

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

**ASSEMBLYMEMBER JERRY HILL, CHAIR**

**MONDAY, MAY18, 2009  
STATE CAPITOL, ROOM 4202  
4:00 P.M.**

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## VOTE ONLY ITEMS

### 4260 DEPARTMENT OF HEALTH CARE SERVICES 4440 DEPARTMENT OF MENTAL HEALTH

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#### ISSUE 1: SPECIALTY MENTAL HEALTH WAIVER – BCP

The Subcommittee considered this issue at its April 22, 2009 hearing (please see that agenda for background on the BCP request), received testimony from the Administration and the public, and held the BCP open. In short, the Administration requested resources to correct significant fiscal integrity, accounting, reimbursement, and electronic claims processing issues identified by the federal government and OSAE in the Specialty Mental Health Services Waiver. This was a BCP that was removed from the 2009-10 Budget Act without prejudice to allow for further consideration.

Although the BCP was held open, the Subcommittee adopted placeholder trailer bill language (TBL) requiring DHCS to provide the results of any federal audits to the Legislature. The Senate also adopted this language.

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#### Staff Recommendation:

**Fully conforming to Senate action taken on April 23, 2009 on this issue, staff recommends, building on the prior action on the TBL, (1) approval of the DHCS positions in the BCP on a two-year limited term basis, as suggested by the Legislative Analyst's Office, (2) deleting \$166,000 in General Fund support from the Department of Mental Health (DMH) to fund the DHCS positions, and (3) additional placeholder TBL to require the Health and Human Services Agency to provide an "Action Plan" to correct the layers of fiscal concerns as discussed in the audits both received and expected by the federal government and as addressed in the aforementioned Subcommittee hearing.**

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## **5180 DEPARTMENT OF SOCIAL SERVICES**

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<b>ISSUE 1: COMMUNITY CARE LICENSING (CCL) DIVISION – LICENSING CLIENT PROTECTIONS – BCP</b>
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The Subcommittee considered this issue at its April 1, 2009 hearing (please see that agenda for background on the BCP request), received testimony from the Administration and the public, and held the issue open. In short, the Administration requested a 16 percent increase in licensing fees, yielding \$3.5 million, and 30 positions to respond to increased criminal background check workload and concerns about the need to assure compliance with laws related to sex offenders and licensed facilities, certified homes, or county-approved relative homes.

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### **Staff Recommendation:**

**Conforming to Senate action taken on May 14, 2009 on this BCP, and in light of the state's current fiscal condition, staff recommends an approximately 10 percent fee increase and the adoption of corresponding, amended placeholder TBL. This new fee revenue would be used for:**

**Approximately 12 positions to increase the frequency of random licensing inspection visits sample to roughly 34 percent of facilities per year (an increase of approximately 2500 facilities per year);**

**Approximately 9 criminal background check positions, plus \$200,000 to be used for increased efficiency via improved access to the California Law Enforcement Telecom System (CLETS); and**

**The proposed website to promote law enforcement access to information about licensed facilities.**

**Exact numbers of positions and corresponding fee and funding amounts would be determined by the Department of Finance in consultation with DSS and Subcommittee staff of both houses of the Legislature.**

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**ISSUE 2: GROUP HOME CLASSIFICATION RATE RELIEF – TBL**

The Subcommittee considered this issue at its April 1, 2009 hearing (please see that agenda for background on the TBL request), received testimony from the Administration and the public, and held the issue open. In short, the TBL request allows group homes flexibility to reconfigure their staffing and retain their existing Rate Classification Level (RCL), while not increasing the costs of the program. This has been a repeated annual request.

**Staff Recommendation:**

**Conforming to Senate action taken on May 14, 2009 on this TBL, staff recommends approval of the Administration's proposed trailer bill language.**

**ISSUE 3: DISABILITY SERVICE DETERMINATION DIVISION (DSDD) – RELOCATION OF LOS ANGELES STATE PROGRAM (LASP) BRANCH – BCP**

The Subcommittee considered this issue at its April 1, 2009 hearing (please see that agenda for background on the BCP request), received testimony from the Administration and the public, and held the issue open.

**Staff Recommendation:**

**Conforming to Senate action taken on May 14, 2009 on this BCP, and in light of the state's current fiscal condition, staff recommends rejection of the BCP request for \$970,000 and direction to the Department to work with DGS to plan for postponing any relocation of this office.**

**ISSUE 4: CHILD WELFARE SYSTEM (CWS) – CHILD AND FAMILY SERVICES REVIEW (CFSR) / PROGRAM IMPROVEMENT PLAN (PIP) – NEW PREMISES**

The Subcommittee discussed CWS funding at its April 1, 2009 hearing (please see that agenda for background) and received testimony from the Administration and the public.

More specifically on the new PIP premises, the Administration has proposed new estimate premises directly related to the most recent CFSR and resulting PIP, as below:

- \$15.2 million (\$6.8 million General Fund, \$5.6 million federal funds and \$2.9 million county funds) for relative search and engagement on behalf of children newly entering the foster care system and older youth (over age sixteen) who have been in foster care longer than 18 months and who are not living with relatives;
- \$7.4 million (\$3.3 million General Fund, \$2.7 million federal funds and \$1.4 million county funds) to increase family case planning meetings; and
- \$699,000 in savings (\$171,000 General Fund, \$272,000 federal funds and \$256,000 county funds) from establishing Multi-Dimensional Treatment Foster Care (MTFC) rates.

The Administration also proposed a new estimate premise for \$11.9 million (\$5.3 million General Fund, \$4.3 million in federal funds and \$2.3 million in county funds) to increase caseworker visits. Although DSS created this estimate in response to federal law (P.L. 109-288, the Child and Family Services Improvement Act of 2006), the changes would also positively impact the state's performance on a related CFSR measure.

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**Staff Recommendation:**

**Conforming to Senate action taken on May 14, 2009 on these new premises, staff recommends approval of placeholder TBL to require DSS to consult with stakeholders, including at least representatives of counties, foster youth, and organizations or entities that have experience providing family search and engagement services or technical assistance, to determine how best to ensure that existing best practices for family search and engagement and participatory case planning, including but not limited to training or technical assistance, are institutionalized statewide. To the extent possible, DSS shall also consult with birth parents or relatives, and caregivers. DSS shall provide information at future budget hearings regarding the implementation of these efforts, including any available outcome data.**

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**ISSUE 5: CHILD SAFETY – BCP**

The Subcommittee considered this issue at its April 1, 2009 hearing (please see that agenda for background on the BCP request), received testimony from the Administration and the public, and held the issue open given its General Fund impact. In short, DSS requests \$265,000 (\$182,000 General Fund and \$83,000 federal funds) and 3.0 positions to perform activities associated with the review of and reporting on incidences of child fatalities and near-fatalities resulting from abuse and neglect.

Current law, including the provisions of Senate Bill 39 (Migden, Statutes of 2008) sets responsibilities for the counties to respond to requests concerning child fatalities and the state receives support currently for its function on near-fatalities. In addition, the new PIP premises discussed in the prior item augment the state's CWS funding by \$10 million in General Fund to prevent such tragedies.

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**Staff Recommendation:**

**Conforming to Senate action taken on May 14, 2009 on this BCP, and in light of the state's current General Fund condition, and concurrent, overlaying policy and fiscal efforts in this area, staff recommends rejection of this BCP.**

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**ISSUE 6: NON-PROVISIONAL FOSTER CARE FISCAL AUDITS – TBL**

The Subcommittee considered this issue at its April 1, 2009 hearing (please see that agenda for background on the TBL request), received testimony from the Administration and the public, and held the issue open pending further discussion with stakeholders and with the department on potential adverse implications for group homes.

The Administration has collaborated with the advocates over the past few weeks and have together recommended revised language as included below, which has resolved the concerns that the original language would result in an increased number of erroneous audits:

Section 11466.2 ...

(a)(2) Notwithstanding paragraph (1), the department shall not ~~reduce a group home program's AFDC-FC rate or RCL, or~~ establish an overpayment based upon a nonprovisional program audit, of conducted on less than a one year audit period.

(3) Notwithstanding paragraph (2), the department may conduct audits covering a period of less than 12 months. Based upon the findings of such audits, the department may reduce a group home program's AFDC-FC rate or RCL pursuant to this paragraph.

(A) In an audit of a period of less than 12 months, if a provider's audited RCL is no more than three levels below the paid RCL, the provider's rate and RCL will be reduced to the audited RCL. The provider will be allowed the opportunity to bring a program into compliance with the paid RCL.

(B) In an audit of a period of less than 12 months, if the provider's audited RCL is more than three levels below the paid RCL, the department shall conduct an audit as identified in 11466.2(a)(2). The provider will be allowed the opportunity to bring a program into compliance with the paid RCL.

(C) A group home provider may request a hearing of the department's RCL determination under subparagraph (a)(3)(A) no later than 30 days after the date the department issues its RCL determination. The department's RCL determination shall be final if the group home provider does not request a hearing within the prescribed time. Within 60 days of receipt of the request for hearing, the department shall conduct a hearing on the RCL determination. The standard of proof shall be the preponderance of the evidence and the burden of proof shall be on the department. The hearing officer shall issue the proposed decision within 45 days of the close of the evidentiary record. The Director shall adopt, reject, or modify the proposed decision, or refer the matter back to the hearing officer for additional evidence or findings within 100 days of issuance of the proposed decision. If the director takes no action on the proposed decision within the prescribed time, the proposed decision shall take effect by operation of law.

Section 11468.6

...(e) (4) If the director fails to take action on the proposed decision within 120 days of the submission of the proposed decision, the proposed decision shall take effect by operation of law.

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**Staff Recommendation:**

**Conforming to Senate action taken on May 14, 2009 on this BCP, staff recommends approval of the placeholder trailer bill language as included in the agenda.**

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**ISSUE 7: TITLE IV-E CHILD WELFARE WAIVER DEMONSTRATION CAPPED ALLOCATION PROJECT (CAP) – BCP**

The Subcommittee considered this issue at its April 1, 2009 hearing (please see that agenda for background on the BCP request), received testimony from the administration and the public, and held the issue open given its General Fund impact. In short, DSS requests in this BCP \$952,000 (\$476,000 General Fund and the rest federal funds), to fund 5.5 permanent positions to support the implementation of the IV-E Waiver CAP and a contract for an independent third-party evaluation of the project. Implementation of the IV-E Waiver CAP began on July 1, 2007 and is scheduled to last for a term of five years.

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**Staff Recommendation:**

Conforming to Senate action taken on May 14, 2009 on this BCP, and in light of the state's current fiscal condition, staff recommends approval of 3.5 of the 5.5 requested positions for the duration of the remaining term of the IV-E Waiver CAP (through July 1, 2012). The approved positions included 1.0 Staff Services Manager I; 1.0 Associate Accounting Analyst; 1.0 Research Program Specialist II; and .5 Staff Counsel III. This action rejects the request for 1.0 Research Analyst II in the Estimates and Research Services Bureau and 1.0 Social Services Consultant II position and approves \$397,000 requested for the third-party evaluation contract.

Separately and not part of this action, the Subcommittee requests that DSS provide specific information as to the terms of the contract, detail on expected deliverables, and a clear fiscal breakdown of its basic components.

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**ISSUE 8: IN-HOME SUPPORTIVE SERVICES (IHSS) – CONLAN V. SHEWRY COURT ORDER – BCP AND SPRING FINANCE LETTER**

**Past Action on BCP.** The Subcommittee considered the *Conlan v. Shewry* BCP at its April 1, 2009 hearing (please see that agenda for background on the BCP request), received testimony from the Administration and the public, and approved the BCP as budgeted. In short, the BCP requested \$128,000 (\$64,000 General Fund) to extend by two years an existing 1.0 limited-term Staff Services Manager I position which would otherwise expire in June 2009.

**Spring Finance Letter.** In a Spring Finance Letter not yet heard by this Subcommittee, DSS further requests \$228,000 (\$114,000 General Fund) for the permanent extension of one 1.0 limited-term Associate Governmental Program Analyst (AGPA) position and the creation of two 2.0 new permanent AGPA positions. If these requests are granted, the Conlan II unit at DSS for 2009-10 would consist overall of one Staff Services Manager (position set to expire in 2011) and three permanent AGPA positions. DSS states that these positions are necessary to meet the provisions of the Conlan II court order.

**Background on Conlan II and DSS Workload.** The IHSS program provides in-home personal care services to qualified individuals who are blind, aged, or who have disabilities. IHSS services allow these recipients to stay in their homes and avoid institutionalization. Conlan II was a series of lawsuits that resulted in court decisions regarding the reimbursement of IHSS recipients for specified out-of-pocket, medically-necessary expenses they paid beginning in 1997. The court approved the state's plan for implementing the decisions in 2006. Under this plan, there are two time periods for which recipients can claim expenses: 1) claims for services received between 1997 and November 16, 2006, which must have been filed by November 16, 2007, and 2) claims for services received after November 16, 2006, which must be submitted within one year of service receipt.

According to DSS, as of January, 2009, the Department was out-of-compliance with the 120-day processing timeframe required by the Conlan II court order. DSS states that the Conlan II cases have resulted in an increasing and permanent workload that could include up to 400 claims per year. At the time of the spring finance letter, DSS had received a total of 765 claims for excess share-of-cost from all sources; 366 of those claims were awaiting adjudication. The Department estimates that each claim takes an average of 10 to 12 hours to review (with some claims instead taking up to 20 hours).

**Staff Recommendation:**

**Conforming to Senate action taken on May 14, 2009 on this BCP and the Spring Finance Letter, and given the need for timely reimbursement of IHSS recipients for out-of-pocket costs and compliance with the Conlan II court order, staff recommends augmenting its prior action on the BCP, which extended for two additional years the 1.0 SSM I position, by approving the permanent extension of one 1.0 limited-term Associate Governmental Program Analyst (AGPA) position and the creation of one 1.0 new permanent AGPA position as requested in the Spring Finance Letter. This action rejects one additional 1.0 permanent AGPA position that was also requested in the Spring Letter.**

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**ISSUE 9: CALWORKS TEMPORARY ASSISTANCE PROGRAM (TAP) – TBL**

The Subcommittee considered this issue at its March 18, 2009 hearing (please see that agenda for background on the TBL request), received testimony from the Administration and the public, and took action to reject the Administration's TBL request, directing staff to consider an alternative for vote-only at a future Subcommittee hearing on delaying TAP in revised TBL.

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**Staff Recommendation:**

**Responding to the prior Subcommittee action and direction, staff recommends adoption of TBL to additionally delay TAP implementation to October 1, 2011. This action conforms to the Senate action taken on May 14, 2009 on this TBL request.**

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**ISSUE 10: STATE HEARINGS DIVISION (SHD) – SPRING FINANCE LETTER**

The Subcommittee is in receipt of a Spring Finance Letter from DSS requesting an increase of \$928,000 (\$510,000 General Fund) in fiscal year 2009-10 to address growth in its caseload of administrative hearings by funding 6.0 Administrative Law Judge and 1.0 Office Technician positions.

**Background.** DSS is required to provide state hearings for the CalWORKs, supplemental nutrition, Medi-Cal, foster care and IHSS programs. In fiscal year 2005-06, the SHD budget was reduced by \$1.2 million (\$486,000 General Fund) as part of an unallocated reduction to DSS's budget. The department projects that between the 2005-06 and 2008-09 fiscal years, the total number of due process hearing requests also increased by more than 16,000. According to the Department there is therefore a growing backlog of requests that are awaiting hearings, particularly in the IHSS program. In the 2008-09 fiscal year, DSS transferred \$928,000 from IHSS Local Assistance to State Operations on a one-time basis and relied on retired annuitants to handle this increased caseload.

**Possible Penalties.** If cases are not adjudicated in accordance with specified federal and court-mandated time requirements (sixty days for the food stamps or supplemental nutrition program and commonly ninety days for other programs), the Department may have to pay penalties that begin at \$5 to \$37 per day to the impacted recipients. These penalties can increase to a maximum of \$100 per day. The Department projects that it will pay approximately \$145,000 in such penalties in the 2008-09 fiscal year. If the requested resources are not provided, the Department estimates that those penalties could increase to up to \$1.4 million by the end of the 2009-10 fiscal year.

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**Staff Recommendation:**

**Conforming to Senate action taken on May 14, 2009 on this Spring Finance Letter request, staff recommends approval of the requested increase to fund 4.0 permanent Administrative Law Judge and 1.0 Office Technician positions in fiscal year 2009-10 to address growth in the caseload and reduce the risk of penalties. Given the fiscal situation facing the state, staff recommends rejecting the remaining 2.0 requested Administrative Law Judge positions.**

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