



# **IHSS Coalition**

## **QUALITY CARE BEGINS AT HOME**

April 22, 2009

The Honorable Carol Liu  
Chair, California Senate Human Services Committee  
State Capitol, Room 5061  
Sacramento, CA 95814

**RE: SB 246 (Benoit) – IHSS Criminal Background Checks  
OPPOSE**

Dear Senator Liu,

The undersigned organizations are members of the IHSS Coalition and are opposed to SB 246 by Senator Benoit that would mandate criminal background checks be conducted on every IHSS provider in California. The IHSS program provides personal care and domestic services to aged, blind or disabled individuals in their own homes. The purpose of the program is to allow these individuals to live safely at home rather than in costly and less desirable out-of-home placement facilities. This bill contains the following provisions:

- Requires all prospective and existing IHSS providers to apply to the IHSS registry in their county and go through the criminal background check process as a condition of employment in the IHSS program.
- Mandates that every Public Authority conduct a criminal background check on all applicants to their IHSS registry using the Department of Justice LIVE-SCAN system;
- Requires IHSS providers who are applying to be on the registry to pay all the costs associated with the criminal background check;

One of the functions of the Public Authorities is to investigate the qualifications and backgrounds of potential IHSS registry providers. SB 868 (Chapter 447, Statutes of 2007) specifies that for registry applicants employed on or after January 1, 2008, the background check may include criminal background checks conducted by the Department of Justice (DOJ). SB 868 also allows Public Authorities to request criminal background checks for non-registry IHSS providers on behalf of IHSS recipients. The legislation also allowed for state financial participation in the cost of DOJ criminal background checks when at least 50 percent of the registry applicants have completed a DOJ criminal background check. However, SB 868 contained language that says the provisions of the bill do not go into effect until an appropriation is made in the annual



Budget Act or in another statute. The Governor's budget proposal does not contain any appropriation to implement the provisions of SB 868.

SB 868 contained language to prohibit any fee to be charged to the IHSS consumer or provider for processing of the criminal background check; however, this provision was tied to the language that required an appropriation to be made before it went into effect. However, the passage of AB 1674 by Assembly Member Jones (Chapter 319, Statutes of 2008) amended the statutes enacted in SB 868 and as of January 1, 2009, all Public Authorities are prohibited from charging any fee to IHSS providers, potential providers or consumers for the cost of processing a criminal background check conducted by the Department of Justice or any law enforcement agency.

**Why SB 246 is unnecessary:** Existing law already establishes a process for employer's of IHSS workers to obtain a criminal background check on their personal care provider. The Elder Care Certification program was created in 1993 (Welfare and Institutions Code § 15660) to provide criminal background information to employers of persons who are unlicensed and providing non-medical domestic or personal care to an aged or disabled person's home. Welfare and Institutions Code § 15660 was amended last year by SB 692 (Ashburn, Chapter 2, Statutes of 2008) to allow all IHSS consumers and Public Authorities to obtain a criminal background check from the Department of Justice. SB 692 specifically requires, in Welfare & Institutions Code 15660 (d)(2), that the Department of Justice fee for the criminal background check "shall be shared by the county and the state in the same ratio as described in Section 12306" (which specifies the 65/35 state-county sharing ratios). So, while SB 868 conditioned state financial participation in sharing costs for criminal background checks on a state appropriation in the budget act in Welfare & Institutions Code 12301.6 (q), SB 692 amended a separate code section and established the mandate for the state to pay its share of cost for criminal background checks for any IHSS consumer and Public Authority who wants one to be conducted on their provider or prospective provider. Therefore, existing law provides a mechanism and state financial participation for all IHSS consumers to obtain a criminal background check on their worker if so desired.

**SB 246 would shift costs to low-wage workers:** After years of work to achieve a system where consumers and Public Authorities are able to obtain a criminal background check with state financial participation, SB 246 takes a giant step backwards by placing the entire financial burden on IHSS workers to pay for their criminal background check. The minimum cost of conducting a criminal background check through the Department of Justice LIVESCAN system is \$50 per person. The Legislative Analyst's Office estimates that 98% of all home care workers now make more than the minimum wage –the average hourly wage for IHSS providers is currently \$9.98. Many IHSS providers live in poverty and are eligible for food stamps. The following organizations are opposed to any mandate for IHSS workers to pay for costs of criminal background checks. This is clearly a financial burden that cannot be absorbed by most IHSS workers and will be a disincentive to providing IHSS.

**Consumers oppose mandatory background checks on family members:** The IHSS program is a consumer-directed model that allows seniors and persons with



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disabilities considerable choice and control over how supportive services are provided and by whom. One of the key tenants of consumer control is their statutory right to hire, fire and supervise the IHSS worker. Approximately 63 percent of IHSS recipients have a relative provider. Additionally, about 44 percent of recipients have a close relative (parent, spouse, or child) provider. An analysis of the IHSS Plus Waiver that was published in June 2008 found that IHSS consumers who receive their IHSS care from a parent or spouse tend to have lower adjusted monthly Medicaid expenditures (i.e., holding health status, functional ability and other factors constant) than those with Non-Relative providers. Comparisons between those with Other Relatives and Non-Relative providers were not statistically significant.

In contrast with most of the legislation that has been introduced over the past two decades that would have mandated criminal background checks, SB 246 does not contain any exemption for IHSS providers who are a relative of the consumer they provide care for.

We respectfully urge your “no” vote on SB 246.

Sincerely,

John Wilkins, IHSS Coalition Chair (Fresno IHSS Consumer)  
AARP-California  
California Alliance for Retired Americans (CARA)  
California Association of Public Authorities for IHSS (CAPA)  
Californians for Disability Rights, Inc. (CDR)  
California Disability Community Action Network (CDCAN)  
California Foundation for Independent Living Centers (CFILC)  
California In-Home Supportive Services Consumer Alliance (CICA)  
California Senior Legislature  
California United Homecare Workers (CUHW)  
Congress of California Seniors  
Disability Rights California (formerly Protection & Advocacy, Inc.)  
Gray Panthers California  
Herbert M. Meyer, Consumer of IHSS Services, Marin County.  
IHSS Public Authority of Marin County  
Independent Living Services of Northern California  
Marin Center for Independent Living  
Nevada Sierra Regional IHSS Public Authority  
Northern California ADAPT  
Older Women’s League California (OWL)  
Personal Assistance Services Council of Los Angeles County  
Resources for Independent Living  
San Francisco IHSS Public Authority  
Service Employees International Union – State Council:  
SEIU United Long Term Care Workers  
SEIU United Healthcare Workers West



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SEIU Local 521  
Silicon Valley Independent Living Center (SVILC)  
United Domestic Workers of America/AFSCME  
Western Center on Law & Poverty

cc: Members, Senate Human Services Committee  
Senator Benoit

DRAFT