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**IN-HOME SUPPORTIVE SERVICES PUBLIC AUTHORITY
REGARDING A COMPLAINT ABOUT MISMANAGEMENT OF
THE PUBLIC AUTHORITY
AD HOC COMMITTEE**

SUMMARY

The 2021 Grand Jury received a complaint against the County Chief Administrative Officer and the Board of Directors of the Public Authority for failure to perform their responsibilities to manage the In-Home Supportive Services Public Authority and for ignoring the mandates of AB 1682 regarding the structure and staffing of the Public Authority.

The majority of the allegations were proven to be unfounded, but the Grand Jury included the investigation in this report to address the ongoing allegations being made in public meetings.

BACKGROUND

In-Home Supportive Services (IHSS) are provided to individuals who are blind, disabled, or 65 years of age and older; receiving Medi-Cal; and unable to live at home safely without help. IHSS Care Providers offer services such as cooking, cleaning, grocery shopping, laundry, and personal care. Services are provided at no cost to eligible individuals.

IHSS is a long-standing program that was amended in 2003 by Assembly Bill 1682. The bill requires, among other things, the designation of an Employer of Record for IHSS providers and provides options for this role, including the establishment of a Public Authority. It further requires the formation of an IHSS Advisory Council to provide local input on IHSS services.

In Tehama County, the IHSS Public Authority was formed as the Employer of Record for IHSS providers. Additionally, a significant role of the Public Authority is to assist consumers with greater access to providers by creating a provider registry that lists screened IHSS providers.

The Tehama County Board of Supervisors has been designated as the Board of Directors to oversee the IHSS Public Authority. They also appoint an IHSS PA Advisory Committee composed of IHSS Providers and Consumers to advocate and advise on ways to improve the quality of the IHSS system.

The County of Tehama explored several models for the operation of the Public Authority, but in 2017, with the unanimous consent of the Board of Supervisors, entered into a MOU (Memorandum of Understanding) for administrative services and facilities, which designated the Tehama County Director of Social Services as the ex-officio Executive Director responsible for administrative oversight, established an IHSS Program Manager for day-to-day responsibilities, and housed the Public Authority within the Department of Social Services.

The Complainant alleged numerous reasons why the structure and management described above has not been compliant with the requirements and intent of AB 1682.

METHODOLOGY

The Grand Jury reviewed documents including AB1682, California Department of Social Services ALL COUNTY INFORMATION NOTICE NO. I 42-02 (AB1682 Implementation Questions), IHSS PA MOU's (2017 and 2020), Board of Supervisors Agendas and Minutes, IHSS PA Board of Directors Minutes, and the IHSS PA Advisory Committee Agenda, Minutes and website.

The Grand Jury listened to audio recordings of Board of Supervisors meetings and Study Sessions regarding the IHSS Public Authority from 2016-2021, and interviewed the ex-officio Executive Director of the IHSS Public Authority. Inquiries were also made to the County Auditor.

The Grand Jury sought guidance from the District Attorney and the County Counsel assigned to the 2021 Grand Jury.

DISCUSSION

The Complainant asserted the following violations:

ALLEGATION 1: "Allowing County employees to do the work of IHSS Public Authority: Assembly Bill No. 1682 States that "Employees of the Public Authority shall not be employees of the county for any purpose." It is asserted that the MOU approved 07/01/2017 was not in compliance with AB 1682. While the IHSS PA is permitted to retain an Executive Director, it is asserted that the law does not allow for other County Employees to be employees of the IHSS PA regardless of what the Tehama County ordinance 1786 States. AB 1682 is law and supersedes any language in a local ordinance that is not appropriately in line with the legal intention and spirit of the law."

FINDINGS

F1A. The State of California - Health and Human Services Agency/Department of Social Services issued an All-County Information Notice No. I 42-02 to all County Welfare Directors/ IHSS Program Managers, including the following questions and answers:

Question 10: In a PA mode, can a county designate one of its departments to run the PA?

Answer: A PA is a legally established local agency. ACL 98-20 explicitly states that a PA or NPC may not duplicate any activities or services of the county. We have advised counties that AB 1682 does not appear to preclude a PA from contracting with county agencies for services. It is unclear to us, however, how one county agency can "run" a separate independent local agency. Counties should consult their county counsels.

Question 11: What is meant by the language in WIC 12301.6(b)(2)(B) that “employees of the Public Authority (PA) shall not be county employees for any purpose”?

Answer: To the extent that this answer is inconsistent with previous answers provided to individual counties, this answer supersedes all previous answers.

As we have stated in our response to question 12 below, some counties have allowed their PAs to contract with the county for county staff services. We now believe that the statutory language was not intended to prohibit an individual from holding a job with the county and holding another job with the PA.

Rather, given the immunity provisions included in WIC 12301.6, we believe it is reasonable to interpret language that “employees of the public authority shall not be employees of the county for any purpose” to mean that for any purpose including employer liability, an employee’s actions done during the course and scope of their employment for the PA shall not be construed to be acts of the employee as an employee of the county in any capacity. See also MPP 30-767.211.

We believe the statutory language clarifies and emphasizes the fact that the PA is an entity that is legally separate and distinct from the county. Each county should consult with its county counsel in assessing the legal issues associated with this question. In particular, counties should consult with their county counsel to determine whether dual employment would conflict with their county conflict of interest codes.

Question 12: Can the PA contract with the county to provide staff for the PA?

Answer: Yes some counties have allowed PAs to contract with the county for the full-time dedicated services of county staff, i.e. county staff contracted to the PA have been fully dedicated to the business of the PA and have had no county duties, although this would not be prohibited. The county employee could dedicate part-time to the county and part-time to the PA, as long as the agreement between the county and the PA properly defines the relationship. Additionally, the law does not appear to preclude a PA from contracting with a county for support services, such as accounting, or payroll. We suggest you discuss these issues with your county counsel.

F1B. Public records indicate County Counsel reviewed the MOU and/or the proposed structure of the IHSS PA, and found it to be legally compliant with AB 1682 on several occasions, including in 2016, 2017, 2020, and 2021.

RECOMMENDATIONS

R1. None, as we believe there is no violation of AB 1682.

ALLEGATION 2: “It is asserted that while an IHSS PA Advisory Board was in place, the Advisory Board folded for lack of management and lack of attention paid to it during the county's CAO assignment as Executive Director. It is a mandate of the program to continue to have an IHSS PA Advisory Board. The IHSS PA Advisory Board has not been treated as an appropriate Brown Act notice meeting with agendas, minutes, consistent times and dates, by laws, etc.”

FINDING:

F2: This appears to have been corrected. Agendas, meetings and minutes are posted online at tehamacountyihsspa.com. It appears that meetings were suspended after March, 2020 due to COVID-19.

RECOMMENDATION:

R2. Meetings should be rescheduled as soon as they can be done safely per County and Public Health guidance, and the website updated within 90 days.

ALLEGATION 3: “It has been asserted that no legitimate financial reporting has been made to the IHSS PA Advisory Board or the Board of Directors. No warrant register specific to the IHSS PA nor treasury reports were provided. Nothing has been submitted to the Board of Directors showing a listing of any or all expenses associated with the IHSS PA. No appropriate reporting has been provided for each fiscal year, nor any other period as is expected with any other independent programs.”

FINDINGS:

F3A: There does not appear to be any language in AB 1682 which specifies financial reporting to the IHSS PA Advisory Board.

F3B. IHSS PA budget and expenditures are submitted to the County Auditor's office and subject to standardized accounting review and approval processes, and available to the Board of Supervisors.

F3C. Out of the ordinary expenditures are submitted for prior approval to the Auditor and/or County Counsel to ensure they are an allowable use of IHSS PA funds.

RECOMMENDATIONS:

R3: None

ALLEGATION 4: “It appears that the IHSS PA Advisory Board and IHSS PA Board of Directors meetings are possibly not properly noticed. IHSS PA Advisory Board meetings were not held for at least a couple of years under the County CAO. Also, when the IHSS PA Advisory Board was being reestablished, the Chair and Vice Chair complained that the meetings were

either not held or inconsistent or planned at dates or times the IHSS PA Advisory Board members could not be there.”

FINDING:

F4. This appears to have been corrected. Agendas, meetings and minutes are posted online at tehamacountyihsspa.com. It appears that meetings were suspended after March 2020 due to COVID-19.

RECOMMENDATION:

R4. Meetings should be rescheduled as soon as they can be done safely per County and Public Health guidance, and the website updated within 90 days.

ALLEGATION 5: “The IHSS PA Board of Directors meeting minutes are extremely difficult to locate, which leads to additional lack of transparency. No Reports of activities of the IHSS PA Advisory Board were reported to the IHSS PA Board of Directors, nor were data or other information provided as an update to keep the IHSS PA Board of Directors properly informed of the program’s activities.”

FINDINGS:

F5A. The IHSS PA Board of Directors meetings are typically encompassed within the Board of Supervisors meetings, and separate minutes are maintained. Agendas and minutes of the Board of Supervisor meetings can be found at: <http://tehamacountyca.iqm2.com/Citizens/calendar.aspx>.

F5B: Study Sessions regarding the IHSS PA were held with the Board of Supervisors in August 2016 and August 2020 prior to MOU approval. These sessions included formal presentations by representatives for the IHSS PA and allowed opportunities for the IHSS PA Board of Directors to have their questions and concerns addressed.

RECOMMENDATIONS:

R5: None

ALLEGATION 6: “The website (tehamacountyihsspa.com) has not been updated since March 19, 2020 No reports or financial updates are provided there. Only a few meeting minutes appear there.”

FINDING:

F6. Agreed.

RECOMMENDATION:

R6. Meetings should be rescheduled as soon as they can be done safely per County and Public Health guidance.

ALLEGATION 7: “The MOU approved on 9/01/2020 is believed to be in violation of AB 1682. “Employees of the Public Authority shall not be employees of the county for any purpose.” The 9/01/2020 MOU has no end date and instead has the statement: “...shall commence upon July 1, 2020 and remain in full force and effect...” It is asserted that this MOU is flawed as any contractual agreement should have a reasonable end date (Most other Tehama County contracts are one to three years). This MOU also lacks a not to exceed spending amount for the contractual period. It is assumed that since a dollar amount was noted in the previous MOU that one could reasonably be expected here. It is believed that this MOU must be immediately redrawn and written to comply with the law. The MOU asserts “This MO shall not be amended, except in a writing that is executed by authorized representatives of both parties.” Both parties' consideration may not be appropriate.”

FINDINGS:

F7A. See Finding F1A above regarding the use of County employees.

F7B: Although no end date was specified, the MOU can be terminated on 30 days' written notice by either party, as per Paragraph 9.

F7C: The not to exceed spending amount is the annual allocation received by IHSS PA as determined by the state, per Paragraph 7.

RECOMMENDATIONS:

R7. None

ALLEGATION 8: “The IHSS PA board of directors have failed in their obligations and responsibilities as they have not held the Chief Administrator and IHSS PA Executive Director, and now the existing Executive Director accountable to the intent of the mandate. They have approved minutes of the PA with no activity reported and they have not performed their obligation of oversight responsibility for the program.”

FINDINGS:

F8A. Multiple County Counsels have reviewed the MOU and the structure of the IHSS PA going back to its origin in 2016-17 and as recently as September 2021. They have consistently found the IHSS PA and the MOU to be compliant with the law.

F8B. The IHSS PA Board of Directors meets at least quarterly for routine business, and has held periodic study sessions for an in-depth discussion of how the program is operating.

RECOMMENDATIONS:

R8. None

ALLEGATION 9: “It is asserted that a particular County employee ... and other county employees have been working within the business of the IHSS PA, in spite of the AB 1682 language that intends for the IHSS PA to remain a separate entity.”

FINDINGS:

F9A. The question of whether a County employee can work on IHSS PA has been addressed in F1A above.

F9B. The IHSS PA Board of Directors and the County of Tehama entered into an MOU for Administrative Services and Facilities. This MOU states that the “...Director of Social Services shall act as ex officio Executive Director of IHSS PA, and shall be responsible for overseeing the budget and general administration... County shall further provide adequate administrative staffing to support the Director's performance of these functions.”

F9C. In August 2016, prior to approval of the 2017 MOU, the Director of Social Services presented a revised organizational chart to the Board of Supervisors for an expanded leadership team. The new structure clearly delineated where the IHSS PA would fit in this structure, including oversight and supervisory responsibilities. The County employee in question falls within this structure.

RECOMMENDATIONS:

R9. None

ALLEGATION 10: “Finally, a citizen... through multiple Public Record Act requests has identified problems, yet documents have been written to cover up issues.”

FINDING:

F10. County Counsel answered the citizen on July 19, 2021.

RECOMMENDATION:

R10. None

ALLEGATION 11: “When the Chief Administrator ceased being the PA Executive Director, it does not appear that his contract was adjusted to remove the additional compensation.”

FINDINGS:

F11A. According to the County Auditor, the Chief Administrative Officer was never paid any additional compensation for his role as Interim Executive Director of the IHSS Public Authority. Further, the Tehama County general fund was reimbursed for certain hours of his time spent serving in that capacity.

F11B. According to the County Counsel, the current ex-officio Executive Director of the IHSS PA is not receiving additional compensation for assuming this responsibility.

RECOMMENDATIONS: R11. None