



**COMMUNITY SERVICES AGENCY**

**Ken R. Patterson**  
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**STANISLAUS COUNTY  
IHSS ADVISORY COMMITTEE MEETING  
MINUTES**

**09/12/03**

Committee Members Present:	Jeffrey Lambaren Jose Acosta Linda White	Kenny Brown Madelyn Amaral Rose Martin	Connie Muller Christine Munoz Ora Scruggs
Committee Members Absent:	George Sharp	Dwight Bateman	
IHSS Staff Present:	Paul Birmingham	Larry Baptista	Esther Magallanes

**OPENING REMARKS by CHAIRMAN JEFF LAMBAREN**

- Meeting called to order at 1:14 PM

**ANNUAL REPORT**

- Kenny Brown gave a slide presentation showing a variety of versions of the annual report cover.
- The committee came to agreement on the final version of the report cover and on the group photo to be included in annual report.
- Committee members to draft brief bios for inclusion in annual report. Drafts will be submitted to Connie Mueller on 3" x 5" cards provided by Larry Baptista via U.S. Mail along with copy of current minutes.

**PUBLIC COMMENT**

- Announcement made for public comment by Chairman, Jeff Lambaren.
- John Stead-Mendez, Field Service Director for United Domestic Workers of America, introduced himself.

**ACCEPTANCE OF MINUTES**

- August 22, 2003 minutes: Motion M/S/A to accept minutes with no corrections.



## **BUDGET UPDATE**

- Larry Baptista announced his departure from CSA on 9/26/03 and introduced Esther Magallanes as position replacement.
- Paul Birmingham discussed county's automation of assistance programs requiring new, high quality computers. This may make surplus equipment available for committee members who require computers. The committee is a County entity for the purposes of surplus out equipment. Suggestion made for all committee members to be on AOL. This would be a direct charge to the committee budget.
- No rollbacks in IHSS program. Allocations remain the same as last year.
- AB 1470 did not pass.
- County Directors Association put out a white paper, which listed number two priorities as wage rate equity for Tuolumne, Alpine and Stanislaus counties. General support from other counties.
- Discussed committee's decision regarding PA versus IP mode.
- John Stead-Mendez commented that no funding inequity intended in PA versus IP when originally established.
- Jeff Lambaren suggested sending letter to legislators encouraging appropriate legislation regarding wages and benefits.
- Motion M/S/A to have Paul Birmingham draft letter.

## **HOMEMAKER MODE UPDATE**

- Paul Birmingham explained Homemaker Program.
- Committee agreed to meet Bertha Garcia at next meeting.

## **OLMSTEAD UPDATE**

- Copies of Olmstead material handed out.
- Committee agreed to save discussion for next meeting (9/26/03).

## **AB 43**

- Handed out copy of AB 43.
- AB 43 passed; not yet signed.
- Committee agreed to discuss next meeting (9/26/03).

## **AB 1470**

- Paul Birmingham announced that AB 1470 is "essentially dead", still in suspense file.

## **PUBLIC AUTHORITY UPDATE**

- Field trip to Madera County tentatively scheduled for either October 10 or October 24.

## **BYLAWS**

- Committee agreed to save discussion for next meeting (9/26/03).

## **AD HOC MEETING ON CUSTOMER SURVEY – Immediately following regular meeting**

- Recipient and provider surveys reviewed.
- Ad hoc meeting cancelled.

## **AGENDA ITEMS FOR NEXT MEETING**

- Budget Update
- Homemaker Mode Update
- Olmstead Update
- AB 43
- Bylaws
- Public Authority Update
  - Field Trip
- Annual Report
- Ad Hoc Meeting

Meeting adjourned @ 2:35 PM  
Esther Magallanes, Recorder



STANISLAUS COUNTY  
COMMUNITY SERVICES AGENCY  
IN-HOME SUPPORTIVE SERVICES ADVISORY COMMITTEE

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COMMITTEE  
MEMBERS

Jeffrey M. Lambaren, Chair  
*Advocate*

Kenny Brown, Co-Chair  
*Advocate*

Jose Acosta  
*Advocate*

Madelyn Amaral  
*Advocate*

Dwight Bateman  
*Advocate*

Rose Martin  
*Advocate*

Connie Muller  
*Advocate*

Christine L. Munoz  
*Advocate*

Ora Scruggs  
*Advocate*

George Sharp  
*Advocate*

Linda White  
*Advocate*

CSA SUPPORT STAFF

Paul Birmingham  
*Manager III*

Jan Holden  
*Manager II*

Esther Magallanes  
*Committee Clerk*

September 25, 2003

**DRAFT**

Dear Sir:

The Stanislaus County In-Home Supportive Services Advisory Committee is strongly urging all State and local elected officials to support the equal treatment of all counties in the funding of the In-Home Supportive Services Program (IHSS). Currently full State participation in the funding of the IHSS Program using the Individual Provider mode is only available to counties that have chosen the Public Authority option. Non Public Authority Counties, such as, Stanislaus County, Tuolumne County and Alpine County are limited to full State participation in the funding of IHSS up to \$7.11 per hour for wages and with no State participation in the funding of benefits. Whereas, in Public Authority counties, the State will participate in the funding of wages up to \$9.50 per hour and \$.60 per hour for benefits.

On July 12, 1999, the Governor of California signed into law AB 1682 and SB 710, which added Section 12302.25 to the Welfare and Institutions Code (WIC). These laws require each county to establish, on or before January 1, 2003, an employer of record for IHSS care providers for the sole purpose of collective bargaining. The law provides IHSS providers representation by a union and the opportunity to negotiate for wages and benefits. WIC Section 12302.25 authorizes these five options for employer of record:

- Public authority/non-profit consortium;
- IHSS contract
- County Administration of individual providers;
- County civil service personnel; and
- A combination of the above

The laws also established IHSS Advisory Committees to make recommendations to the County Board of Supervisors regarding which option the county should use to implement the employer of record provisions of AB 1682 and SB 710.

Counties are discouraged from selecting an employer of record option other than a public authority primarily because the public authority is the only one for which full county reimbursement is available. In Stanislaus County the IHSS Advisory Committee after a careful consideration of all the options allowed and the County's financial situation recommended that a County Administration of the Individual Providers be the employer of record. However, this has resulted in Stanislaus County

# DRAFT

and the IHSS Providers in Stanislaus County being denied full access to funding for IHSS wages and benefits. If a non-public authority county negotiates wages above \$ 7.11 per hour and any benefits, the State does not participate in the funding of the amount above \$ 7.11.

The option of County Administration of the Individual Providers is a legitimate option allowed under the law. Counties must be allowed to make choices regarding the administration of the IHSS Program without forcing a county to choose an option they cannot afford.

The issue of parity or equal treatment of counties in the funding of the IHSS Program, regardless of whether or not they are a public authority has been endorsed by the California Welfare Directors Association (CWDA) in their IHSS paper: "In-Home Supportive Services: Past, Present and Future". A funding goal addressed in the paper is "State financial participation levels must be consistent regardless of a county's employer of record structure".

The issue of parity has already been addressed between the public authority and the contract option. The contract option as well as the public authority option received full State participation in their wage rate. However, as wages for providers in public authority counties increased, the wages approached or in some instances surpassed the wages paid by contractors to their employees. In the revised 2002-03 Governor's budget the Maximum Allowable Contract Rates (MACR) was increased 16%. A C4A Budget Alert in 2003 stated "The MACR increases are necessary to establish parity between the contract rates and the Public Authority (PA) IHSS provider rates."

The issue of parity between public authority counties and non-public authority counties has not been addressed.

The IHSS Advisory Committee supports legislation that will allow parity of full State participation in the funding of the IHSS Program regardless of a county's employer of record structure and asks that you support legislation that would allow parity or equal treatment under the law.

Sincerely,

Jeffrey M. Lambaren, Chairman  
Stanislaus County  
In-Home Supportive Services Advisory Committee

## 4. CALIFORNIA

### (a) THE PLANNING PROCESS

In April 2002, the Health and Human Services Budget Subcommittee of the California Senate adopted language in a trailer bill requiring the California Health and Human Services Agency (CHHSA) to create an *Olmstead* plan. The committee's action was the result of intensive advocacy by the Coalition of Californians for *Olmstead* (COCO), a broad cross-disability coalition of consumer and advocacy organizations.<sup>1</sup>

The National Conference of State Legislatures' (NCSL) March 2001 findings on California suggested that the state had represented to the NCSL that the Long Term Care Council (LTCC) of the CHHSA would serve as the *Olmstead* planning group. However, in its Two Year *Olmstead* Progress Report, NAPAS reported that California was not, in fact, developing an *Olmstead* plan:

The Long-Term Care Council, which was represented to NCSL as an *Olmstead* Task Force, has in fact not been given a directive to develop an *Olmstead* plan. The LTC Council's only written document is a vision and mission statement supporting the provision of quality long-term care. This document does not mention the *Olmstead* decision and its structure does not directly involve consumers of long-term care services or their advocates.

COCO informed NAPAS that it had tried to work with the LTCC for over a year, but that the LTCC "has failed to identify itself as the body coordinating *Olmstead* planning and therefore there is confusion and disagreement about its goals and mission."<sup>2</sup>

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<sup>1</sup>Interview with Deborah Doctor, COCO, April 25, 2002.

<sup>2</sup>NAPAS, "Two-Year *Olmstead* Report" at 9. The comment from COCO was reported in NCSL's follow-up report on *Olmstead* implementation. National Conference of State Legislatures, *The States' Response to the Olmstead Decision: A Work in Progress (2002)*, State Findings: California.

In April 2002, lawyers representing the California DDS had represented in a brief filed in *Sanchez v. Johnson*, a case in federal district court challenging the low wages of direct support professionals working in the community, that the state had a “comprehensive, effectively working plan” consistent with *Olmstead* requirements. However, representatives of COCO testified in a hearing before the Health and Human Services Budget Committee that California “has no timetable for a plan, much less a timetable for actually moving people from institutions to the community.”<sup>3</sup> The subcommittee adopted the directive that CHHSA begin developing a plan, and a few days later, at a meeting of the LTCC, although *Olmstead* planning was not on the agenda, the director of DDS proposed that the state begin to develop an *Olmstead* plan. The LTCC voted to develop a process for *Olmstead* planning by its next meeting in late July.<sup>4</sup>

According to COCO, prior to the Senate subcommittee’s action, the state’s efforts in community integration of people with disabilities and elders, especially those who live in long-term care facilities, were “dismal.” Plans to assess institutional residents for community service needs were extremely limited as well. Although the LTCC received a federal grant in 2002 to develop an assessment tool and process for nursing homes, the grant proposed to assess 650 of the more than 65,000 Medicaid-funded nursing facility residents over the next three years and contained no goal for assessing people in psychiatric institutions. Despite the statutorily required person-centered assessment process for people with developmental disabilities, people in institutions are often determined “not ready” to move because of the lack of resources in the community.<sup>5</sup>

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<sup>3</sup>Coalition of Californians for *Olmstead*, “California to Hold Hearing on the Impact of the *Olmstead* Decision on California” (April, 2002); see Margaret Jakobson, COCO Testimony for the April, 2002 *Olmstead* Legislative Hearing (April 30, 2002).

<sup>4</sup>California Health and Human Services Agency, Agendas and Minutes of Long Term Care Council, 2001–2002; interview with Deborah Doctor, April 25, 2002.

<sup>5</sup>Margaret Jakobson, COCO Testimony for the April 2002 *Olmstead* Legislative Hearing (April 30, 2002).

In September 2002, the CHHSA extended an invitation to all interested stakeholder groups, individuals with disabilities, and elders to participate in a series of work group meetings to help develop the state's *Olmstead* plan. The state announced that it would designate those persons who wish to participate in these work groups as "Real Choice Consultants" so they could receive travel reimbursement. The state also announced that it would sponsor a series of community forums throughout the state to receive input from persons with disabilities and others.<sup>6</sup>

A draft plan was released in January 2003 and was to be presented to the legislature in April 2003. It is basically a "plan to plan," and its recommended future actions include such basic steps as identifying the data needed to assess persons in institutions and developing needed community services. The plan proposes to identify, beginning in June 2003, all persons living in publicly funded institutions and to identify for each person the services and supports that would enable him or her to live successfully in an integrated community setting. The plan recommends that the state identify all persons who do not object to community placement and for whom the assessment team has identified community placement as a "feasible option." The plan also proposes to identify the gap between existing services and consumer needs, that is, the number of affordable, accessible housing units needed to enable people who currently are institutionalized to transition to the community.<sup>7</sup>

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<sup>6</sup>Information provided by Marty Omoto, Legislative Director, California Coalition of United Cerebral Associations, October 1, 2002.

<sup>7</sup>California Long Term Care Council, *Olmstead* Plan, Section V, Recommended Future Actions: Data.



These are positive steps. Also positive is the plan's commitment to make peer support and independent advocates available to assist in assessments and to base the determination of the most integrated setting based on the person's needs and desires for community services and not on the current availability of services.<sup>8</sup> But the time frames for these preliminary activities are far in the future. The council does not propose to review existing discharge planning procedures until July 1, 2003,<sup>9</sup> or to recommend improvements in existing assessment procedures until fall 2003.<sup>10</sup> The council proposes to prepare "a conceptual design for a comprehensive assessment and services coordination system for individuals placed in, or at risk of placement in, publicly funded institutions." However, the design will not be produced until April 2004.<sup>11</sup>

The plan sets no time frames or targets for movement of people on waiting lists; indeed, the plan is not clear as to whether people who are unnecessarily institutionalized should be considered as on a waiting list for community services. The state agencies represented on the LTCC are not asked to report on the status and movement of their waiting lists until fall 2003.<sup>12</sup> Further, the plan contains many caveats that its recommendations may not be implemented because of California's staggering budget shortfall, estimated to be more than \$20 million.<sup>13</sup>

The most impressive component of the California plan is the section on housing, which plainly reflects input of state housing and community development agencies or others with expertise in housing. The plan proposes that the California Department of Housing and Community Development (HCD) develop a database of housing resources available to persons with disabilities in each city and county, including the numbers of Section 8 vouchers, the numbers of accessible subsidized housing units, and other relevant data. HCD will require that ConPlans reflect *Olmstead* goals as a condition of certification, will develop a Universal Design/Visitability Ordinance for adoption by local governments, and will award state housing

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<sup>8</sup>*Id.*, Assessment.

<sup>9</sup>*Id.*, Transition.

<sup>10</sup>*Id.*, Assessment.

<sup>11</sup>*Id.*, Comprehensive Service Coordination.

<sup>12</sup>*Id.*, Community Service Capacity.

<sup>13</sup>Information provided by Marty Omoto, Legislative Director, California Coalition of United Cerebral Associations, November 14, 2002.

dollars only to projects that reserve ground floor units for persons with disabilities and require all apartments to be convertible for use by persons with disabilities.<sup>14</sup>

In all, however, the plan, by postponing even an analysis of the barriers to community integration for six to nine months, seems designed more as a defense against litigation than as a serious effort to remedy unnecessary institutionalization.

**(b) PROGRESS IN COMMUNITY INTEGRATION**

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<sup>14</sup>California Long Term Care Council, Olmstead Plan, Section V, Recommended Future Actions: Housing.

Institutional populations in California are very large. The 2000 census reported 15,950 institutionalized children, 12,922 adults between the ages of 18 and 64 living in nursing facilities and another 21,359 living in other institutions, and 114,909 institutionalized elders. Although California's nursing home population of 105,923 is the second highest in the nation (after New York), it is lower than the median for the United States as a whole when expressed as a percentage of the total population age 65 and older.<sup>15</sup> Medicaid spending on nursing facilities rose by a relatively modest 26 percent between 1996 and 2001.<sup>16</sup>

Although more than 2,000 persons with developmental disabilities left state institutions to move to the community during the mid-1990s under the consent decree in *Coffelt v. Department of Developmental Services*, by 1998 movement from institutions had virtually come to a halt. In 2000, 3,876 persons were in state institutions and another 4,887 in nursing homes, private ICFs/MR, and other private institutions.<sup>17</sup> Discharges are now matched by a virtually equal number of admissions. In 2001, 2,247 Californians institutionalized in state psychiatric facilities had lived in those facilities for more than a year.<sup>18</sup>

### **(c) SYSTEMS CHANGE ACTIVITIES**

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<sup>15</sup>S.R. Gregory and M.J. Gibson, *Across the States 2002: Profiles of Long Term Care* (AARP Public Policy Institute, 2002).

<sup>16</sup>Harrington et al., *1997 State Data Book on Long Term Care: Program and Market Characteristics* (San Francisco: University of California at San Francisco, 1999): California; Home and Community-Based Services Resource Network, Medicaid Long-Term Care Expenditures, 1996–2001: California.

<sup>17</sup>University of Colorado, *The State of the States in Developmental Disabilities* (2002): California.

<sup>18</sup>NASMHPD Research Institute, *State Mental Health Agency Profiling System: 2001*, California.

California has not received a Systems Change grant. In the *Olmstead* training sponsored by ILRU, California advocates demanded numerous improvements in the services system: In-home support workers should receive higher wages and benefits; in-home support service hours must not be capped; the state should apply for more aggregate waivers, and home- and community-based waivers should reflect California's population, with more waivers for persons with physical disabilities and seniors; counties should be held accountable for their housing plans and should be fined for not having safe, affordable housing and rewarded for having it; and the state should streamline disability services so there is a single point of entry and it is not so difficult to coordinate the various agencies providing services.<sup>19</sup> Similarly, COCO asked that the planning process include the development of appropriate assessment tools for people in institutions or at risk of institutionalization, expansion of community support infrastructures, expansion of affordable housing, enhanced quality assurance, and reallocation of resources to move people who want to and can move from institutions into the community.<sup>20</sup>

Californians with disabilities have filed several lawsuits to challenge the lack of movement from institutions: *Davis et al. v. Department of Health and Human Services*, which challenges the City of San Francisco's decision to rebuild Laguna Honda, a 1,200-bed public nursing facility, and asks that the defendants be ordered to conduct assessments, identify the long-term care needs of those they serve, and determine whether their needs can be met in an integrated, community-based setting;<sup>21</sup> *Capitol People First v. DDS*, a post-*Coffelt* lawsuit that challenges the inappropriate institutionalization of persons with developmental disabilities in state institutions; and *Sanchez v. Johnson*, which challenges the great disparity in wages paid to direct support professionals who

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<sup>19</sup>Independent Living Research Utilization, *Advocacy Plans Developed by Participants in the Olmstead Training: California* (October 18, 2001).

<sup>20</sup>Margaret Jakobson, COCO Testimony for the April 2002 *Olmstead* Legislative Hearing (April 30, 2002).

<sup>21</sup>The City and County of San Francisco spends about 70 percent of its long-term care dollars on the 1,200 beds at Laguna Honda, although the county has 10,000 residents who need long-term care at home. *Disability Rights Education and Defense Fund News* (Fall 2001) at 3.

work with persons with developmental disabilities in the institutions and the wages paid to those who perform comparable work in the community.