

## CICA Statewide Call

August 19, 2015

### Notes

*These notes were shortened and are not exact wording! Please listen to the recording for the exact wording.*

Ms. Doctor read this and shared how this got her started in the field she is now in. She stressed the importance of this and how this was the base of the Americans with Disabilities Act (ADA).

Not exactly her quote but took from Section 504 states (in part):

“No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency” or by the [United States Postal Service](#). - Codified as [29 U.S.C. 794](#).

For reference:

[https://en.wikipedia.org/wiki/Section\\_504\\_of\\_the\\_Rehabilitation\\_Act](https://en.wikipedia.org/wiki/Section_504_of_the_Rehabilitation_Act)

This preceded the ADA and was the foundation for all laws passed since then. This was the first time disabled people were recognized as a class of people and it was not the fault of the disabled there was a lack of access and they were not included in society. The lack of accessible was a form of discrimination.

Ms. Doctor believed this is one of the first antidiscrimination laws that recognized disabled people as a protected class and they needed to be included in our society. It was no longer the problem of the person with the disability to be included in activities within our society, but it was the problem of those providing services and activities to provide access to services provided.

This law stated that if an entity received federal funds they could not discriminate against individuals with disabilities. What pushed the regulation was people throughout the United States demanding regulations be issued to enforce the Section 504. While fighting for regulations to be issued while President Carter was in office many disabled people camped overnight in public buildings, some tying themselves to a building; individuals protested federal buildings with one of the longest taking place in Berkeley for 25 days. It was an astounding coalition bringing many civil rights groups together for a common goal. Regulations were finally in 1977 (it is believed) issued regulations to enforce the civil rights laws of Section 504 of the Rehabilitation Act.

Section 504 laid the ground work for the structure of the Americans with Disabilities Act (ADA). The ADA extended beyond entities receiving federal funds, expended to all public and private businesses throughout the nation to provide access and involvement of people with disabilities. The ADA is divided into several sections dealing with civil rights like telecommunications, employment, and government services.

Being one, with Ms. Fran Smith, Ms. Doctor was at the signing of the ADA. One part of the ADA dealing with employment she felt would improve was employment, but after 25 years unemployment of 80% of working aged disabled is a high figure and much more needs to be done. One positive part of the ADA often heard of in the news is accessibility being provided to public accommodations such as businesses and local lodging facilities. It is too bad that what the media covers are those cases considered to be frivolous cases and there is so much more where people are being discriminated against.

What we do with the ADA and IHSS Services are important and words to remember are “services are to be provided in the most integrated setting a possible. The word integration is very important to civil rights of IHSS programs. It is connected to the Olmstead Decision.

The story of the Olmstead case begins with two women, Lois Curtis and Elaine Wilson, who had mental illness and developmental disabilities,

and were voluntarily admitted to the psychiatric unit in the State-run Georgia Regional Hospital. Following the women's medical treatment there, mental health professionals stated that each was ready to move to a community-based program. However, the women remained confined in the institution, each for several years after the initial treatment was concluded. They filed suit under the Americans with Disabilities Act (ADA) for release from the hospital.

[http://www.ada.gov/olmstead/olmstead\\_about.htm](http://www.ada.gov/olmstead/olmstead_about.htm) for more information.

California has worked to meet the requirement of the ADA to be in the most integrated settings. The IHSS program is a leader in meeting this requirement which pre-dated the ADA, but we are still behind. It is estimated that there may be 110,000 still in nursing homes and other institutional type (mental health) facilities. A positive side for California has been the State to close state mental institutions throughout the state within the next few years. Those leaving the mental facilities have proven they can live in their homes and the need for institutionalization is not needed.

The ADA and Olmstead have been used to stop the cuts to the IHSS program in the past. This was done by DRC and unions.

In contrast individuals needing long term care may be in the hospital they can get instant approval to go to a nursing home. But if you are a person who wants to go home and need services under the Nursing Facility waiver programs you might wait 6 months to get it approved. The two systems do not work well to keep people in their homes.

The state is willing to spend \$70k per year for an individual to stay in a nursing home, but only \$48k to stay in your home to receive the same care. There are only 3600 waivers to serve the needed 100,000 needing the services. The DRC has introduced a bill to get the state to increase funding for increasing the number of vouchers and the yearly amount spent.

In contrast under the developmental disability system there are 115k slots and if they want more waivers or money they get them.

People can assist DRC in improving the waiver program for the IHSS program by educating the public and their representatives of problems with the waiver program.

AB 1518 is the bill referred to by Ms. Doctor.

[http://www.leginfo.ca.gov/pub/15-16/bill/asm/ab\\_1501-1550/ab\\_1518\\_bill\\_20150901\\_amended\\_sen\\_v95.pdf](http://www.leginfo.ca.gov/pub/15-16/bill/asm/ab_1501-1550/ab_1518_bill_20150901_amended_sen_v95.pdf)

**Summary:** Would authorize the department to seek additional increases in the scope of the home- and community-based Nursing Facility/Acute Hospital Waiver. The bill would require the department to, by February 1, 2016, apply for an additional 5,000 slots, to be added in the 2016-17 fiscal year, beyond those currently authorized for the waiver.

**Status:** 9/11/2015 - Failed Deadline pursuant to Rule 61(a)(14). (Last location was INACTIVE FILE on 9/11/2015)

Ms. Riley, Question: Concerned about roadblocks that seem to be in place. Gave an example of a recipient looking to get on the waiver program for more hours considering staying in the hospital for three months and they would be eligible for the waiver program. Compared costs for caring for some are between \$48k and \$200k. Wondering how to get the department to do the right thing?

Doctor responded: If you are in a nursing home you can get on the waiver program much easier than getting on the program then if you did it from home. The State feels there is not a problem because there is not a waiting list of those in nursing homes, yet it is believed this could be true, but it does not mean we are meeting the needs of the people. *We need to follow-up on this and see the status of the bill.*

Housing issue is also a problem and being addressed through AB 1235.

[http://www.leginfo.ca.gov/pub/15-16/bill/asm/ab\\_1201-1250/ab\\_1235\\_bill\\_20150707\\_amended\\_sen\\_v95.pdf](http://www.leginfo.ca.gov/pub/15-16/bill/asm/ab_1201-1250/ab_1235_bill_20150707_amended_sen_v95.pdf)

**Summary:** Would establish eligibility and other requirements for providing the home upkeep allowance or transitional personal needs fund, to Medi-Cal patients residing in a long-term care facility, as specified. The bill would prescribe general requirements as well as specific requirements both for facility residents who intend to leave the facility and return to an existing home, who would receive the home upkeep allowance, and residents who intend to leave the facility and establish a new home, who would establish a transitional personal needs fund, as part of the personal needs allowance provided to the resident.

**Status:** 8/28/2015 - Failed Deadline pursuant to Rule 61(a)(11). (Last location was APPR. on 8/27/2015)

We have not had a champion in legislature to push our issues needed to provide adequate home care.

Riley question: Asked about Therapeutic Behavioral Services and information on Early Periodic Screening, Diagnosis, and Treatment (EPSDP). **Bean shares:** *Early and Periodic Screening, Diagnosis, & Treatment (EPSDT) is a Medi-Cal benefit for individuals under the age of 21 who have full-scope Medi-Cal eligibility. This benefit allows for periodic screenings to determine health care needs. Based upon the identified health care need and diagnosis; treatment services are provided. EPSDT services include all services covered by Medi-Cal. In addition to the regular Medi-Cal benefits, a beneficiary under the age of 21 may receive additionally medically necessary services.*

Ms. Doctor's respond: Cannot respond directly, but glad the issue about young people was brought up. There is a big concern under this program because when a child turns 21 they lose the services and they need to be switched over to another waiver program, which lacks in funding and waivers mentioned earlier in discussion.

Fran Smith shared that getting the ADA passed took people with disabilities visiting members of Congress in DC for two years. Wondered what California would do with the ADA? The Olmstead

committee was formed and they have prepared and read many reports, but no action plan has been developed to, no action has been taken.

Agendas are set by staff and we are presented with feel-good reports.

Janie switched gears asking members to submit ideas to the State Advisory Committee to consider. Share what your IHSS program is doing in your County. In the Santa Clara is asking IHSS Social Workers to go to the hospital to meet with individuals who may need the IHSS program.

Your IHSS Advisory Committee should be asking if local IHSS Social Workers are going to the hospitals; have some type of relationship with hospitals to know about individuals needing services.

Who reports to the State numbers of people placed in nursing homes that could have been placed in their homes through IHSS?

Question was asked if when they go to the hospital are the waiver programs discussed or shared. This is a part of IHSS not many know about, or if they know about it, more information is needed.

Are waiver programs explained to hospital social workers – where can individuals learn more about the waiver programs?

There is a concern from experience with social workers not knowing about the waiver programs, direct deposit, and advanced pay. It is claimed that in San Diego the Managed Care Organization can sign individuals up for IHSS and Section 8 and assist individuals getting out of nursing homes.

If this can be done in San Diego, why is it not being done throughout the State?

**Bean thoughts:** *As a member of the local housing authority I would question the ability of the managed care organization being able to get people into the Section 8 housing program. This program is allowed so*

*many vouchers per county and allotted a limited budget to support this program. Which in turn if rents are high in one area it will mean less Section 8 vouchers will be issued. **This is something clarification needs to be sought out.***

**Things IHSS Advisory Board members can do:** Who in your community is working on getting people out of the nursing homes? Ask them to make a presentation to your AB. What kind of housing is being provided in your community for individuals with disabilities?

CAPA about the special sessions:

The special sessions overlaps IHSS and it includes the extension of the 7% beyond his year's funding. Governor has asked the legislature to develop a tier managed care system, but it was not embraced by the legislature. There has been some controversy on the current Managed Care Organization Tax (MCOT). How it works now in the formula the tax provides a guarantee that it does not gain or lose money. The Federal rules have changed to require that there be winners and losers. Health Management Plans with higher Medi-Cal users would be the winners and those with fewer Medi-Cal users would be losers. This scenario would be much like placing a corporate tax on higher income population.

There is concern about the Regional Centers and the funders. There has been a couple proposals for the Managed Care Organization Tax that may be enacted to make up revenues. Taxes being considered are "sin" taxes like cigarette taxes to be an alternative to the MCO tax. The situation for new taxes, such as the tobacco tax is something the Governor would support in place of the MCO tax.

It is understood revenues have exceeded prior estimates so there is a debate on whether new taxes will be needed. Being discussed is the need for a tobacco tax or MCO tax or any tax at all. It is important to remember the restoration of the 7% IHSS hours was only good for one year from the general fund. This is something the legislature needs to determine and come to an agreement on. The governor has requested

the legislature to find a source of funding in the amount of \$1 billion and it is expected if they do not cuts will be made to Medi-Cal programs and one of them is IHSS – this would be seen in the governor’s 2016 budget prepared in January.

Potential start of overtime the budget included funds to cover this. The FLSA decision has been speed up for a decision. A final decision is hoped to be known between September and December. No matter what is decided an appeal is expected.

Riley question: There will be an appeal so overtime probably will not go into effect until 2016?

That is a reasonable thought. Then if it is appealed it may go to the Supreme Court and it will be there to be heard or not.

Riley question: Why can’t the General Fund be used for IHSS?

It has been used to cover this year’s 7% restoration. There is concern about the general fund having a deficit because it is used for education and other programs the State funds. Finding a source for future funding is important and most favorable may be the tobacco tax.

Janie recognized individuals who will serve on the State Advisory Committee: Charlie Bean, Deborah Doctor, Michael Conley, Michelle Rousey, Kristine Loomis, and others who will be serving.

There was discussion on the State Wide Public Authority and negotiations for two counties connected to the CCI. This is something to watch for future negotiations for other counties looking to improve wages.

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