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August 14, 2018

Honorable John B. Ellis
Presiding Judge of the Superior Court
County of Solano
600 Union Avenue
Fairfield, CA 95433

RE: Response to Grand Jury Report – In-Home Support Services Program Oversight and Management

Judge Ellis:

Pursuant to Penal Code sections 933(c) and 933.05, the Solano County Board of Supervisors responds to all Recommendations and all Findings contained in the 2017/2018 Grand Jury Report entitled "In-Home Support Services Program Oversight and Management."

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 non-compliance 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 Finding 1 and Recommendation 1

Board of Supervisors: The Board concurs with the response by the County Administrator's office that additional review and discussions are needed. The Board will provide a follow up response as outlined in the County Administrator's response which is referenced below.

County Administrator's Office: The CAO may not agree entirely with Finding 1, as we do not have purview of all that the Grand Jury received or considered. The County Administrator will study Recommendation 1.

The County Administrator will commence additional meetings with impacted departments, will evaluate the IHSS and Compliance programs effectiveness and will formalize an action plan, as appropriate as outlined below:

- Meet with impacted departments and evaluate the program and its effectiveness by September 10, 2018
- Formalize action plan, as appropriate by December 10, 2018

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 Finding 2 and Recommendation 2

Board of Supervisors: The Board concurs with the response by the County Administrator's office that additional review and discussions are needed. The Board will provide a follow up response as outlined in the County Administrator's response which is referenced below.

County Administrator's Office: The CAO disagrees in part with the finding. The H&SS Compliance Unit is not the sole responsible agency for compliance for IHSS and was established for the broader compliance requirements under Federal and State laws.

Movement of the Office of Compliance and Quality Assurance may or may not be necessary for H&SS to meet State standards for IHSS compliance. However, the questions regarding having an audit plan, initial risk assessment procedures and independence in compliance and quality assurance and for responding and documenting corrective actions as compliance matters arise during the year is a matter requiring further study and review, as do the appropriate placement of staff and reporting authorities. The CAO will study Recommendation 2 as part of the response provided to Recommendation 1.

As noted from Above the County Administrator will:

- Commence additional meetings with impacted departments, will evaluate the IHSS and Compliance programs effectiveness and will formalize an action plan; and
- Meet with impacted departments and evaluate the program and its effectiveness by September 10, 2018; and
- Formalize action plan, as appropriate by December 10, 2018.

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 Finding 3 and Recommendations 3a and 3b

Board of Supervisors response: The Board concurs with the responses provided by the County Administrator's office and the Department of Health Social Services that the recommendation will not be implemented at this time for reasons stated in the aforementioned responses.

County Administrator's Office: The CAO disagrees wholly or in part with the finding. The recommendation will not be implemented at this time, because it is not warranted or reasonable to have the Special Investigations Bureau perform the duties of the State with regards to fraud in the IHSS program.

Solano County Department of H&SS has voluntarily implemented fraud prevention/detection services within our Older and Disabled Adult Services Bureau, with a stated goal to ensure recipients receive services they are entitled to, so they may continue to live independently in their own homes. When fraud is suspected or detected by staff conducting home visits 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 as an independent elected official may identify and elect cases it will prosecute.

Furthermore, it should also be noted that the Special Investigations Bureau is a mandated function, that is funded as part of the administrative funding associated with Employment and Eligibility (E&E) program funding received from the Federal government by way of the State.

As noted the Department of H&SS Director's response: The Grand Jury's statement that 'The Solano County Department of H&SS 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.

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 Finding 4 and Recommendation 4

Board of Supervisors: The Board of Supervisors concurs with the County Administrator's Office and Department of Health and Social Services responses that the recommendation will not be implemented at this time for reasons stated in the aforementioned responses and reflected below.

County Administrator's Office: The CAO disagrees wholly or in part with the finding. The recommendation will not be implemented because it is not warranted or is not reasonable.

As indicated in the response by the Solano County Department of H&SS Director: 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 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.

Health and Social Services: 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.

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 Finding 5 and Recommendation 5

Board of Supervisors: The Board of Supervisors concurs with the responses of the County Administrator's office.

County Administrator's Office: The CAO disagrees wholly or in part with the finding. The recommendation will not be implemented because it is not warranted or is not reasonable.

As noted in the response by the Director of Solano County 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 CAO acknowledges the issues raised by the Grand Jury regarding the IHSS Program and will study the recommendations contained in the Report.

The County Administrator will meet with impacted departments, will evaluate the program and its effectiveness and will formalize an action plan, as appropriate as outlined below:

- Meet with impacted departments and evaluate the program and its effectiveness by September 10, 2018.
- Formalize action plan, as appropriate, by December 10, 2018.

Respectfully,

JOHN M. VASQUEZ, Chair
Solano County Board of Supervisors

cc: Clerk of the Board, Solano County Board of Supervisors
Simona Padilla-Scholtens, Auditor-Controller
Krishna Abrams, District Attorney
Jerry Huber, Director of Health and Social Services
Dennis Bunting, County Counsel, Solano County
Solano County Grand Jury Office