LAO has allocated the costs of this proposal along the lines suggested above. The resulting revised allocation of funding would shift \$723,000 of cost from the General Fund to the L&C Fund. Support for this proposal would consist of \$834,000 from the General Fund and \$1,155,000 from the L&C Fund. Trailer Bill language would still be needed to authorize L&C Fund use for staff outside the L&C Division.

Duplicative Positions. Two of the requested positions could be deleted for a savings of about \$200,000. These positions, within the Division of Communicable Disease, consist of a Research Scientist III (Epidemiology Biostatistics) in the Infectious Disease Branch, and a Research Scientist III in the Microbial Diseases Laboratory.

Positions were added last year in the Division of Communicable Disease to partially address overall infrastructure needs, including infectious diseases. As such, these positions can serve to facilitate progress on this issue area, particularly in the area of mitigating the spread of influenza. Even without the two new positions, there would still be other Research Scientist and data specialist positions provided, and there are two existing positions (Public Health Medical Officer III and a Nurse Consultant) doing infection control work. In addition, the CDC guidelines will serve as a core focal point for the development of the overall program. As such, information can be obtained from the CDC in many cases.

Microbiologist Recruitment and Retention. Another concern with the request for additional science positions in the Microbial Diseases Laboratory (MDL) is that the department already has a high level of vacancies there. Information provided to staff indicates that 9 of the 60 authorized positions in MDL are vacant (15 percent) and of these, 6 are public health microbiologists. In addition, there are 5.5 vacancies of 49.5 authorized positions (11 percent) in the Viral and Rickettsial Disease Laboratory (VRDL), and all of those vacancies are microbiologists. Consequently, the department needs to concentrate on filling existing positions before requesting new ones.

The department should address the following questions:

1. Are the vacancy figures presented above representative?
2. Why are there such a large number of vacancies for microbiologists? How does compensation compare with other employers, such as hospitals and local governments?
3. Are there difficulties retaining microbiologists?
4. What is the department doing to improve hiring and retention of microbiologists?