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DEPARTMENT OF HEALTH & SOCIAL SERVICES



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July 12, 2018

Honorable John B. Ellis
Presiding Judge of the Superior Court
Solano Superior Court
600 Union Ave
Fairfield CA 94533

Regarding: County Responses to FY2017-2018 Grand Jury Report Entitled: In-Home Supportive Services Program Oversight and Management

Dear Judge Ellis,

The Department of Health & Social Services (H&SS) appreciates the review of the complicated In-Home Supportive Services (IHSS) program. H&SS is tasked with providing the administration of the California Department of Social Services (CDSS) IHSS program for County residents pursuant to Federal and State code. IHSS is a statewide program providing domestic and personal care services designed to enable qualified blind, elderly and disabled persons to remain in their residences rather than cared for in an institutional setting. H&SS is committed to an IHSS program that enables clients to remain in their homes instead of being placed in expensive, convalescent or board-and-care facilities.

H&SS is in receipt of the 2017-2018 Grand Jury Report entitled: "In-Home Supportive Services Program Oversight and Management," dated May 18, 2018. The following is submitted in response to the findings and recommendations of the report.

First Finding and Recommendation

Finding 1 – The Solano County In-Home Supportive Services program has failed to meet minimum state standards for quality assurance, quality improvement and anti-fraud efforts for four or more years. The root cause of this persistent failure of regulatory compliance results from a lack of effective program oversight and management by the Solano County Department of H&SS and the ODAS office in particular. There is a prevailing practice of regulatory noncompliance as an operational norm.

Recommendation 1 – The Solano County Board of Supervisors and County Administrative Officer hold Health and Social Services Department management personnel, particularly within the ODAS office, accountable for IHSS program compliance.

Response to First Finding and Recommendation – The Department of Health & Social Services disagrees wholly or in part with the finding.

The recommendation will not be implemented because it is not warranted or is not reasonable.

IHSS is a statewide program administered by each county under the direction of the California Department of Social Services (CDSS). The State of California has judged the Solano County IHSS Program to be in compliance. With respect to the IHSS Program Integrity and Anti-Fraud activities of Solano County, the May 3, 2017 State of California, Department of Social Services All County Information Notice (ACL) 1-26-17 “Release of the In-Home Supportive Services (IHSS) Program Integrity and Anti-Fraud Report for Fiscal Year 2014/15”, page 30, specifically states for medium-sized counties’ completed fraud investigations, “Solano County reported the most fraud investigations completed at 107 cases.” Additionally, it should be noted in the same ACL, the medium-sized counties of Solano, Kern and San Joaquin reported a combined 50 percent of the *Referred for Administrative Action* cases, indicating robust activities in this area. In the year 2015, the ODAS Bureau examined the workflow of the IHSS Program to optimize cost effective operations. IHSS Program casework is now on an electronic file maintenance software process. IHSS will continue to embrace and incorporate compliance review recommendations by internal and external partners to ensure improved delivery of service for IHSS intakes and reassessments.

Second Finding and Recommendation

Finding 2 –Solano County’s IHSS program management and compliance oversight functions have failed to achieve minimum objective measures of program integrity over the last five years due to the lack of effective use of H&SS departmental resources.

Recommendation 2– The H&SS office of Compliance and Quality Assurance be placed under independent operational supervision such as the Solano County Auditor-Controller until the IHSS program achieves minimal QA/QI standards and earns a satisfactory follow-up Internal Control Audit by the Solano County Auditor-Controller’s office.

Response to Second Finding and Recommendation – The Department of Health & Social Services disagrees wholly or in part with the finding.

The recommendation will not be implemented because it is not warranted or is not reasonable.

The Grand Jury mischaracterizes the program integrity unit (PIU) program structure and performance. It fails to recognize the difference between fiscal integrity and program performance. The Solano County Auditor – Controller is responsible for fiscal audits, not program compliance. Program performance and compliance are the responsibility of the department (Health & Social Services), division (Public Health), bureau (ODAS) and program (IHSS). With the merger of the ODAS Bureau into the Public Health Division

an opportunity has been created to increase efficient and accurate oversight. The H&SS Compliance bureau is developing an active role of oversight and program recommendations department-wide. As noted in the report "Recommendation for Solano County Compliance Organizational Model" produced by Hubbert Systems Consulting (Dec 2013), a review of 14 counties with Compliance programs showed a majority of them had Compliance Units embedded in Health & Human Services programs, and a few had a Countywide Compliance Officer that reported directly to the County Administrative Officer. Additionally, as recommended in the noted report, the organizational structure was implemented as suggested. The Compliance Unit submits an annual workplan of priorities to the Director of Health & Social Services. This plan is approved by the Director and shared with the County Administrator as part of the departmental annual plan. Further, deliverables and work product is submitted to the Director of Health & Social Services as designed in the plan. The department is working to implement a multi-disciplinary Executive Compliance Committee by January 2019, which was also recommended in said report, to leverage and provide oversight to the Compliance Unit in areas that span across and throughout the department. Older & Disabled Adult Services welcomes and partners with the California Department of Social Services, Health & Social Services Compliance and our internal Quality Assurance / Program Integrity Unit staff to review and implement recommendations which result in efficient communications, a streamlined work flow, increased productivity and an overall cost-effective delivery system for these mandated services.

The ODAS Bureau acknowledges that in FY 2014/15 and FY 2015/16 IHSS Quality Assurance staff did not complete the required number of reviews. For FY 2016/17, the required number of desk reviews and home visits were completed. For FY 2017/18, the Bureau remains on track to complete the required number of desk reviews and home visits. While no additional staff were hired into the Quality Assurance / Program Integrity Unit, the Older & Disabled Adult Services Bureau reviewed work practices to efficiently streamline necessary clerical support services and shifted additional clerical support to this unit. Again, it is also important to acknowledge the May 3, 2017 State of California, Department of Social Services All County Information Notice (ACL) 1-26-17 "Release of the In-Home Supportive Services (IHSS) Program Integrity and Anti-Fraud Report for Fiscal Year 2014/15", page 30, which specifically states for medium-sized counties' completed fraud investigations, "Solano County reported the most fraud investigations completed at 107 cases." In the same ACL, Table 13 on page 29 indicates that thirteen of the 26 medium-sized counties did not report completing any fraud investigations and Solano, Kern and San Joaquin Counties were responsible for a combined 50 percent of the reports for *Referred for Administrative Action* among medium-sized counties.

Movement of the office of Compliance and Quality Assurance is not necessary as the Health and Social Services Department is meeting State standards for IHSS compliance. The Department commits to providing the County Administrator's Office and the Auditor-Controller's Office by September 3, 2018, with an audit plan for the office of Compliance and Quality Assurance. The audit plan will include an initial risk assessment and will dedicate the Compliance and Quality Assurance staff to the plan but allow time for responding to compliance matters that come up during the year.

Third Finding and Recommendations

Finding 3 – The Solano County Department of Health and Social Services' welfare fraud investigative unit, the Special Investigations Bureau, has been precluded from participating in In-Home Supportive Services program fraud investigation and prosecution by H&SS departmental policy and budget decisions.

Recommendation 3a – The Special Investigations Bureau be transferred to the District Attorney's Office.

Recommendation 3b - The current 'Purchase of Service Agreement for Investigation of Welfare Fraud' between the Solano County H&SS Department and the D.A.'s Office be rewritten to specifically include investigation and prosecution of IHSS program fraud.

Response to Third Finding and Recommendations – The Department of Health & Social Services disagrees wholly or in part with the finding.

The recommendation will not be implemented because it is not warranted or is not reasonable.

The State is responsible for investigation of fraud in the IHSS program and, therefore, does not provide any funding to counties for IHSS fraud prevention or investigation. Solano County has voluntarily implemented fraud prevention/detection services within our Older and Disabled Adult Services Bureau. Our goal is to ensure recipients receive services they are entitled to so they may continue to live independently in their own homes. When fraud is detected, it is reported to the Department of Health Care Services (DHCS) so that the State may determine which cases it will refer to the Solano County District Attorney (DA). The DA then identifies those cases it will prosecute.

The Grand Jury mischaracterizes the IHSS fraud investigation and prosecution process. In accordance with statewide policies and procedures regarding IHSS fraud, Solano County's Special Investigations Bureau (SIB) has no role in IHSS fraud investigations. Accordingly, there would be no reason to move SIB from the Health and Social Services Department to the District Attorney's Office.

The Grand Jury's statement that 'The Solano County Department of Health and Social Services has an annual \$500,000 purchase of service contract with the District Attorneys' Office for the investigation and prosecution of welfare fraud' is in error. H&SS has an annual Purchase Service Agreement for the *prosecution* of welfare fraud in the amount of \$175,000 which is an appropriate service of the District Attorney's Office.

The fraud complaint process involves multiple stages. The California Department of Social Services (CDSS), Adult Programs Division, Policy & Quality Assurance Branch, Report of Program Integrity and Anti-Fraud Efforts in the In-Home Supportive Services Program report of July 2014 and ACL 18-67, dated June 8, 2018, provide the fraud-related protocols for IHSS. In these protocols, counties have agreed to track and submit

fraud data to CDSS, and CDSS has committed to releasing annual reports summarizing the data. The ODAS unit of H&SS submits an annual Fraud Plan to CDSS. This annual plan includes the ODAS unit activity for administrative actions and referrals to the Department of Health Care Services (DHCS). Referrals for review for prosecution go to DHCS. All fraud complaints are reviewed by the ODAS Fraud Review Social Worker. The Fraud Review Social Worker attempts to recover all overpayments, no matter how small. In addition, all overpayments over \$500 are referred to or discussed with the DHCS, per State policy. DHCS, in turn, makes referrals directly to the Solano County DA for prosecution when appropriate to do so.

Fourth Finding and Recommendation

Finding 4 – IHSS provider time cards continue to be a significant source of potential fraud. The electronic IHSS provider electronic time card has been adopted by Solano County but is not mandatory.

Recommendation 4 – The Solano County Public Authority require that the IHSS electronic time card is a condition of employment for all providers. Granting of the power of proxy second signatures to the IHSS electronic time card should be limited to instances that meet the legal standard requiring a notarized power of attorney for a financial transaction.

Response to Fourth Finding and Recommendation – The Department of Health & Social Services disagrees wholly or in part with the finding.

The recommendation will not be implemented because it is not warranted or is not reasonable.

By statewide rules described in the State of California, Department of Social Services All-County Letter No.: 17-76 dated July 14, 2017, the use of electronic timesheet (ETS) is highly encouraged but it is not mandatory. The California Department of Social Services (CDSS) acts as the payroll agent, and it establishes the rules for the IHSS program, including how IHSS electronic timesheets are utilized. CDSS is the only entity that has authority to impose rules or regulations for IHSS providers regarding conditions of employment. ETS is an optional service in which the consumer and provider must both agree to use e-timesheets. There is a mechanism in place that alerts the Program Integrity Unit staff if a provider has had a complaint of suspected fraud.

Under Welfare and Institutions Code (W&I Code) section 12301.6, the Solano County Public Authority is established as the employer of record for negotiations purposes only and may not require electronic timecards as a condition of employment as IHSS providers are not considered employees of the County for any purpose. Currently, under W&I Code section 12301.24, the only condition of employment for an IHSS provider is that he or she complete an enrollment process, which includes attending an in-person orientation and passing a Department of Justice Background Check (known as a Livescan) under the conditions set forth in W&I Code section 12305.81.

The State's Case Management Information and Payroll System (CMIPSII) does not allow more than the number of authorized hours to be paid. It is the responsibility of the IHSS recipient (the employer) to select the IHSS provider (the employee). As the employer, the IHSS recipient can hire anyone who meets the IHSS provider enrollment requirements and can meet the needs of the recipient. If the IHSS consumer (the IHSS recipient, or employer) does not receive services from the IHSS provider (the employee), it is the responsibility of the IHSS consumer to monitor, hire, and if needed select another provider.

Fifth Finding and Recommendation

Finding 5 – Health and Social Services Department management stated that its primary concern is IHSS Program sustainability and quality of services rather than program integrity and regulatory compliance.

Recommendation 5 – Program integrity and regulatory compliance be the primary focus of H&SS management to ensure IHSS program sustainability.

Response to Fifth Finding and Recommendation – The Department of Health & Social Services disagrees wholly or in part with the finding.

The recommendation will not be implemented because it is not warranted or is not reasonable.

By H&SS Department and County policies, H&SS Departmental mission, and fundamental ethical realities, the primary focus of the ODAS Bureau is the provision of services to the IHSS consumer. The ODAS Bureau is a client-centered, service program. IHSS is a mandated, entitlement program. That said, the Solano County IHSS Program is in compliance with all applicable regulations per CDSS, as noted above.

In conclusion, the Department of H&SS appreciates the issues raised by the Grand Jury regarding the IHSS Program. The Department of H&SS is proud of the work done by the IHSS Program. Many of the processes and techniques used by the Program have been selected and used by other counties throughout the State. I trust the information provided adequately responds to the Grand Jury's Findings and Recommendations. I would like to thank the Solano County Grand Jury for its time and evaluation of the IHSS Program. I personally want to acknowledge the hard work and dedication of the ODAS Bureau staff for the work they do to better the lives of some of Solano County's most vulnerable residents.

Respectfully,

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