California Association of Public Authorities

OVERVIEW OF THE GOVERNOR'S FY 15-16 STATE BUDGET PROPOSALS FOR IHSS

IHSS Budget Overview 1

Restoration of Across the Board Reduction 2

IHSS Caseload Information 2

IHSS Caseload Impact of the ACA 3

IHSS Wage, Tax, Benefit and Public Authority Administrative Rates 4

FLSA Regulations, Overtime and Compliance 6

Coordinated Care Initiative 7

County IHSS Maintenance of Effort (MOE) 8

Managed Care Organization Tax 8

IHSS Provider Payment – Incorrect Share of Cost Deductions 9

Federally Ineligible Providers 9

Community First Choice Option (CFCO) 9

County Realignment Funds 10

Supplemental Security Income/State Supplemental Payment (SSI/SSP) 10

IHSS Budget Overview

The Governor's budget provides $8.2 billion ($2.5 billion GF) for the IHSS program, reflecting a 14.4 percent increase over the 2014-15 level. The IHSS caseload in 2014-15 is anticipated to grow by 3.8 percent from the prior fiscal year to 446,053, and is projected to increase again by 3.7 percent in 2015-16 to 462,648 recipients. While the 2015-16 projections are increasing at a slower rate compared to prior years, the Administration estimates

915 L Street, Suite 1435 • Sacramento • California 95814
Phone: (916) 492-9111 • Fax: (916) 492-9444 • Email: keeslar@sbcglobal.net

approximately one percent of newly eligible individuals under the Affordable Care Act (ACA) will utilize IHSS services, resulting in 19,679 newly eligible IHSS cases per month in 2014-15 and 20,126 cases per month in 2015-16.

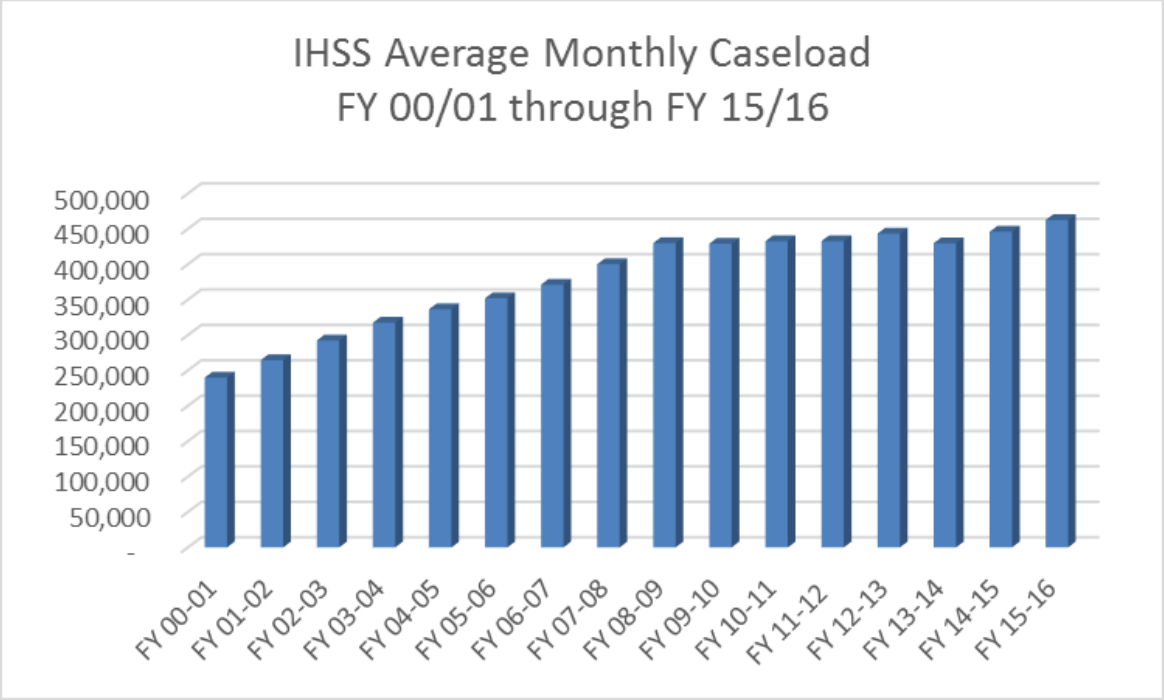
According to the Administration, this 6.4 percent growth reflects expected increases in negotiated wages and benefits, the impact of the State's minimum wage increase and the impact of limiting payment of overtime. Additional details on the overtime proposal are provided below.

Restoration of Across the Board Reduction

The Budget proposes to restore the current 7 percent across the board reduction in service hours with proceeds from the new tax on managed care organizations effective July 1, 2015. The cost to restore the 7 percent reduction is estimated to be $483.1 million in 2015-16 ($215 state GF).

IHSS Caseload Information

The IHSS caseload includes recipients who are Medi-Cal eligible and aged, blind or disabled. The actuals and projection lines are based on a 12-month moving average (MA) for display purposes in the above graph. The 2015-16 Governor's Budget projects the average monthly caseload for FY 2014-15 will increase 3.8 percent from the previous FY and the caseload for FY 2015-16 will increase by 3.7 percent from FY 2014-15. The 2015-16 Governor's Budget projections are increasing at a slower rate compared to past years. Average cases per month are projected to be 446,053 in FY 2014-15 and 462,648 in FY 2015-16. Federally eligible cases account for 98.9 percent of the total caseload and the remaining 1.1 percent are residual cases with no FFP.



IHSS Caseload	Average # of IHSS cases	Difference from prior year	% Difference
FY 80-81	90,000	0	0.0%
FY 81-82	90,000	0	0.0%
FY 82-83	111,538	21,538	23.9%
FY 83-84	100,044	(11,494)	-10.3%
FY 84-85	106,330	6,286	6.3%
FY 85-86	111,879	5,549	5.2%
FY 86-87	120,686	8,807	7.9%
FY 88-89	127,202	6,516	5.4%
FY 89-90	134,500	7,298	5.7%
FY 90-91	143,600	9,100	6.8%
FY 91-92	148,339	4,739	3.3%
FY 92-93	153,679	5,340	3.6%
FY 93-94	158,631	4,952	3.2%
FY 94-95	184,580	25,949	16.4%
FY 96-97	190,667	6,087	3.3%
FY 98-99	208,401	17,734	9.3%
FY 99-00	225,676	17,275	8.3%
FY 00-01	239,830	14,154	6.3%
FY 01-02	264,658	24,828	10.4%
FY 02-03	292,360	27,702	10.5%
FY 03-04	317,641	25,281	8.6%
FY 04-05	336,443	18,802	5.9%
FY 05-06	352,026	15,583	4.6%
FY 06-07	371,244	19,218	5.5%
FY 07-08	400,156	28,912	7.8%
FY 08-09	429,895	29,739	7.4%
FY 09-10	428,962	(933)	-0.2%
FY 10-11	432,740	3,778	0.9%
FY 11-12	432,650	(90)	0.0%
FY 12-13	443,264	10,614	2.5%
FY 13-14	429,635	(13,629)	-3.1%
FY 14-15	446,053	16,418	3.8%
FY 15-16	462,648	16,595	3.7%

IHSS Caseload Impact of the ACA

Effective January 2014, the ACA provides an enhanced FMAP rate for services to newly eligible individuals between 19 and 65 years of age whose household income does not exceed 138 percent of the federal poverty level. Due to the changes in Medi-Cal eligibility resulting from the ACA, newly eligible adults, some of which were previously covered under other programs such as the Low Income Health Program, are transitioning into Medi-Cal and seeking IHSS services.

The DHCS' ACA caseload projections for the optional expansion population include the newly eligible individuals expected to utilize IHSS services. These cases are eligible for an enhanced FMAP of 100 percent through June 2016. Of the ACA optional expansion population, the budget estimates that one percent will utilize IHSS services. Based on DHCS' estimates of the optional expansion population, there will be an additional 19,679 newly eligible IHSS cases per month in FY 2014-15 and 20,126 per month in FY 2015-16.

IHSS Wage, Tax, Benefit and Public Authority Administrative Rates

Under California Labor Code section 1182.12, the California minimum wage increases from $8.00 per hour to $9.00 per hour effective July 2014 followed by an increase to $10.00 per hour effective January 2016. In FY 2014-15, 16 counties will be impacted by the July 2014 increase. In FY 2015-16, 32 counties will be impacted by the January 2016 increase. Due to the IHSS county MOE, the state is responsible for all nonfederal costs of the minimum wage increases. The budget includes $3.1 million GF for FY 14/15 and $3.3 million GF for FY 15/16 for this purpose.

The following rates represent dollars per hour effective through September 2014.

County	Wages	Payroll Tax	Health Benefits	Other Benefits	Admin
Alameda	$11.50	$1.26	$0.72	$0.21	$0.11
Alpine[1, 4 ††]	$9.00	$0.00	$0.00	$0.00	$0.00
Amador[4 ††]	$9.00	$0.91	$0.60	$0.00	$0.62
Butte[4 ††]	$9.00	$0.81	$0.60	$0.00	$0.07
Calaveras	$10.00	$0.90	$0.48	$0.01	$1.08
Colusa[3, 4 ††]	$9.00	$0.82	$0.00	$0.00	$1.20
Contra Costa	$11.50	$1.07	$1.31	$0.13	$0.26
Del Norte[3 †]	$9.50	$0.73	$0.00	$0.00	$0.19
El Dorado[†]	$9.00	$0.81	$0.60	$0.00	$0.60
Fresno	$10.25	$0.99	$0.85	$0.00	$0.10
Glenn[3, 4 ††]	$9.00	$0.81	$0.00	$0.00	$0.62
Humboldt[3, 4 ††]	$9.00	$0.82	$0.00	$0.00	$0.19
Imperial[4 †]	$9.50	$0.86	$0.29	$0.00	$0.07
Inyo[3 †]	$9.25	$0.86	$0.00	$0.00	$0.63
Kern[3]	$10.35	$1.20	$0.00	$0.00	$0.19
Kings[3, 4 †]	$9.85	$0.90	$0.00	$0.00	$0.34
Lake[3 †]	$9.30	$0.99	$0.00	$0.00	$0.20
Lassen[4 ††]	$9.00	$0.69	$0.00	$0.00	$0.26
Los Angeles[2, 3 †]	$9.65	$0.97	$0.92	$0.00	$0.05
Madera[3]	$10.35	$0.94	$0.00	$0.00	$0.08
Marin[3]	$12.10	$3.63	$0.82	$0.00	$0.31
Mariposa[4]	$10.10	$0.91	$0.00	$0.00	$0.82
Mendocino[†]	$9.90	$1.18	$0.60	$0.00	$0.47

Merced†	$9.00	$1.62	$0.60	$0.00	$0.25
Modoc[4 ††]	$9.00	$0.90	$0.00	$0.00	$0.49
Mono[4 ††]	$9.00	$0.69	$0.00	$0.00	$2.36
Monterey	$11.50	$2.16	$0.69	$0.00	$0.15
Napa	$11.50	$0.46	$0.60	$0.00	$0.41
Nevada[3, 4 ††]	$9.00	$1.00	$0.60	$0.00	$0.57
Orange†	$9.30	$0.70	$0.60	$0.00	$0.06
Placer	$10.00	$1.00	$0.60	$0.00	$0.39
Plumas[3, 4 ††]	$9.00	$1.00	$0.60	$0.00	$0.57
Riverside[3, 4]	$11.50	$0.92	$0.60	$0.00	$0.14
Sacramento[3]	$10.80	$0.99	$0.80	$0.00	$0.07
San Benito	$10.50	$0.89	$0.60	$0.00	$0.38
San Bernardino†	$9.25	$0.74	$0.38	$0.00	$0.17
San Diego[3 †]	$9.85	$1.10	$0.37	$0.00	$0.21
San Francisco[3, 4]	$12.00	$1.30	$2.51	$0.00	$0.10
San Joaquin[3, 4 †]	$9.85	$1.17	$0.74	$0.00	$0.16
San Luis Obispo[3, 4]	$11.05	$0.99	$0.00	$0.00	$0.27
San Mateo	$11.50	$1.15	$0.97	$0.28	$0.20
Santa Barbara[3]	$11.05	$0.89	$0.00	$0.00	$0.28
Santa Clara[3, 4]	$12.44	$1.10	$3.32	$0.22	$0.06
Santa Cruz[3]	$11.90	$1.49	$0.20	$0.00	$0.23
Shasta[3 †]	$9.64	$1.16	$0.00	$0.00	$0.13
Sierra[3, 4 ††]	$9.00	$1.00	$0.60	$0.00	$0.57
Siskiyou[4 ††]	$9.00	$0.67	$0.00	$0.00	$0.13
Solano	$11.50	$2.13	$0.60	$0.00	$0.29
Sonoma[3]	$11.65	$0.91	$0.60	$0.13	$0.21
Stanislaus[3, 4]	$10.10	$0.92	$0.00	$0.00	$0.14
Sutter†	$9.25	$0.79	$0.60	$0.00	$0.71
Tehama[4 ††]	$9.00	$0.82	$0.00	$0.00	$0.19
Trinity[4 ††]	$9.00	$0.82	$0.00	$0.00	$0.04
Tulare[3, 4 †]	$9.59	$0.87	$0.00	$0.00	$0.14
Tuolumne[4 ††]	$9.00	$0.00	$0.00	$0.00	$0.00
Ventura[4]	$11.10	$1.00	$0.00	$0.00	$0.19
Yolo[3]	$11.02	$1.00	$0.60	$0.00	$0.26
Yuba	$10.00	$1.43	$0.60	$0.00	$0.27

Footnotes:

1 For Alpine and Tuolumne Counties, the tax rates are not displayed.

2 Rates for the Los Angeles Backup Assistance Program: $12.00 wages, $1.20 payroll taxes, $0.92 health benefits and $0.05 administrative costs.

3 Rate changes in FY 2013-14 are displayed on the following page.

4 Rate changes in FY 2014-15 are displayed on the following page.

†† The California minimum wage increased to $9.00 per hour July 2014. State

imposed wage rate increases impacted the following 16 counties: Alpine, Amador, Butte, Colusa, Glenn, Humboldt, Lassen, Modoc, Mono, Nevada, Plumas, Sierra, Siskiyou, Tehama, Trinity and Tuolumne.

† The California minimum wage will increase to $10.00 per hour January 2016. In addition to the 16 counties impacted by the July 2014 increase, state imposed wage rate increases will impact the following 16 counties: Del Norte, El Dorado, Imperial, Inyo, Kings, Lake, Los Angeles, Mendocino, Merced, Orange, San Bernardino, San Diego, San Joaquin, Shasta, Sutter and Tulare.

FLSA Regulations, Overtime and Compliance

In September 2013, the United States Department of Labor issued its Final Rule concerning domestic workers under the FLSA. The regulation is effective January 2015 and contains several significant changes impacting the IHSS program, including: (1) more clearly defining the tasks that comprise "companionship services" and (2) 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. Compliance with the final federal pay regulations for direct care workers require compensation for IHSS provider overtime, payment for commute time between multiple recipients and wait time associated with medical accompaniment.

Under the Final Rule, the state, as a third-party employer, can no longer claim the "companionship services" or "live-in domestic service employee" exemption under the federal minimum wage and overtime regulations. The state will be required to pay IHSS providers overtime under the FLSA. In addition, as the state is no longer able to claim minimum wage and overtime exemptions, the state is required to compensate providers for commute time between multiple recipients and wait time during medical accompaniment.

SB 855 (Chapters 29, Statutes of 2014) added section 12300.4 to the W&IC to specify that IHSS providers are not permitted to work a total number of authorized hours within a workweek that exceed 66 hours, as reduced by the net percentage defined in W&IC sections 12301.02 and 12301.03.

- Overtime during FY 2014-15 is estimated to cost $6.22 per hour (overtime costs for time and a half based on regular wages of $12.44 per hour) and $6.29 per hour in FY 2015-16 (based on regular wages of $12.57 per hour).
- Eighteen percent of providers serve multiple recipients. It is estimated providers will spend an average of ten hours per month traveling between recipients. Eighty-seven percent of recipients will have a provider accompany them to medical visits. It is estimated providers will spend three hours per month waiting for recipients to complete their appointments during medical accompaniment.

The FY 14/15 budget assumed implementation of the FLSA regulations on January 1, 2015. However, in late December 2014, a federal district court ruled that 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 is also delayed pending further action by the federal court.

Coordinated Care Initiative

Under the Coordinated Care Initiative (CCI), persons eligible for both Medicaid and Medi-Cal (dual eligibles) receive medical, behavioral health, long-term supports and services, and home and community-based services coordinated through a single health plan. These changes are being pursued through a federal demonstration project known as Cal MediConnect. The CCI is also enrolling all dual eligibles in managed care plans for their Medi-Cal benefits and integrating long-term services and supports for Medi-Cal-only beneficiaries. The CCI was intended to operate in eight counties: Alameda, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Mateo and Santa Clara.

The following changes have occurred since enactment of the 2012 Budget Act and the creation of the program:

- More than 100,000 participants were exempted, including Medicare Special Needs Plans and certain categories of Medi-Cal beneficiaries based on age or health condition.
- Passive enrollment was delayed until 2014, and Alameda County will no longer participate in the demonstration due to concerns regarding one of the health plan's readiness. Six counties have begun passive enrollment and the seventh, Orange County, will begin in July 2015.
- Medicare and Medicaid savings were intended to be shared 50-50 with the federal government; however, the federal government reduced the amount of savings California was allowed to retain to approximately 25-30 percent.
- To help pay for implementation, the federal government allowed a 4-percent tax on managed care organizations through June 30, 2016, which is attributed to the state's participation in the demonstration. However, recent guidance from the federal government indicates the tax is inconsistent with federal Medicaid regulations and will not be allowed to continue.
- As of November 1, 2014, approximately 69 percent of eligible participants have opted out of the demonstration compared to initial projections of approximately 33 percent. That percentage is around 80 percent for In-Home Supportive Services (IHSS) beneficiaries, and participation varies widely by county.
- Due to revised Federal Fair Labor Standards Act regulations, IHSS providers are entitled to overtime compensation. Because the CCI established a Maintenance-of-Effort (MOE) funding formula for the IHSS program, the state's IHSS costs have significantly increased due to the CCI. This arrangement changed the fiscal exposure for counties from a share of non-federal costs to a cost cap based in 2011-12 expenditure levels plus annual growth of 3.5 percent. The cost cap applies to all 58 counties, not just the seven counties implementing the CCI. This funding change, together with the federal government's change in overtime regulations, has significantly increased the state's costs.

Under the current law, the Director of Finance is required to annually send to the Legislature a determination of whether the CCI is cost-effective. If the CCI is not cost-effective, the program would automatically cease operation. Although the Budget projects net General

Fund savings for the CCI of $176.1 million in 2015-16, these savings are primarily from the tax on managed care organizations. Without the tax revenue, the CCI would have a General Fund cost of $398.8 million in 2015-16. The most recent analysis also shows that the initiative could result in net costs to the state in 2016-17 and beyond due to the factors outlined above. If these factors are not improved by January 2016, the CCI would cease operating effective January 2017.

The Administration remains committed to implementing the CCI to the extent it can continue to generate program savings. Over the course of the next year, the Administration will seek ways to improve participation, extend an allowable managed care tax, and lower state costs.

County IHSS Maintenance of Effort (MOE)

The budget continues to reflect the state's share of cost in the IHSS program due to implementation of the County MOE. Prior to the IHSS MOE, counties had a 35 percent share towards non-federal costs of this program. The County MOE is adjusted annually based on locally negotiated and annualized wages and benefits, county share of the Community First Choice Option (CFCO), and a 3.5 percent annual inflation factor which implemented in 2014-15. The County MOE base was established at $925.8 million in 2011-12. The proposed budget makes the following annualized adjustments to the county MOE:

- For 2012-13, increases county MOE expenditures by $18.9 million
- For 2013-14, increases county MOE expenditures by $9.2 million
- For 2014-15, increases county MOE expenditures by $37.4 million
- For 2015-16, increases county MOE expenditures by $38.3 million.

Please refer to additional discussion of the County MOE under the CCI report above.

Managed Care Organization Tax

SB 78 (2013) authorized a tax on the operating revenue of Medi-Cal managed care plans based on the state sales tax rate. Nearly half of this revenue is used for the non-federal share of supplemental payments to Medi-Cal managed care plans. The remainder of the revenue is used to fund increased capitation rates. The Budget includes a General Fund offset from the tax of $803 million in 2014-15 and $1.1 billion in 2015-16.

The Governor's Budget notes that the federal government recently released guidance indicating that this tax is likely impermissible under Medicaid regulations.

The Administration is proposing a new managed care tax that complies with federal law. The new revenue will offset the same amount of General Fund expenditures as the current tax, as well as fund a restoration of the 7-percent across the board reduction to authorized IHSS hours of services. The Administration will be pursuing the new managed care tax early in 2015.

IHSS Provider Payment – Incorrect Share of Cost Deductions

This premise reflects the costs associated with managing incorrect share of cost deductions from IHSS provider wages. Currently, there is no process to directly pay providers when an incorrect share of cost deduction is made. The recipient can pay the provider for the erroneous deduction and file a claim for reimbursement using the Conlan II claim process. Due to financial hardship, some recipients are unable to front payments. The provider wage reimbursement process will allow providers to contact the county and request payment directly.

This process will mitigate financial hardship for IHSS recipients and providers, assist in preventing disruption of IHSS services if the recipient cannot reimburse his/her provider and avoid potential legal action by IHSS providers and labor unions relating to payment of wages.

Federally Ineligible Providers

This premise reflects the cost of a state/county funded program for IHSS providers who have criminal histories and have been found ineligible for federal Medicaid reimbursement, even though the recipients they serve are Medi-Cal eligible. The court in *Ellis/Beckwith v. Wagner and Maxwell-Jolly (Beckwith)* required the state to enroll all providers with previous criminal convictions unless the provider was convicted of one of the three crimes listed in W&IC section 12305.81. These crimes include fraud against a government health care or supportive services program, specified abuse of a child and specified abuse of an elder or dependent adult. The W&IC section 12305.87 expands the list of convictions that can be used as a basis to exclude a provider from the program.

State statute authorizes an IHSS recipient to waive the exclusionary convictions of an individual, as identified under that same section, and continue to receive services from the otherwise ineligible provider. Statute also allows individuals excluded under that section to apply for a general exception to work as a provider and, if granted, be eligible to provide IHSS. However, these crimes and waiver/exception processes are not consistent with federal requirements for excluded Medicaid providers.

To ensure CDSS continues to receive federal reimbursement and to comply with the requirements of the *Beckwith* court order, a state/county funded program was established. This program allows enrollment of providers who have criminal conviction(s) that are not identified in W&IC sections 12305.81 and 12305.87 but warranted placement on the federal OIG list (requiring exclusion from Medicaid participation) and due to the court order, must be allowed to continue working for their Medi-Cal recipients. As these providers are ineligible to provide services to Medicaid-eligible recipients, this premise creates the necessary funding shift to assure no federal share is used in the compensation of service hours provided under these circumstances.

Community First Choice Option (CFCO)

The CFCO is a Medi-Cal state plan benefit that provides home-based and community-based attendant services and support benefits to qualified IHSS recipients who meet the state's nursing facility eligibility standards. These services are eligible to receive an enhanced FMAP of 56 percent (six percent above the standard 50 percent FMAP associated with other IHSS services).

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 federal CMS approved a subsequent state plan amendment 13-007 effective July 1, 2013, updating eligibility language for compliance with the Social Security Act section 1915(k)(1) and 42 CFR section 441.510.

The budget assumes state GF savings of $230 million in FY 14/15 and $241 million in FY 15/16.

County Realignment Funds

1991 Realignment is funded through two sources: state sales taxes and Vehicle License Fees (VLF). The Governor's proposed budget estimates that 1991 Realignment sales tax revenues will increase by 4.41 percent in 2014-15 and 5.95 percent in 2015-16. VLF revenues for 1991 Realignment are estimated to increase by 2.57 percent in 2014-15 and 2.88 percent in 2015-16.

Supplemental Security Income/State Supplemental Payment (SSI/SSP)

The Governor's Budget proposes to pass through an annual federal cost of living adjustment (COLA) based on the Consumer Price Index to the SSI portion of the grant, which is projected to equal a 1.7 percent increase in 2015, and a projected 1.5 percent increase in 2016. This would result in maximum SSI/SSP monthly grant level increases of $11 and $16 for individuals and couples, respectively, effective January 2015. As of January 2015, the maximum SSI/SSP grant levels $881 per month for individuals and $1,483 per month for couples. Cash Assistance Program for Immigrants (CAPI) benefits are equivalent to SSI/SSP benefits, less $10 per month for individuals and $20 per month for couples. There is no proposed increase proposed to the state SSP portion of the grant.

# # #