AGENDA
SUBCOMMITTEE NO. 1
ON HEALTH AND HUMAN SERVICES

ASSEMBLYMEMBER PATTY BERG, CHAIR

MONDAY, MAY 5, 2008
STATE CAPITOL, ROOM 127
4:00 P.M.

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ITEMS ON CONSENT

4260 DEPARTMENT OF HEALTH CARE SERVICES

1. In Home Supportive Services (IHSS) Plus Waiver—Extend State Staff

Issue. The Governor's Budget includes $389,000 ($195,000 General Fund) to permanently establish 4 positions—an Associate Governmental Program Analyst, a Health Program Specialist, a Health Program Auditor III and an Accounting Officer—that currently terminate on July 1, 2008. The Legislature originally approved these positions on a two-year limited-term basis to administer the In Home Supportive Services (IHSS) Plus Waiver, which received federal approval under Section 1115 of the Social Security Act in July 2004. The IHSS Waiver is overseen by the Department of Health Care Services (DHCS) in its role as the single state Medicaid agency under federal law. Specifically the DHCS monitors the health and safety of Waiver participants, oversees the financial aspects of the program, and ensures compliance with federal cost neutrality requirements.

Background. This Waiver enables CA to obtain federal matching funds through Medicaid (Medi-Cal) for (1) provider wage payments to the parents of minor children and to spouses of IHSS; (2) advance payments to individuals who hire and train their own caregivers; and (3) restaurant meal allowances for individuals with physical or mental impairments who cannot prepare meals at home. The waiver funding offset about $90 million annually of former General Fund costs. The existing Waiver is set to expire July 31, 2009. However, the waiver has an additional three-year renewal period and DHCS expects renewal to be granted.

Approve Limited-Term Extension. *Senate Subcommittee 3 approved (3-0) extension of these positions, but for two years in order to ensure appropriate legislative oversight.* The action proposed here for consent would conform with the Senate action.

2. Breast and Cervical Cancer Treatment Program-- Extend State Staff

The Governor's Budget includes $716,000 ($358,000 General Fund) to permanently establish 7.5 positions—six Associate Governmental Program Analysts, a Staff Services Manager I, and an Office Technician—which currently expire July 1, 2008. The Legislature originally approved these positions on a two-year limited-term basis to provide assistance with a backlog in reviewing certain eligibility redeterminations and related functions.

Approve Limited-Term Extension. The Legislative Analyst's Office (LAO) recommends extension of the positions for two years in order provide for reevaluation of workload needs at that time, and Senate Subcommittee 3 approved (3-0) the two-year extension. The action proposed here for consent would conform with the Senate action.

3. Provider Enrollment—Extend State Staff

The Governor's Budget includes $189,000 ($47,000 General Fund) to extend two Associate Governmental Program Analysts to June 30, 2010. These positions are set to expire as of June 30, 2008. These positions were originally funded by the Legislature on a two-year limited-term basis to reduce a backlog of Medi-Cal provider applications.

LAO Recommends Denial. The LAO recommends denying this request. SB 857 (Speier) of 2003, required that all incoming applications be processed within 180 days or the provider be enrolled automatically in Medi-Cal. In addition, regulations were enacted to eliminate the need for providers to file multiple applications to Medi-Cal. Previously; providers were required to re-enroll for every group and location where they practiced. These actions have dramatically reduced the backlog and have improved the average application processing time significantly.

Senate Subcommittee 3 approved (3-0) the LAO recommendation to deny the request, which is also the proposed consent action here.

4265 DEPARTMENT OF PUBLIC HEALTH

1. Budget Balancing Proposals.

The following list of selected Governor's Budget Balancing Proposals (BBRs) for the Department of Public Health (DPH) is proposed for adoption. These reductions total $4.5 million (General Fund) and generally consist of 10 percent or other marginal reductions to various state operations and administration or research and surveillance activities. All of the listed reductions are recommended by the LAO (as part of the alternative budget) and all of these reductions were approved (3-0) by Senate Subcommittee 3.

Department of Public Health
Proposed Consent Actions (Approve)
Selected Governor's Budget-Balancing Reduction (BBR) Proposals
State Operations and Administration
(in Thousands)

BBR page #	Title	2008-09 Savings	Comments
360	**Center for Chronic Disease Prevention and Health Promotion**		
361	Occupational Health Programs	$125	10% cut to contract funds targeted at reducing impacts of chemical emergencies on workers and eliminates contract funds to verify ingredients of cosmetics.
365	Childhood Lead Poisoning Prevention Branch	116	10% reduction in training program for Lead-Related Construction Program
366	Environmental Health Investigations Branch	330	Eliminates 2 of current 22 positions (1 analyst and one research scientist)
368	Cancer Control Branch	140	Reduces support for a Health Program Manager II and a Public Health Medical Officer III (positions do not appear to be eliminated). BBR indicates that impact on clients will be minimal.
369	Epidemiology and Prevention for Injury Control Branch	94	Reduces GF funding for contracts and operating expenses by 10%--1% of total funding, according to the BBR.

369	Chronic Disease Control Branch Office	98	Shift from GF to Federal Funds for one Branch administrator position.
371	Cancer Surveillance and Research Branch	440	13.5% cut in GF funding for contract with the Public Health Institute to administer the California Cancer Surveillance Program/California Cancer Registry. Reduction is 3.8% of total contract funding of $11.5 million
385	Environmental Health Laboratory Branch Chemical Emergency Response - Air Program	300	Eliminates 2 of current 22 positions plus some equipment and administrative funding.
388	**Center for Environmental Health**		
389	Radiologic and Chemical Health Emergency Preparedness and Response	44	Reduces number of tabletop training exercises
391	Food & Drug Branch - Administration	195	Cuts 2 of 22 administrative positions and reduces student assistant funds.
393	Food Safety Program	80	Travel cut.
394	Food & Drug Lab Branch	64	Reduces operating expenses.
399	Cosmetic Safety Program	16	Reduce travel budget
401	Beach Safety	109	Reduces contracts for water quality monitoring with coastal counties and the City of Long Beach
403	Sanitation & Radiology Lab Branch	476	Reduces funding for equipment, supplies, facilities operation, and training.
405	Drinking Water Program	422	Eliminates GF support for 3 of 15 positions (positions will be retained using other funds. DPH should clarify whether there is a programmatic impact.

406	Lab Animal Services	346	Eliminates 2 staff and reduces operating expenses. Eliminates mice breeding program--will need to purchase mice instead.
409	**Health Information and Strategic Planning and County Health Services Programs**		
410	Indigent Health Care	183	Eliminates one position and operating expenses for review of county financial reports.
412	Local Public Health Services Program	5	Cuts funds for travel to local health departments.
413	CA Health Interview Survey	80	10% cut to contract with UCLA for state contribution. Equal loss of federal matching funds.
415	**Center for Family Health**		
425	Comprehensive Perinatal Services-Training	23	Reduces contract with CSU Sacramento for training of providers.
431	Maternal, Child and Adolescent Health-State Operations	263	Eliminates one of current 85 positions and travel funding.
451	**Division of Communicable Disease Control**		
462	West Nile Virus Surveillance, Testing, and Education	106	Reduces contract funds for surveillance
474	Tuberculosis Control Branch--Support	205	Eliminates 2 positions that perform testing of TB strains and reduce facility costs.
476	Communicable Disease Surveillance Program Administrative Support	231	Eliminates 1 of 4 current positions and reduces contract funds.

Department Administration			
477	Administrative Services Division	21	Eliminates 2.5 positions and reduces support. Also includes $803,000 funding reduction in distributed administration budgeted in applicable programs.
	Total	**$4,512**	

2. Enterprise-Wide Online Licensing Project (Finance Letter)

The Department of Public Health (DPH) is proposing $439,000 (various special funds) to begin implementation of an "Enterprise-Wide Online Licensing" project. This project is to be funded with nine special funds, which are all fee, supported. All of these special funds have sufficient funds for this purpose.

This information technology project is to replace several small systems and manual processes for license application/approval, inspection, proficiency testing, renewal, inquiry/lookup, maintenance of historical information, complaint investigation, billing, and enforcement. Savings of over $900,000 are expected from efficiencies, which will be applied to ongoing costs of the new system. DPH states that this project will benefit regulated entities, the health care community, selected licensing programs, and the general public. The immediate clientele of the licensing activities of the participating programs are the entities that are subject to licensing, enforcement, and billing as follows:

- Food and Drug Program. Medical device manufacturers and retailers; Drug manufacturers; Bottled water facilities; Haulers, distributors and vendors; Food manufacturers, Food and drug exporters.

- Radiation Safety Program. Radiation machines; Radiation machine operators; Radiologic technology schools; Radioactive materials.

- Drinking Water Operator Certification Program. Water treatment and water distribution operators.

- Safe Drinking Water Systems. Small water systems.

- Medical Waste Management Program. Small quantity generators; large quantity generators; storage facilities; Haulers.

No issues have been raised regarding this proposal. Senate Subcommittee 3 acted to approve it (3-0).

3. Fresno County Small Water Systems (Finance Letter)

DPH is requesting an increase of $430,000 (Safe Drinking Water Account) to fund four technical positions to take oversee and regulate small drinking water systems in Fresno County. DPH notes that three of the four positions will be supported using *reserves* contained within the Safe Drinking Water Account, with the other position being funded with existing fees. Presently small water systems pay *flat fees*. Small water systems regulated by the state with less than 1,000 service connections can only be billed at an annual flat fee that ranges from $259 to $728, depending on the number of service connections. As a result, the revenue generated by the small water system fees is insufficient to operate a minimally acceptable regulatory program.

DPH directly oversees and regulates larger public drinking water systems, but existing law allows DPH to delegate to counties regulatory authority over their small water systems. Due to budget shortfalls, Fresno County has recently decided to return its small water program back to the state, which it may do under existing law. There are 318 small water systems in Fresno County with over 4,000 service connections which provide water to residents, visitors, and businesses. About 75,000 people are served by these service connections. Therefore, DPH is requesting staff to ensure water quality and safety in Fresno County.

DPH points out that without adequate funding sources to regulate small drinking water systems, it is increasingly likely that other counties will return their programs to the state. The department notes they are currently assessing and evaluating this risk in order to develop potential options for long-term solutions.

Approve with Limited-Term Positions and Trailer Bill Language. *In approving this request, Senate Subcommittee 3 made two* modifications*:* (1) The three positions funded from the account reserve were made two-year limited-term because the reserve is not a viable permanent source of funds, and (2) the following trailer bill language was adopted to address the ongoing sustainability of the program:

> *In an effort to more comprehensively clarify issues regarding the state's responsibilities and oversight of small water systems, including the payment structure, the Department of Public Health will provide the fiscal and policy committees of the Legislature with a synopsis of key issues regarding the program and options for addressing the sustainability of the program to meet safe drinking water quality standards.*

The proposed consent action here would conform with the Senate subcommittee actions (adopted 3-0).

4. Technical Adjustment to Federal Funds (Finance Letter)

The department requests a technical adjustment to decrease by $5.8 million (Federal Funds) in the support item (Item 4265-001-0890) to remove excess federal expenditure authority within several public and environmental health programs, and to adjust for an increase of $315,000 (Federal Trust Funds) in additional authority for the Women, Infants, and Children (WIC) Program. No issues have been raised.

5. Finance Letter Request to Establish an Office of Suicide Prevention at DPH

DPH requests an augmentation of $350,000 (Proposition 63 Mental Health Services Act Funds) and two positions to establish an Office of Suicide Prevention within the department. DPH states that it intends to expand collaboration, data collection, epidemiology and surveillance in support of the Office of Suicide Prevention within the Department of Mental Health.

New Office is Unnecessary. First, DPH presently has an "Epidemiology and Prevention for Injury Control Branch which serves as a focal point for the DPH's injury prevention and surveillance efforts. This Branch receives General Fund support (4 positions), various federal grants, special funds and non-profit foundation support. As part of its portfolio, it does provide some information regarding suicide from an epidemiology/surveillance perspective and as part of its prevention program policy.

Second, the Department of Mental Health (DMH) has the primary responsibility for suicide prevention and it is requesting four positions for a DMH Office of Suicide Prevention and $7 million for statewide initiatives, all supported by Proposition 63 Mental Health Services Act Funds.

Accountability should be in one place. DMH, with assistance from the Oversight and Accountability Commission, could contract when necessary to obtain data and analysis regarding suicide from numerous entities. Making DMH responsible for these efforts will enable mental health advocates, the Oversight and Accountability Commission and the Mental Health Planning Council to be more directly involved with data collection and analysis. The Proposition 63 funds requested by DPH can be better spent to provide mental health services.

The proposed consent action is to deny this request. (Senate Subcommittee 3 took the same action by a vote of 3-0.)

ITEMS TO BE HEARD

4260 DEPARTMENT OF HEALTH CARE SERVICES

ISSUE 1: KINGAP STATE PROGRAM

The Governor's Budget proposes a General Fund increase of $35,000 and adoption of Trailer Bill language to enable about 200 former foster-care children to continue to receive health care services through Medi-Cal. The foster care program is administered by the Department of Social Services (DSS).

Foster care workers are authorized to conduct Medi-Cal eligibility determinations as apart of the foster care eligibility determination, consequently foster care children automatically receive no-cost Medi-Cal benefits without a separate Medi-Cal eligibility determination. When children leave the foster care system for KinGAP due to placement with relatives that have obtained permanent legal guardianship, these KinGAP children currently also automatically receive no-cost, full-scope Medi-Cal benefits. *However,* in order to qualify for federal financial participation, the state must conduct full Medi-Cal eligibility determinations for these KinGAP children. Since some of the KinGAP children may not meet federal Medicaid requirements, primarily due to their guardian's assets, they will lose their full-scope Medi-Cal benefits and/or be placed in the share-of-cost Medi-Cal program.

The DHCS estimates that in the absence of this proposed legislation approximately 200 children would lose no-cost Medi-Cal. In some cases, relatives may choose not to obtain legal guardianship of these children in order to continue the child's no-cost Medi-Cal under the foster care program, thereby undermining the purpose of KinGAP.

ISSUE 2: ADULT DAY HEALTH CARE (ADHC)

State Staffing Request

The Governor's Budget requests an augmentation of $2.4 million ($1 million General Fund) for 20 new positions at DHCS. This request is in addition to the 33 new positions provided to the DHCS in 2007 to continue to implement the ADHC reforms contained in SB 1775 (Chesbro) of 2006. Among other things, ADHC reform will "unbundled" the existing all-inclusive daily rate (90 percent of the Nursing Facility Level A rate) with a rate for core ADHC service based on audited costs of the centers plus rates for specific add-on services. The ADHC core services must be determined to be medically necessary for an individual enrollee through department approval of a Treatment Authorization Request (TAR) and any add-on services must be consistent with the enrollee's individual treatment plan and subject to post-payment review. DHCS expects the new methodology to be implemented in August 2010.

The department indicates that the 20 additional positions are needed to continue implementation of SB 1775, as well as to provide follow-up to the annual Medi-Cal Payment Error Study. Specifically, the department would allocate the 20 positions as follows:

- *Medi-Cal Benefits, Waivers Analysis and Rates Division (1 Position).* This Research Analyst II would carry out the workload generated by the new rate methodology specified in SB 1775.

- *Audits & Investigations, Medical Review Branch (7 Positions).* Conduct additional anti-fraud activities responding to the findings of the Medi-Cal Payment Error Study. This includes six Nurse Evaluator II positions and one Health Program Auditor III position to conduct 350 medical necessity review audits. In the past, DHCS redirected other staff to conduct medical review audits related to the ADHCs.

- *Audits & Investigations, Financial Audits Branch (8 Positions).* All of these positions pertain to further implementation of SB 1775, including doing about 350 financial audits per year for the first three years under the ADHC reforms.

- *Office of Legal Services (4 Positions).* Two of the four positions would be used to assist with appeals related to the Medical Review audits (as noted above), and the remaining two would be associated with the Finance Audits (as noted above).

- *Office of Legal Services, Administrative Hearings and Appeals (2 Positions).* This includes two Staff Counsel positions. These positions would be used for administrative hearings and appeals associated with the audits.

Medi-Cal Payment Error Study. The DHCS recently released its 2006 "error rate" study, which is an annual analysis within the Medi-Cal Program to detect, identify and prevent fraud and abuse. This is the third such study that has been completed. The study is primarily used by the DHCS to identify where the Medi-Cal Program is at greatest risk for payment errors. The results of the study assist in the development of new fraud control strategies and determine how best to deploy Medi-Cal anti fraud resources. Among other things, the study found that the Adult Day Health Care (ADHC) Program errors accounted for 10 percent of the overall percentage of payment error found in the study. This represents an improvement from the findings of the 2005 study (when the figure was 15 percent). Many ADHC errors were due to insufficient documentation of services and medical necessity (i.e., whether ADHC services were medically necessary for the beneficiary).

The DHCS has conducted "unannounced" site visits to many ADHC providers over the past two years. Payment errors found during these unannounced site visits resulted in the imposition of sanctions. The number of ADHC providers, as well as the number of beneficiaries attending ADHCs from November 2005 to December 2006, declined significantly. It is likely that these declines are a direct result of the anti-fraud efforts undertaken by the DHCS.

Background—SB 1775 ADHC Reform

SB 1775 responded to federal objections to California's ADHC Program. Specifically, the federal Centers for Medicare and Medicaid Services (CMS) notified the state that certain changes needed to occur in the program in order for California to continue to receive federal matching funds. SB 1775 authorizes DHCS to reform the program to address the federal objections. The state will be submitting a State Plan Amendment (SPA) to CMS in 2009 that details the reforms, which will be carried out over the next three years. Reforms authorized by SB 1775 include:

- Establishing a set of definitions relating to ADHC services.
- Revising the standards for participant eligibility and medical necessity criteria in receiving ADHC services.
- Setting new standards for the participant's personal health care provider and the ADHC center staff physician.
- Requiring ADHCs to provide a set of core services to every participant every day of attendance.

- Restructuring the rate methodology to a prospective cost-based process requiring audited cost reporting.

Since 2004, there has been a moratorium on the certification of any new ADHC centers, with some very limited exceptions.

Savings from ADHC Reforms. The DHCS states that with the gradual implementation of SB 1755 reforms, it estimates that annual savings of $121.8 million ($60.9 million General Fund) may be achieved beginning in 2011-2012 Savings are expected to stem from post-payment reviews, tightening of medical necessity criteria to limit ADHC to only those enrollees that require ADHC services to remain in the community, requiring ADHCs to bill for specific add-on services, tying ADHC rates to the actual costs of providing the services, and intensive and ongoing audits.

For 2008-09, the Medi-Cal Estimate projects much smaller savings from initial efforts at reform--$4.8 million (General Fund). However, DHCS now indicates that those savings were somewhat understated and will be about $13.9 million, which will be recognized in the May Revision estimate. The savings results from the tightening of medical necessity criteria starting as of February 1, 2008.

LAO Recommends Denial of Staffing Request

LAO recommends rejecting the DHCS' request for 20 additional state positions. The primary basis of the Medi-Cal Error Rate Study from annual to biennial. According to LAO, DHCS indicates that 175 staff are involved in the annual study, so that reducing the study frequency should free-up enough staff resources to address the tasks needed to accomplish the SB 1775 reforms. LAO also recommends that DHCS report to the subcommittee on how its plans for the Error Rate Study will affect its overall staffing needs.

STAFF COMMENTS

- The 2007-08 Budget funded 33 additional positions to commence ADHC reform. Based on recent information, many of these positions are still in the process of being filled. With respect to the need for more anti-fraud efforts regarding the ADHC Program, the DHCS has considerable Audits and Investigations staff which can be focused and redirected on various aspects of the Medi-Cal Program as needed.

- The department should provide the subcommittee with a brief update on the implementation of ADHC reforms, projected savings, and progress in filling the new positions in the current year.

- The department also should update the subcommittee, as recommended by the LAO, regarding its plans for the Medi-Cal Payment Error Study and how staffing needs will be affected by changing to a biennial schedule.

- *Senate Subcommittee 3 Action.* The Senate deleted all of the proposed new positions except for one to develop a federal Waiver for continuation of the ADHC Program; Subcommittee staff recommends approval of one position (Research Analyst II as designated) for this purpose.

ISSUE 3: EXTENSION OF AB 1629 NURSING HOME RATE METHODOLOGY

The Governor's Budget requests adoption of Trailer Bill language to extend for one year the sunset date for the AB 1629 nursing home rate methodology through 2009-2010. Existing law continues the rate methodology through to July 31, 2009. At this time no other statutory changes are proposed. *However* the department indicates that it views its current request as a "placeholder," and may propose additional changes at the May Revision. The purpose of the enabling legislation was to create a *"facility-specific"* Medi-Cal reimbursement methodology for nursing homes, and to authorize a provider "Quality Assurance (QA) Fee" to assist in providing a Medi-Cal rate increase. Free-standing nursing facilities pay the QA fee to the state, which is levied on most of their patient revenues (excluding Medicare revenue). The state then obtains a federal match for the QA fee revenue and uses the combined funds to help finance increased nursing home rates. Initially, a significant portion of the QA fee was not needed for rate increases and instead replaced General Fund contributions to Medi-Cal, resulting in a state savings. However, cumulative annual rate increases now consume the QA revenue, although DHCS indicates that General Fund costs remain less than they otherwise would have been under the former rate methodology without the QA fee.

Have Staffing and Quality of Care Improved?

The Administration has yet to conduct a comprehensive analysis of the effects of the rate increases. The most recent independent study, by Charlene Harrington and others at UCSF, was released on April 1 (*Impact of California's Medi-Cal Long Term Care Reimbursement Act on Access, Quality, and Costs*). This study found that contrary to expectations, the new reimbursement methodology did not substantially improve quality as measured by complaints, licensing and certification deficiencies, staffing levels, turnover rates and wage levels. Among many other things, the report also notes that 16 percent or 144 nursing facilities in the state did not meet the state's minimum staffing standard of 3.2 hours per resident day in 2006. Therefore, the researchers conclude that California nursing homes have low staffing levels, and average staffing levels only slightly improved after California adopted the new reimbursement system. Response to this study has pointed out that the new rate methodology had only recently gone into effect in 2006, so that improvements may not have had adequate time to manifest themselves.

No 10-Percent Rate Cut and Larger Rate Increase Expected. Facilities paying the QA fee, including all facilities reimbursed under AB 1629, were held harmless from the Governor's 10-percent Medi-Cal rate reductions. The DHCS estimates QA fee revenues of $289 million in 2008-09. These revenues will be matched with federal funds and used to help fund a portion of Medi-Cal payments for nursing home care. The Governor's Budget proposed a 3.35 percent increase in AB 1629 rates effective August 1, 2008 for a cost of $186.4 million ($93.2 million General Fund). However, the department indicates that actual cost survey data will likely produce a large percentage increase in the May Revision. Existing law caps the annual rate increase at 5.5 percent.

STAFF COMMENTS

- ***Increased Staffing Ratios Not Implemented.*** As a result of a court decision, increased minimum staff-to-patient ratios have been adopted in regulation for direct caregivers and licensed nurses in nursing homes. These regulations were not proposed until late 2007 (legislation requiring the staffing standard was enacted in 2003). Emergency regulations were filed with the Office of Administrative Law on April 15, 2008. However, existing law makes the implementation of the standard contingent on a budget appropriation and none is proposed. DHCS estimates an annual cost of $208 million to meet the new standard.

- ***Potential for Additional QA Fee Revenue***. DHCS estimates that including nursing facility Medicare revenues in the calculation of the QA fee would generate an additional $40 million of fee revenue. This would require a statutory change. It also would increase the impact of the fee on nursing facilities that do relatively less Medi-Cal business.

- ***Weak Collection Tools.*** The department indicates that about 10 percent of the QA fee currently is uncollected. The main collection tool is to deduct delinquent fees from Medi-Cal payments due to a facility. However, for facilities that do little or no Medi-Cal business, the only collection tool is withdrawal of their license, which has never occurred to this point.

The department should comment on the following:

1. Why an additional extension of the AB 1629 methodology is needed now.

2. Whether the AB 1629 rate methodology actually has improved staffing and patient quality of care.

3. The potential for increased QA fee revenue and General Fund savings from the inclusion of Medicare revenue in the QA fee calculation.

4. The need for better collection tools.

ISSUE 4: INFORMATION TECHNOLOGY (IT) PERSONAL SERVICE CONTRACTS

This Issue affects both DHCS and DPH. The two departments share significant IT resources that were developed when they were one department.

Both DHCS and DPH appear to be leaving authorized IT positions vacant and instead hiring outside of state service at costs that average almost 50 percent more.

1. Salary Savings (vacancies) is significant and exceeds budgeted amounts. It was 10.8 percent in 2006-07 (before the two departments split). Current-year and 2008-09 salary savings for IT positions are estimated at only 5 percent in the budget, but actual salary savings were 10 percent and 15 percent for the first two quarters of the current year.

2. Average personal services costs (salary and benefits) per state IT position are between $92,000 for DHCS and $102,000 for DPH.

3. In 2006-07 there were 42 IT staff provided through contract at a total cost of $6,448,153, or $153,527 per contract position.

4. Converting the contractor positions to state employees at about $100,000 per position would save almost $2.2 million.

5. These contractors are individuals who are located at the departments and perform tasks identical to or very similar to tasks that are performed or are within the scope of state employees. (These are not the major IT systems development contracts.)

STAFF COMMENTS

- The subcommittee may wish to hear testimony from an employee representative regarding DHCS and DPH IT personal services contracting and problems in recruiting state IT staff.

- The two departments should respond to issues identified above, and explain their criteria for hiring contract employees, how contract pay is set, and what steps they are taking to replace contractors with state staff.

4265 DEPARTMENT OF PUBLIC HEATH

ISSUE 1: IMPROVING THE DEPARTMENT'S STRUCTURE AND COMPETENCE

With the creation of the new Department of Public Health (DPH) in July 2007, issues have come to the forefront regarding the continued evolution of the restructuring efforts. Many of these issues pertain to the natural outgrowth of creating a new state department, and some of them concern issues that have not had the opportunity to be fully vetted before due to the shear size and complexity of the Department of Health Services prior to the split. With appointments just completed for the 15- member Public Health Advisory Committee, it appears to be an opportune time to propose trailer bill legislation to continue the restructuring efforts in a more focused manner to address specific administrative and programmatic efficiencies. For example, the Legislative Analyst states in her Analysis that consideration of consolidating various public health programs into a block grant might be warranted and advisable.

A more comprehensive review of certain administrative functions, such as development of program regulation packages, is much overdue for public health programs. Therefore, Subcommittee staff is recommending adoption of the following trailer bill language to more fully engage the Public Health Advisory Committee and DPH to continue the restructuring efforts to ensure the sustainability of core public health programs.

Proposed Trailer Bill Language (uncodified):

a) The Director of the Department of Public Health shall convene the Public Health Advisory Committee established by Section 131230 of the Health and Safety Code to review the organizational structure of the Department of Public Health in order assess the department's efficiency and effectiveness in administering its programs. The department shall participate in this review and shall make available to the committee information that is deemed necessary to carry out this review and shall provide support and assistance to the committee within its existing resources.

b) The review shall consider the following:

i) The ability of the department to carry out current statutory responsibilities.

ii) The timeliness of program implementation after enactment of statutes, including the development of related regulations.

iii) The use of fees charged for program services, including the efficiency of collection and budgeting of these fees to carry out the purposes of Department's programs.

iv) The level of administrative support provided to carry out program services, including the ability to process, in a timely manner allocations, grants, and contracts.

v) The ability to recruit and properly compensate the professional personnel necessary to carry out department programs.

vi) The organizational structure of the department and the number and breadth of programs administered by the department.

vii) The recommendations by the legislative analyst, as outlined in the Analysis of the 2008-09 Budget Bill, calling for the consolidation of public health programs and the development of a universal contract for funds allocated to local jurisdictions and non - profits organizations.

c) The director and the advisory committee shall seek and invite the participation of experts from local health departments, universities, health providers, and organizations that participate in department programs, and the federal government in order to assist and inform the advisory committee in this review.

d) The committee shall report the results of the review required by this section to the director, the Secretary of the Health and Human Services Agency, and to the fiscal committees and the health policy committees of the Legislature by October 1, 2009. The report shall include any recommendations to improve the department's organizational structure, program effectiveness and efficiency, and technical competence and expertise.

Background—Department of Public Health. The core functions of the DPH include: (1) Emergency Preparedness; (2) Communicable Disease Control; (3) Chronic Disease and Injury Prevention; (4) Laboratory Sciences; (5) Family Health Programs; (6) Environmental and Occupational Health; (7) Drinking Water and Environmental Management; (8) Food, Drug and Radiation Safety; (9) Health Statistics; (10) Health Facility Licensure and Certification; (11) Office of Multicultural Health; and (12) Office of Binational Border Health.

Background--Public Health Advisory Committee. A 15-member Public Advisory Committee (Committee) was established in the enabling legislation. Its members are appointed by the Governor (9 appointments), the Senate Rules Committee (3 appointments) and the Speaker of the Assembly (3 appointments). The Committee membership was formally announced in early April. The purpose of the Committee is to provide expert advice and make recommendations on the development of policies and programs that seek to prevent illness and promote the public's health. The Committee is to identify strategies to improve public health program effectiveness, identify emerging public health issues, and make recommendations, as necessary, on programs and policies to improve the health and safety of Californians.

STAFF COMMENTS

- The department, LAO and public health representatives should comment on the proposed language.

ISSUE 2: LICENSING AND CERTIFICATION

The Licensing and Certification (L&C) Program is operated by the L&C Division within the Center for Healthcare Quality in DPH. The L&C Program develops and enforces state licensure standards, conducts inspections to assure compliance with federal standards for facility participation in Medicare and/or Medi-Cal, and responds to complaints against providers licensed by the DPH. Based on the Governor's Budget, the L&C Program is requested total funding of about $160 million in 2008-09, of which $84.3 million is from L&C fees paid by facilities and $58.8 million is from federal funds. The proposed General Fund portion of support is about $11.1 million.

Proposed Fee Increases

Commencing with the Budget Act of 2006, the Governor has *annually* proposed significant increases in the fees paid by health care facilities and agencies in order to support the cost of L&C activities. State-owned facilities that require licensing do not pay fees. Instead, their licensing and certification fees are paid by the General Fund and any applicable federal funds.

Through a number of means, the Legislature has annually acted to mitigate the Administration's substantial fee increases, including requiring improved timekeeping systems, the unbundling of facility types to more appropriately allocate costs, adjusting state staffing requirements, recognizing other revenues collected by the L&C Division to offset L&C Fees, and providing a small General Fund subsidy for certain non-profit community-based facilities.

Significant Fee Increases Proposed by DPH. The Governor's Budget proposes an increase of $10.9 million (15.6 percent) in the amount of revenue to be collected from fees in 2008-09. Proposed spending from the fee revenues increases by significantly less--$8.4 million (11.6 percent). One reason for the discrepancy is that the budget shows a smaller carryover balance in the fee fund going into 2008-09 than occurred in the current year.

The Governor's proposed L&C fee increases are shown in the Table 1 below, as compared to those approved by the Legislature through the Budget Act of 2007. In many instances there are substantial fee increases proposed for 2008-09. In a few cases (including acute care hospitals), reductions are proposed.

Table 1. Proposed Changes to Licensing and Certification Fees

Facility Type	Fee Basis	2007-08 Fee	Proposed 2008-09 Fee	Difference	Percent Change
Referral Agencies	per facility	$6,798.11	$6,216.49	-$582	-8.6%
Adult Day Health Centers	per facility	$4,383.14	$5,030.16	$647	14.7%
Home Health Agencies	per facility	$3,867.14	$5,260.47	$1,393	36%
Community-Based Clinics	per facility	$871.13	$1,349.93	$479	55%
Psychology Clinic	per facility	$2,296.58	$3,565.26	$1,268	55%
Rehabilitation Clinic (for profit)	per facility	$402.20	$1,103.60	$702	172%
Rehabilitation Clinic (non-profit)	per facility	$402.20	$1,103.60	$702	172%
Surgical Clinic	per facility	$2,842.08	$2,694.73	-$148	-5.2%
Chronic Dialysis Clinic	per facility	$3,238.98	$3,405.79	$166	5.1%
Pediatric Day Health/Respite	per bed	$138.30	$195.89	$58	4.2%
Alternative Birthing Centers	per facility	$1,710.20	$2,983.92	$1,274	74.5%
Hospice (2-year license)	per facility	$723.86	$2,221.40	$1,497	206%
General Acute Care Hospitals	per bed	$309.07	$255.46	-$54	-17.5%
Acute Psychiatric Hospitals	per bed	$309.07	$255.46	-$54	-17.5%
Special Hospitals	per bed	$309.07	$255.46	-$54	-17.5%
Chemical Dependency Recovery	per bed	$200.29	$177.49	-$23	-11.5%
Congregate Living Facility	per bed	$250.77	$292.20	$41	16.3%
Skilled Nursing	per bed	$250.77	$292.20	$41	16.3%
Intermediate Care Facility (ICF)	per bed	$250.77	$292.20	$41	16.3%
ICF-Developmentally Disabled	per bed	$469.81	$1,307.72	$837	178%
ICF—DD Habilitative, DD Nursing	per bed	$469.81	$1,307.72	$837	178%
Correctional Treatment Centers	per bed	$806.53	$832.67	$26	3.3%

Fees May Not Need to Increase So Much. The greatest percentage fee increases represent a reallocation of costs to those facilities, based on the department's assessment of its workload and tasks for each facility type. However, the large overall net increase in fees is driven by the projected 15.6 percent increase in fee revenues needed to fund the program in 2008-09. There are a number of reasons to question whether such large fee increases are necessary to fund the proposed L&C budget:

1. ***High Vacancy Rates.*** The December 1, 2007 vacancy rate for the Center for Healthcare Quality (primarily the L&C Division) was *20.7 percent*. The department's budget, however, assumes a much lower vacancy rate of 6.4 percent. Furthermore, the budget requests 75 additional L&C positions in 2008-09, and all of these requests are budgeted at a 5-percent vacancy rate. It is quite likely that current high vacancy rates will result in a larger carryover balance in the L&C Fund than estimated in the budget. In addition, it would appear that, even with efforts at improved recruitment and retention, the budgeted vacancy rate for 2008-09 is too low, and therefore projected spending is inflated.

2. ***Other Funding Sources Assumed Flat.*** The budget assumes that federal funding and reimbursement funds will be virtually unchanged in 2008-09. It is not clear why these funds should remain flat when costs are growing.

3. ***Workload Standard May Be Too Low.*** DPH uses a Health Facility Evaluator Nurse (HFEN) surveyor workload standard of 1,364 personnel-hours as being a full-time equivalent position. Most other programs within DPH, as well as other state departments, use a standard of 1,800 personnel hours, or 336 hours more, for a full-time position. DPH has justified this standard in the past based on the need for training time, completion of reports, and related aspects of the surveyor position. The use of this lower standard has been in the context of recent large staffing increases to meet the requirements of legislation. However, there now should be some improvement in stability and training, so that the workload standard could be increased closer to the full 1,800 hour standard.

How Well Do Fees Reflect Actual Workload for Each Type of Facility?
DPH uses a “workload” methodology, which they state is based upon a detailed timekeeping system as to how staff is utilized by the 17 L&C Field Offices in the state to conduct various licensing and certification visits, including initial visits, annual reviews, follow up, visits for complaints and others. Based on this “workload” methodology, a percentage is devised and it is used to then allocate costs back to the individual health care facility categories. However, many of the provider groups are still unclear as to how these workload percentages are devised. There are also many other questions as to the appropriateness of the fee structure. For example, the fees that are levied on a "per-facility" basis assume that the L&C workload is the same no matter the size, capacity, and staffing level of a facility. In certain cases, facilities have to pay L&C fees even though the are regulated by another department, such as the Department of Mental Health.

Department of Finance Review Found Flaws. Due to continued concerns expressed by the Legislature regarding the development and application of L&C fees, the Legislature directed the Office of Statewide Audits and Evaluations (OSAE) within the Department of Finance to conduct an analysis of the methodology used by the DPH. The OSAE report, released on January 31, 2008, made the following findings regarding the L&C fee methodology:

- The DPH cannot ensure that the L&C Fees to be assessed to health facilities in 2008-09 will fairly allocate the costs among the various health facilities;

- The DPH has design flaws and operational weaknesses in its timekeeping system used by the L&C Division for determining workload allocations;

The OSAE made a number of recommendations to DPH for improvement of the methodology in the future.

Continuation of General Fund Subsidy for Certain Facilities

The budget proposes to continue (after a 10-percent reduction) the General Fund provided in the current year to mitigate the impact of fee increases on certain types of facilities. The proposed subsidy totals $2.34 million. The department proposes to allocate the General Fund subsidy in the same manner as in the current year and shown in Table 2 below:

Table 2. Allocation of L&C General Fund Subsidy

Health Facility Category	Proposed General Fund Subsidy	Percent of Subsidy
Home Health Agencies	$491,166	21%
Community Clinics	$636,714	27.2%
Psychology Clinics	$12,636	0.54%
Surgical Clinics	$171,522	7.3%
Chronic Dialysis Clinics	$151,866	6.5%
Hospice	$133,380	5.7%
Intermediate Care Facilities (6-bed)	$742,716	31.7%
Total	**$2,340,000**	**100%**

Significant Proposed Augmentations

The Governor's Budget includes the following significant augmentation proposals for the L&C Program:

- ***Implementation of SB 739 (Speier) of 2006.*** In the Budget Act of 2007, the Governor vetoed an increase of $1.3 million ($833,000 General Fund and $431,000 L&C fees) for implementation of this legislation establishing a Hospital Infectious Disease Control Program, which requires the department and general acute care hospitals to implement various measures relating to disease surveillance and the prevention of health care associated infections. The budget for 2008-09 includes an increase of $431,000 (L&C Fees) to fund three positions. The DPH is showing this as a "baseline" adjustment and does not clearly provide reference to this adjustment in its annual L&C Fees Report. Further the DPH allocates the $431,000 across all facility types based on an assumed workload percentage, although the program focuses on hospitals.

- ***Continued Implementation of SB1312 (Alquist) of 2006.*** Though the DPH was provided a total of 16 positions, as requested in the Budget Act of 2007 and the Legislature adopted modifications as requested by the Administration to clarify statute, the DPH is requesting an additional $8.864 million (L&C Fees) for 2008-09 to hire an additional 68 positions (and to increase its contract with Los Angeles County). SB 1312 requires DPH to inspect all licensed long-term care health facilities to ensure compliance with *state* laws and regulations to the extent that those standards provide greater protection to residents or are more precise than federal standards. All long-term care health facilities must be surveyed once every two years. However, a facility that has received a class "AA", "A" or "B" citation for non-compliance with state law or regulation within the last 12 months must be surveyed annually.

- ***Proposed Augmentation for Reviewing Complaints.*** The budget includes an increase of $732,000 ($293,000 L&C Fees and $439,000 federal funds) to fund seven positions to investigate complaints against Certified Nurse Assistants (CNAs), Home Health Aides and Certified Hemodialysis Technicians who are accused of abuse, theft, negligence, or unprofessional conduct against patients in health care facilities, private homes or agencies. DPH states these positions are needed due to an increase in new complaints received and the need to address a backlog of 726 cases.

- ***General Fund Loan Repayment to Be Completed.*** In 2006, a loan from the General Fund was provided as a transition until the L&C Fee revenues were generated to sustain the program. The final loan repayment of about $1.1 million will be transferred to the General Fund in 2008-09.

STAFF COMMENTS

The department should respond to the following queries:

1) Briefly describe the department's methodology for establishing the fees for the

individual types of facilities.

a) How has the department responded to the OASE findings—have the recommendations been implemented?

b) Does the fee structure assume the same workload for all facilities that are charged on a per-facility basis? Does workload actually vary by size or complexity of specific facilities within a category? Does the fee structure recognize any savings for facilities that are regulated by other departments, such as DMH?

2) Will there be additional carryover savings at the end of the current year due to high vacancy levels?

3) What are the current vacancy levels? Is the budget assumption of 6.4 percent salary savings unrealistic? What level would be more realistic and how much savings would result versus the budget request?

4) What is the basis for the current workload standard for Health Facility Evaluator Nurses? How much can the standard be raised now and how much would this save?

5) Is there a specific rationale for the General Fund subsidy? How much difference would it make to affected facilities if it were eliminated?

6) Does the department still expect federal funds and reimbursements to remain flat in 2008-09?