In-Home Supportive Services (IHSS)*
History of Major Program Changes

1973
IHSS Program

The IHSS Program was created to enable elderly, blind and disabled individuals to live independently in the community.

1978-1981
Equity Assessment Project

This was a three-year project conducted by UC Berkeley, in three counties (Alameda, Contra Costa and Marin). Historical needs assessment data was used to predict recipients' level of need for IHSS services. The project also permitted similar awards to individuals with similar needs, thus promoting equity (beginning of IHSS Assessment Uniformity).

1981
Domestic Services Standard – *W&IC section 12310*

The first state time-per-task standard, known as the Domestic Services Standard, was introduced.

1992
Non-Profit Consortiums and Public Authority – *W&IC section 12301.6*

Statute was added to allow a County Board of Supervisors to contract with a non-profit consortium, or to establish by ordinance, a public authority for the delivery of IHSS.

Federal Funding Approved for the IHSS PCSP

On November 2, 1992, a State Plan Ammendment was approved by the CMS allowing most IHSS services to be considered a Medi-Cal benefit under the new IHSS PCSP.

1993
PCSP

The PCSP was implemented April 1, 1993.

1998
Expansion of PCSP Eligibility – *W&IC section 18937*

Statute was amended, expanding PCSP eligibility to include medically-needy aged, blind and disabled persons (previously, only categorically-eligible persons were eligible).

Waivers for Personal Care Services – *W&IC section 14132.97*

The Waivers for Personal Care Services, as defined under the Medi-Cal Program, were required to be provided to persons meeting specified requirements.

In-Home Supportive Services (IHSS)*

History of Major Program Changes

1999
State Plan Amendment

On April 1, 1999, a State Plan Amendment was approved by CMS expanding PCSP eligibility to include income-ineligible recipients (i.e., recipients with a share of cost).

Employer of Record – *W&IC sections 12301.6, 12303.4, 12301.3, 12301.4, 12301.8 and 12302.25*

Counties were required to act as or to establish an employer of record for IHSS providers for purposes of collective bargaining. Counties that had not established a public authority for the provision of IHSS services were required to establish an advisory committee to provide recommendations on modes and delivery of IHSS services. The IHSS Registry sales tax sub-account was also eliminated from the LRF and remaining funds were transferred to the GF.

2000
IHSS Non-federal Sharing Ratios and State Participation in Wages and Benefits – *W&IC sections 12306.2 and 12306.3*

This bill established the non-federal share to be paid by the state and counties for any increases in provider wages and benefits and associated taxes. Limits were also defined for state participation in increases to wages and benefits.

Non-Public Authority Counties

Effective January 1, 2001, participation in the non-federal portion of any county-implemented increase in IHSS provider wages, benefits and associated taxes was set at 65 percent state and 35 percent county. Wage increases were at county discretion and limited to no more than three percent above the statewide minimum wage.

In-Home Supportive Services (IHSS)*

History of Major Program Changes

2000 (CONTINUED)
Public Authority Counties

Participation in the nonfederal portion of any increases in wages, benefits and associated taxes that are negotiated by a public authority or a non-profit consortium was set at 65 percent state and 35 percent county participation. Increases in wages and benefits were subject to the following limits:

- The state would participate in wages up to $7.50 per hour and in individual health benefits up to $0.60 per hour for all public authority and non-profit consortium providers.
- The state would participate in total wages and health benefits up to $9.10 per hour if wages reached at least $7.50 per hour. Gradual increases to wage and benefits were allowed for these specified providers over the four years following FY 2000-01, up to total combined wages and health benefits of $12.10 per hour in the fourth year.
- State participation in subsequent year increases would only occur if wages had already reached $7.50 per hour and GF revenue had exceeded the previous FY's GF revenue by at least five percent.
- State participation in wage and benefit increases in any FY would be limited to a maximum increase of $1.00 per hour.

Contract Counties

Funding was provided in FY 2000-01 for the increased state share of cost for existing contract counties that elected to increase their maximum allowable contract rates. (Wages and benefits for contract providers are negotiated between the contractor and their local unions).

IHSS Advisory Committee – *W&IC sections 12301.3 and 12301.4*

Each county that had not established a public authority was required to establish an advisory committee. The advisory committee in each county was also required to provide recommendations on certain modes of service to be utilized in the county for IHSS. The advisory committee membership would have to include one IHSS provider for a county that has an IHSS caseload of less than 500 and two IHSS providers for a county that has an IHSS caseload of more than 500. Reimbursement of the advisory committee's administrative costs was also allowed.

In-Home Supportive Services (IHSS)*

History of Major Program Changes

2004
Improve Quality of IHSS – *W&IC sections 12301.21, 12305.7, 12305.71, 12305.72, 12305.8, 12305.81, 12305.82, 12305.83, 12317, 12317.1 and 12317.2*

The CDSS, counties and DHCS were required to perform a number of activities that would focus on improving the quality of IHSS. The key provisions included:

- Ongoing statewide social worker training.
- State oversight and monitoring of county QA activities.
- Hourly task guidelines, with exception criteria to promote accurate and consistent assessments, to provide social workers a tool for conducting assessments and service authorizations.
- Fraud prevention and detection activities that include collaboration among agencies to prevent/detect fraud and to maximize recovery of overpayments.
- Annual error-rate studies and data-match activities.

IPW

The IPW State Plan Amendment was approved, allowing most residual recipients to be served in this waiver program (i.e., services provided by a spouse and/or parent of a minor child, or to those receiving Restaurant Meal Allowance or Advance Pay). The IPW was approved for five years, from August 1, 2004, through July 31, 2009, and extended until September 30, 2009.

2009
Key Provisions of Fraud – *W&IC sections 12301.15, 12301.22, 12301.25, 12301.6, 12305.7, 12305.71, 12305.73, 12305.82, 12305.85 and 12305.86*

The CDSS, counties and DHCS were required to improve detection, referral, investigation and prosecution of fraud in the IHSS program, communication and to develop collaboration between state and county agencies. The key provisions included:

- Provider Orientation.
- Provider enrollment including fingerprinting and background checks, enrollment form and signed agreement.
- Provider appeals.
- Fraud prevention protocols clarifying state/county roles and responsibilities including targeted mailings, unannounced home visits and county anti-fraud training.
- Policy guiding the use of Post Office boxes.
- Creation of the NOA to inform providers of recipient's authorized hours/services.

In-Home Supportive Services (IHSS)*

History of Major Program Changes

2009 (CONTINUED)
County Fraud Plan Funding

In FY 2009-10, CDSS approved county fraud plan funding for 45 counties to enable the development of the infrastructure necessary to support future fraud prevention operations.

The IHSS Plus Option

The IHSS Plus Option State Plan Amendment was approved on September 29, 2009, and the IHSS Plus Option became effective on October 1, 2009. The Social Security Act section 1915(i), Self-Directed Personal Assistance Services State Plan Option, was identified as the best replacement for the expiring IPW program.

Statutory Reductions and Court Injunctions

A minimum Functional Index Score threshold was created for IHSS Program services and this became the *Oster I* Lawsuit. The state financial participation rate for IHSS provider wages was capped at $10.10 effective July 1, 2010. This became the *Dominguez v. Schwarzenegger* lawsuit. The "Share of Cost Buyout" program was eliminated.

2011
Statutory Reductions and Court Injunctions

A 3.6 percent reduction in hours was implemented in February 2011 and a 20 percent reduction in hours was triggered by the Budget Act in December 2011. This became the *Oster II* Lawsuit and part of 2013 litigation settlement.

Health Care Certificate Requirement

The IHSS recipients were required to provide a Health Care Certificate from a licensed health care professional beginning August 2011.

Changes to Provider Enrollment Background Checks

Tier 1 – Specified Child Abuse, Elder Abuse and Fraud against government health care or supportive services.

Tier 2 – Other items identified in a background check could be waived by the IHSS recipient.

In-Home Supportive Services (IHSS)*

History of Major Program Changes

2011, 2013
CFCO

The ACA of 2010 (enacted March 23, 2010) established a new State Plan Option entitled CFCO. The CFCO provides home and community based attendant services and supports and also provides increased federal funding in the form of a six percent increase in the FMAP for CFCO eligible recipients. CDSS and DHCS submitted a State Plan Amendment to CMS on December 1, 2011. The State Plan Amendment was approved August 31, 2012, with implementation retroactive to December 1, 2011.

On August 31, 2012, the federal CMS approved State Plan Amendment 11-034 for CFCO, allowing the state to obtain increased federal funding for eligible PCSP and IHSS Plus Option program recipients. The CMS approved State Plan Amendment 13-007 effective July 1, 2013, and updated eligibility language for compliance with the federal Social Security Act, section 1915(k)(1) and 42 CFR section 441.510.

2012-2013
CMIPS II Launched

The CMIPS II launched in pilot counties Merced and Yolo in July 2012. In September 2012 San Diego joined the pilot. Extensive work and training has been conducted with counties/public authorities, labor organizations health benefit administrators and IHSS recipient/providers. In March 2013 group one launched eight additional counties followed by 20 additional counties in group two in May 2013. Group three (Los Angeles County) launched in August 2013 followed by the remaining 24 counties in group four in November 2013.

2013
Oster I, Oster II and Dominguez Lawsuits Settlement Process

The IHSS Settlement Agreement, filed March 28, 2013, received preliminary approval on April 4, 2013. Court and legislative action was required by May 24, 2013. This lawsuit resulted in an eight percent reduction to IHSS Recipients hours effective July 1, 2013, through June 30, 2014. The reduction decreased to seven percent effective July 2014 and will be ongoing, unless action is taken to offset the reduction.

In-Home Supportive Services (IHSS)*

History of Major Program Changes

2013 (CONTINUED)
CCI – *SB 1008 (Chapter 33, Statutes of 2012) and SB 1036 (Chapter 45, Statutes of 2012) changed the following sections of California law related to the IHSS program: Government Code 6531.5; Government Code Title 23; W&IC sections 10101.1, 12306, 12306.1,12306.15, 12330, 14182, 14186, 14186.35 and 14186.36*

The CCI, a Medi-Cal managed care plan, changed state statute related to the IHSS program. The CCI began phasing in the eight pilot counties April 2014. The implementation process, including stakeholder meetings, is ongoing. As the IHSS program moves eligible recipients into CCI, it will remain very similar to the current program. The CCI legislation requires the Cal Medi-Connect plan to administer IHSS in accordance with current IHSS program standards and requirements. The plan will ensure access to, provision of and payment for recipients who meet the eligibility criteria for IHSS.

Key Provisions:

The IHSS recipients will retain the responsibilities as the employer of the IHSS provider for the purposes of hiring, firing and supervising their provider, appealing any action relating to his or her application for or receipt of services and the ability to request a reassessment.

IHSS providers will continue to adhere to the IHSS provider enrollment requirements set forth in existing statute.

Care coordination teams will be established, as needed and subject to the consumer's consent, for individual care plan development. The teams will include county IHSS social workers, consumers and their representatives, managed care health plans and may include IHSS providers and others as applicable.

CDSS will retain program administrative functions, in coordination with DHCS, including policy development, provider appeals and general exceptions, quality assurance and program integrity for the IHSS.

The CCI shifts the responsibility of collective bargaining functions (wages, benefits and other terms and conditions of employment) from county Public Authority to a Statewide Authority. This shift will occur for each county when enrollment of dual eligibles into Cal Medi-Connect is complete. This establishes a new Advisory Committee for the Statewide Authority.

Each county will be responsible for paying a MOE instead of paying a percentage of program costs. Each county's MOE is based on program expenditures for FY 2011-12, which was adjusted to reflect savings based on the additional six percent FMAP for CFCO eligible cases, county negotiated wage increases and an annual 3.5 percent inflation factor starting July 1, 2014. This MOE requirement applies to all 58 counties effective July 1, 2012, regardless of when the county will begin participating in the CCI.

In-Home Supportive Services (IHSS)*

History of Major Program Changes

2013
CCI (CONTINUED)

The CDSS, in consultation with DHCS, shall certify any agency that is contracting with Cal Medi-Connect for the provision of IHSS. The CDSS shall also develop a written appeal process for any agency dissatisfied with the decision from CDSS regarding certification.

As required by CCI, CDSS has, in consultation with stakeholders, developed voluntary provider training available January 2014. Three stakeholder workgroup meetings were held between May 29, 2013, and December 3, 2013. The workgroup meetings included at least one participant from each of the following groups: public authorities, providers, recipients, county representatives, recognized employee representatives and DHCS.

On March 27, 2013, the Dual Demonstration MOU was approved to integrate dual eligible beneficiaries as a component of CCI.

In an effort to ensure that data-sharing needs are identified and addressed prior to the implementation of the CCI in 2014, CDSS is holding data sharing stakeholder workgroups, the first of which took place November 30, 2012.

A stakeholder workgroup has been established to develop the universal assessment process, including a universal assessment tool for home and community-based services. The first stakeholder workgroup meeting was held September 20, 2013.

The W&IC sections 12300.7, 12306, 12306.1 and 12306.15 were amended and delinked CCI components to allow the mandatory enrollment of Medi-Cal and Medicare beneficiaries (dual eligibles) into Medi-Cal managed care, the integration of long-term supports and services into managed care plans and the commencement of the IHSS Statewide Public Authority to proceed separately from Cal MediConnect.

In-Home Supportive Services (IHSS)*

History of Major Program Changes

2013 (CONTINUED)
FLSA Final Rules Concerning Domestic Workers – *W&IC section 12300.41, 12301.1 and 12301.24*

In September 2013, the United States Department of Labor issued its Final Rule concerning domestic workers under the FLSA. The regulations were scheduled to implement January 2015 containing several significant changes impacting the IHSS program, including more clearly defining the tasks that comprise "companionship services" and limiting exemptions for companionship services and live-in domestic service employees to the individual, family, or household using the services and not third-party employers. Under the final rule, CDSS is required to pay IHSS providers overtime wages and compensate providers for wait time during medical accompaniment and commute time between multiple recipients. CDSS is evaluating implementation options for compliance with FLSA regulations. Policy changes to IHSS provider workweek limitations and provider orientation were made.

Statutes were amended and added to provide a limitation of the hours an IHSS provider can work in a week contingent upon implementation of the FLSA ruling. Providers cannot work more than 66 hours each week, less the seven percent reduction while it is in effect (61 Hours). The 66/61 hour limit is based on the statutory maximum hours (283) an IHSS recipient can receive, divided by 4.33 weeks per month. It allows payment to IHSS providers for travel time, limited to seven hours per week, when traveling directly between different recipients on the same day. The CDSS or a county may terminate a provider from the IHSS program if he/she continues to violate the overtime/travel time limitations. The legislation also established a three month grace period for IHSS provider overtime changes, in which providers will be compensated for overtime. Statute was amended to require onsite orientation, completion of the IHSS provider application prior to attendance, oral presentations and written material translated into the IHSS threshold languages in the county. Statute also permits presentations by representatives of recognized employee organizations in the county.

2014-15
FLSA Federal District Court Ruling

In late December 2014, a federal district court ruled that a portion of the regulations exceeded the federal Department of Labor's authority and delayed implementation of the regulations. Under state law, the state's implementation of overtime, commute time, and wait time were also delayed pending further action by the federal court. On January 14, 2015, Judge Leon issued a ruling, vacating the Department of Labor's revised companionship services definition that was scheduled to go into effect on January 15, 2015.