To: RCRC Board of Directors

From: Paul A. Smith, Vice President Governmental Affairs
Tracy Rhine, Legislative Advocate

Date: June 28, 2017

Re: In-Home Support Services Budget Trailer Bill Detail (Senate Bill 90)

This memo outlines the State Budget provisions reestablishing the In-Home Support Services (IHSS) Maintenance of Effort (MOE) and the associated agreements made by the Administration to further offset impacts to counties.

In January, the Governor took action to repeal the IHSS MOE which had been in effect since 2012. By abolishing the MOE, cost for IHSS services would have reverted to the cost-sharing ratios in place before the MOE.

Senate Bill 90 (Committee on Budget and Fiscal Review) was enacted into law yesterday as part of the 2017-18 State Budget package and establishes a new MOE estimated to shift an additional $592.2 million to counties for IHSS services in 2017-2018. However, the proposal provides for a number of revenue redirections to offset these increased county cost.

MOE

General Fund Offsets. SB 90 establishes the statewide county IHSS MOE base at $1.769 billion and appropriates $400 million General Fund (GF) in 2017-18, $330 million GF in 2018-19, $200 million in 2019-20 and $150 million in 2020-21 and annually thereafter to offset the additional IHSS costs being shifted to counties.

Annual Cost Inflator. In Fiscal Year 2018-19, the County IHSS MOE base will be adjusted by 5 percent. In Fiscal Year 2019-2020 and annually thereafter, the base will be adjusted by 7 percent. When there is no growth or negative growth in 1991 Realignment sales tax revenues, the MOE inflator will adjust to 0. When 1991 Realignment sales tax revenues grow between 0 and 2 percent year-over-year, the inflator will be cut in half.

Revenue Redirection. Revenue growth from the Health, Mental Health and County Medical Services Program will be redirected to further offset costs to counties. Specifically AB 106 requires:

- 100 percent of the Vehicle License Fee (VLF) growth for Health, Mental Health and the County Medical Services Program (CMSP) Subaccounts will be redirected to the Social Services Subaccount to assist in paying for IHSS for three years (2017-18 through 2019-20). CMSP funding will only be redirected to CMSP participating counties;
- 50 percent of the VLF growth will be redirected for the same purpose for an additional two years (2020-21 through 2021-22);
- Exempts the cities receiving 1991 realignment funds for health and mental health purposes for the VLF redirection; and,
- Requires the State Controller's Office to post a calculation of VLF growth that would have otherwise gone to the Health, Mental Health and County Medical Services Program Subaccounts.

1991 Realignment Sales Tax changes. SB 90 revises 1991 Realignment sales tax provisions to disburse sales tax growth throughout the fiscal year. The sales tax growth is being directed to IHSS within the Social Services Subaccount. Includes provisions to ensure that the Health, Mental Health, CMSP, and Child Poverty and Family Supplemental Support Subaccount bases are fully funded when there are sufficient revenues.

Community Choice First Option. If the Community First Choice Option is eliminated, the County IHSS MOE shall be adjusted once to reflect a 35 percent share of the enhanced federal financial participation. Part of the Affordable Care Act, the "Community First Choice Option" allows States to provide home and community-based attendant services and supports to eligible Medicaid enrollees under their State Plan.

County IHSS Administration Costs. SB 90 includes language directing the California State Association of Counties, the County Welfare Directors Association and the Department of Finance (DOF) to examine workload and budget assumptions related to administration of the IHSS program. County IHSS Administration is underfunded by approximately $30 million in 2017-18. This underfunding is an addition to the cost shifts outlined above.

Wage and Benefits

IHSS Wage/Benefit Increases. A county IHSS MOE will be adjusted for any provider wage or health benefits that are locally negotiated, mediated or imposed after July 1, 2017. If Department of Social Services does not approve the wage or benefit increase, the county must pay the entire non-federal share of the cost increase. A county that negotiates a wage/benefit increase will have its IHSS base increased by 35 percent of the (non-federal share) cost of those wage and benefit increases (as occurred under the 2012 IHSS MOE). The state will participate in IHSS wages/benefits up to $1.10/hour above the state minimum wage and will pay 65 percent of wage increases, not to exceed 10 percent over three years, for counties above the state cap in wages. To be eligible for state participation in the 10-percent increase, the increase must begin prior to the date that the state minimum wage reaches the $15/hour cap.

Supplemental Wage Increases. SB 90 provides that if a county negotiates a wage supplement linked to the state minimum wage increase, the county's IHSS MOE shall be adjusted once. For example, under this provision, a county could negotiate a contract that includes a $.25 wage supplement that occurs every time the state minimum wage increases up to the state maximum of $15.00. When the state calculates that county MOE, the state will adjust the county MOE once for the cost of the new wage.

Public Employee Relations Board (PERB). If an employer and the service provider union are unable to reach an agreement on a contract, SB 90 establishes a process through PERB to find resolution. Specifically this bill requires:

- If the public authority or nonprofit acting as the employer of record fails to reach agreement on an IHSS contract by January 1, 2018, the union or the employer of record may request mediation, which shall be mandatory. If the parties fail to agree on a mediator, PERB shall appoint one. Mediation shall be held no more than 15 business days from the request;
- If unable to effect settlement through mediation, parties shall submit their differences to fact-finding. If both parties agree, they may bypass mediation and go straight to fact-finding;
- Findings of fact and recommended terms of settlement (which shall be advisory) shall be released within 30 days of the panel being appointed by PERB;
- Within 15 days after the fact-finding panel releasing its finding/terms of settlement, either party may request post-fact-finding mediation, which shall be mandatory;
- Post-fact-finding mediation shall be held no more than 15 days from the date requested;
- PERB shall designate a pool of no more than five qualified individuals to serve as mediators or on a fact-finding panel;
- Costs shall be divided evenly between the employer and employee organization;
- By April 1, 2018, PERB shall report to the fiscal committees of the Legislature the status of IHSS bargaining in all 58 counties; and,
- Sunsets the PERB provisions on January 1, 2020.

<u>Associated Changes</u>

Caseload Cost Calculations. The Administration will change the methodology for calculating program costs for IHSS. Instead of the current accrual method that essentially sets up a two-year lag for program payments to counties, costs will be paid in the year in which they are incurred, relieving counties of carrying IHSS costs on their books over multiple fiscal years. This will change will go into place sometime after the Realignment fiscal year starts in August, however it is unclear the exact implementation date.

Loan Availability. Counties may apply to DOF for a low interest loan related to the additional IHSS costs. The application period is 2017-18 through 2019-20. The sum of all loans may not exceed $25 million.

Institutions of Mental Disease. A suspension of the current obligation on counties to provide a 3.5 percent annual rate increase to institutions of mental disease in any year that the Mental Health Subaccount does not receive full growth allocation.

Board of Equalization Debt. The Administration will forgive the Board of Equalization accounting errors that occurred from July 1, 2011 through June 20, 2016 that impacted 1991 Realignment, 2011 Realignment, and Proposition 172. The BOE accounting errors likely would have caused 1991 Realignment and 2011 Realignment to be adjusted in a way that would have decreased bases; counties potentially could have owed the state several hundred million dollars.

Lawsuit Nullification. SB 90 contains a provision to inhibit the ability of counties to file a lawsuit against the Administration for the Governor's action in January which repealed the Coordinated Care Initiative and the IHSS MOE.

Re-Opener Language. SB 90 requires, as part of the 2019-20 State Budget, that stakeholders and DOF re-examine costs of the IHSS program as it relates to overall 1991 Realignment revenues, and requires DOF to report findings and recommendations based on that process. Specifically, the finding must include:

- The extent to which revenues available for 1991 Realignment are sufficient to meet program costs that were realigned;
- Whether IHSS program and administrative costs are growing at a rate that is higher, lower or approximately the same as the MOE;
- The fiscal and programmatic impacts of the IHSS County MOE on the funding available for Health, Mental Health, CMSP and other social services programs included in 1991 Realignment; and,
- The status of collective bargaining for the IHSS program in each county.