



SOLANO COUNTY GRAND JURY
2017-2018

**In-Home Supportive Services
Program Oversight and Management**

In-Home Supportive Services Program Oversight and Management

2017-2018 Solano County Grand Jury

I. SUMMARY

The 2017-2018 Solano County Grand Jury finds that the Solano County Department of Health and Social Services oversight and management of the IHSS program is seriously deficient. The Department has progressively failed to meet minimum state-required quality assurance standards, and has made little effort to mitigate fraud or to collect overpayments. The persistent deficiencies in the Solano County IHSS program management have been detailed by three prior Solano County Grand Jury investigations, a recent internal control audit by the Solano County Auditor-Controller, and annual reports from the California Department of Social Services.

The In-Home Supportive Services (IHSS) program is an essential social welfare program that provides care and assistance to functionally impaired elderly, blind and disabled persons. The objective of the program is to keep these most vulnerable members of our community in their homes.

The California Department of Social Services (CDSS) Uniform Statewide Protocols for IHSS program integrity are the product of the collaborative efforts of state-wide stakeholders. The guiding principles of the program emphasize transparency, recipient wellbeing, recipient and provider dignity, as well as safe and respectful mitigation (stopping a problem before it starts).

The California Legislature has passed extensive regulations which mandate program integrity by requiring counties to conduct specific quality assurance and anti-fraud activities. IHSS program integrity functions are essential to maintain public trust. The program is founded on a commitment to ensure that no one is unfairly targeted, and to minimize disturbance or confusion of the vulnerable members of the IHSS community.

II. INTRODUCTION

The 2017-2018 Solano County Grand Jury investigated the Department of Health and Social Services' management of the In-Home Supportive Services Program (IHSS). Our objective is to evaluate the effectiveness of the business practices and control functions of those responsible for program integrity and mitigation of fraud.

The In-Home Supportive Services program was created by the State of California to provide individuals with limited income who are disabled, blind or over the age of 65 with non-medical in-home care services to help them remain safely at home. California's Welfare and Institutions Code (WIC) and United States Code (USC) mandate IHSS as an entitlement program. IHSS is a

California Department of Social Services (CDSS) program administered in Solano County by the Older and Disabled Adult Services (ODAS) division of the Health and Social Services Department.

The IHSS program is funded by federal, state and county governments.

Solano County IHSS Program Costs

FY 2015/16	Total	Federal (50%)	State (35%)	County (15%)	Maintenance of Effort *
Administrative costs	\$6.6M	\$3.3M	\$2.3M	\$1M	\$.77M
Service costs	\$78.3M	\$39.2M	\$25.4M	\$13.7M	\$8.1M

Service costs include salaries and benefits of IHSS providers.

(*)**Maintenance of Effort** is an additional cost to the county paid monthly to CDSS in lieu of paying the nonfederal share of IHSS program costs.

Source: Solano County Auditor-Controller

Interested individuals have the right to apply for IHSS and are guaranteed services if they meet the financial and functional eligibility criteria for Medi-Cal. A licensed health care professional must certify the potential recipients’ functional need for IHSS. County social workers conduct a home visit and eligibility assessment to determine the number of hours and type of services required. Once approved, the applicant is notified of the approved services and the number of authorized hours per month. Under the IHSS program, the recipients of services are responsible for directing their care and can hire, supervise, sign timesheets and terminate their providers. A program social worker is assigned to conduct limited case management and consultations with involved support individuals, including providers. In Solano County, over fifty percent of the providers are family members.

The IHSS program is based on trust: trust that the provider will provide quality services to the recipient and that the recipient is truly in need of assistance with daily living. The unique three party relationship created by the IHSS program (recipient, provider and government) significantly increases the potential for fraud within the program. Without frequent monitoring, supportive services actually delivered to a recipient are difficult to assess. Historically, the limited oversight of recipients and providers within the program has enabled recurrent fraud.

The office of Older and Disabled Adult Services (ODAS) is directly responsible for the administration of the IHSS program. The ODAS office is under the direct supervision of the Department of Public Health which in turn reports to the Director of H&SS, who is the County Welfare Director (CWD). For Fiscal Year (FY) 2015/2016, the ODAS office was comprised of 31 full-time employees (FTE). Within ODAS, the Program Integrity Unit (PIU) is comprised of three social workers. Two perform quality assurance functions such as: recipient in-home reassessments, annual desk reviews, unannounced home visits, and regular directed mailings. The third has the primary responsibility for conducting program anti-fraud measures.

In 1992, California created independent agencies called "Public Authorities" to perform selected functions for the IHSS program. The legislation provided counties the option of creating agencies to serve as the employer of record of IHSS workers. It also authorized other tasks such as performing provider background investigations, providing training and maintaining a referral registry of providers. The Solano County Public Authority is administratively controlled by the ODAS office. The majority of IHSS case providers are not on the public authority registry list. There are 352 case providers on the public authority registry as of December 31, 2016 with a total county IHSS caseload of 3,548.

California law requires regulatory oversight and law enforcement support of the IHSS program. The Solano County H&SS Department units tasked with these functions are the Compliance and Quality Assurance office and the Special Investigations Bureau, both of which report directly to the H&SS Director who is also the County Welfare Director.

The Welfare and Institutions Code and CDSS regulations establish program compliance requirements for county IHSS programs. State mandated IHSS Quality Assurance/Quality Improvement (QA/QI) measures are intended to strengthen program integrity and to protect the vulnerable older and disabled individuals receiving in-home care. Solano County IHSS program compliance is the direct responsibility of the Program Integrity Unit (PIU) within ODAS. Potential fraud is to be investigated by evaluating complaints received and monitoring the outcomes realized from these reviews. Low compliance with these regulations jeopardizes federal financial participation, which is predicated on compliance with minimum case review requirements.

The California Senate Office of Oversight defines fraud as: "...the intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or herself or some other person." IHSS fraud arises from providers or recipients illegally and intentionally claiming unauthorized payments or benefits from the IHSS program. The California Department of Health Care Services reported that fraud complaints within the statewide IHSS program increased fifty-four percent from 7,472 to 11,509 between FY 2013/2014 and FY 2014/2015. During the same period, Solano County reported a high number of IHSS program fraud complaints involving a large number of individuals.

IHSS Fraud Identified by Source – 2012-2015

compared to benchmark counties with similar demographics and IHSS caseloads

County	Fraud Investigations Completed	Suspected Collusion	Suspected Provider fraud	Suspected Recipient fraud	Other
Solano	504	155	286	38	4
Stanislaus	345	83	29	55	81
San Joaquin	273	69	194	10	0
Marin	130	19	90	22	0
Placer	122	41	73	7	1

Source: California Department of Social Services: IHSS Reports of Program Integrity and Anti-Fraud Efforts for FY 2012-2015, Benchmark counties from Solano County Statistical Profile, FY 2017/18 Recommended Budget.

State law and CDSS regulations specifically require that County IHSS program personnel shall conduct anti-fraud activities. One such measure is a program of directed annual educational mailings to a CDSS generated list of identified IHSS providers. The CDSS provider mailing list is based upon risk and is provided to county programs annually.

As a further anti-fraud measure, California has developed an electronic time card (ETC) for IHSS providers. This time card requires signatures of both the recipient and provider as a security measure. A data match program identifies episodes when a provider claims hours worked during a period when the recipient is hospitalized, is deceased or other obvious misrepresentations. These false claims can result in overpayments of wages to the provider. However, Solano County does not require the use of an ETC. Paper time sheets submitted by providers allow for fraudulent claims and less program oversight.

California law and CDSS regulations mandate that counties shall take all appropriate measures to recover overpayments and refer episodes of potential fraud for investigation and possible prosecution by law enforcement. The IHSS Quality Assurance/Quality Improvement manual states: “If overpayment is determined, the county is obligated to initiate recovery action...” Ultimately the responsibility for overpayment collection action rests with the County Welfare Director (CWD). Overpayment amounts of less than \$500 may be recovered by the county and can be retained to offset program costs. Overpayments of over \$500 are meant to be referred to the state. The total amount of identified Solano County IHSS program overpayments is significant.

IHSS Fraud Losses and Recovery Actions – 2013-2015

compared to benchmark counties with similar demographics and IHSS caseloads

County	Loss Identified	Court Ordered restitution	Identified for overpayment collection
San Joaquin	\$560,558	\$142,778	\$315,594
Solano	\$226,968	\$5,134	\$222,453
Stanislaus	\$179,600	\$18,009	\$178,767
Marin	\$122,173	\$42,995	\$55,066
Placer	\$75,909	\$146, 562	\$25,673

Source: California Department of Social Services: IHSS Annual Reports of Program Integrity and Anti-Fraud Efforts for FY 2012-2015, Benchmark counties from Solano County Statistical Profile, FY 2017/18 Recommended Budget.

The California WIC and the DHSS manual state the county shall investigate and prosecute fraud occurring in the IHSS program. The California Department of Social Services Manual states that each county shall establish and maintain a Special Investigations Unit, which in Solano County is the Special Investigations Bureau (SIB) of the Department of Health and Social Services. The Bureau is composed of thirty-eight personnel including two supervisors and seven investigators who are peace officers whose primary responsibility is the investigation of crimes related to public social services including welfare fraud. This office shall investigate any activity, particularly during eligibility intake, which may constitute fraud. The Solano County Department of Health and Social Services SIB has an annual budget of over five million dollars. Funding for SIB involvement in IHSS fraud investigation was addressed in CDSS County Fiscal Letter No. 11/12-40 which specifies the ‘Time Study Codes’ for IHSS Anti-Fraud Plan activities. In 2011, the Solano County Board of Supervisors heard an SIB presentation for continued funding of its IHSS program anti-fraud activities.

The Solano County Department of Health and Social Services has an annual \$500,000 purchase of service contract with the District Attorney’s office for the investigation and prosecution of welfare fraud.

III. METHODOLOGY

The Grand Jury Interviewed Staff:

- Solano County Public Authority
- Special Investigations Bureau
- Health Services: Older and Disabled Adults Services office
- Office of the District Attorney
- Office of the Auditor-Controller
- Compliance and Quality Assurance Office of the Department of Health and Social Services
- Office of the Director of Health and Social Services

The Grand Jury Reviewed:

- Prior Solano County Grand Jury Reports published 2007, 2009, and 2013
- Grand Jury Reports of Los Angeles County 2008, Sacramento County 2009, Fresno County 2009, San Diego County 2011, and Contra Costa County 2012
- Solano County 2017 Health and Social Services Overview
- Solano County Public Authority Statistical Report to the IHSS Public Authority Advisory Committee FY 2012-2013; 2015-2016; 2016-2017
- Public Authority Website
- Welfare and Institutions Code sections 12300 et seq.
- California Department of Health Care Services CA.Gov 2018
- Extension/Renewal Summary of the Purchase of Service Agreement for the Plan of Cooperation Agreement Between Welfare Agencies and District Attorney Offices for the Prosecution of Crimes Against the Cal-Works and the Cal Fresh Program
- Solano County Program Integrity Unit Fraud Investigations and Program Integrity Efforts Plan FY 2011-2012
- Special Investigations Bureau FY 2017/2018 Working Budget including Time Study Codes
- Bay Area Social Services Consortium Survey of Special Investigative Units in Solano, San Mateo, Sonoma, San Francisco, and Marin Counties
- California Department of Social Services Manual Chapter 20-0000 Recipient Fraud
- Fraud Cost Savings Spreadsheets 2012-2017
- California Department of Social Services County Fiscal Letter (CFL) 11/12-40
- Solano County Budget Justification Fraud Funding Plan for Fiscal Year 2012-2013
- Solano County Internal Control Review of the In-Home Supportive Services April 27, 2017
- Department of Homeland Security/U.S. Citizenship and Immigration Services 2017 HHS Poverty Guidelines for Affidavit of Support Form I-864P
- Fresno County IHSS Fraud Unit Website
- Disability Rights California Publication # 5494.01
- California Dept. of Social Services Standards on the IHSS Program Chapter 30-700
- California Dept. of Social Services Reports FY 2015 and FY 2017
- County Policies and Procedures on Welfare and Social Services
- Solano County Welfare Regulations

- Penal Code § 368
- STATE OF CALIFORNIA- Department of Health and Human Services Agency Forms:
 - 426, 426a
 - 824
 - 846
 - 873

IV. STATEMENT OF FACTS

It is the objective of the 2017-2018 Solano County Grand Jury to review the adequacy and effectiveness of the Solano County Department of Health and Social Services' management and oversight of the In-Home Supportive Services program from 2012 to the present.

The Solano County IHSS program has been previously investigated by the Solano County Grand Jury during the 2006-2007, 2008-2009 and 2012-2013 terms. The common theme of these reports is the County's failure to meet state-mandated minimum program integrity requirements. The Grand Jury has repeatedly noted a lack of corrective action by county management and administration to resolve IHSS program issues that are systemic in nature.

The 2006-2007 Solano County Grand Jury, noting a lack of completion of required home visits, recommended that the management of the county IHSS program:

“Take the steps necessary to determine the reason for the lack of compliance and correct this situation.”

The 2008-2009 Solano County Grand Jury report on the IHSS program stated:

“Our main concern is with the poor performance of Solano County In-Home Supportive Services when compared with other counties who have similar caseloads and staff resources. We look to the management of Solano County In-Home Supportive Services to make what may be difficult management decisions to achieve compliance with State standards.”

In April 2017, the Solano County Auditor-Controller's Office published the results of an internal control review of the county IHSS program. Auditor's Report No. 2017-17 describes the following findings concerning the management and operation of the IHSS program by the ODAS Office:

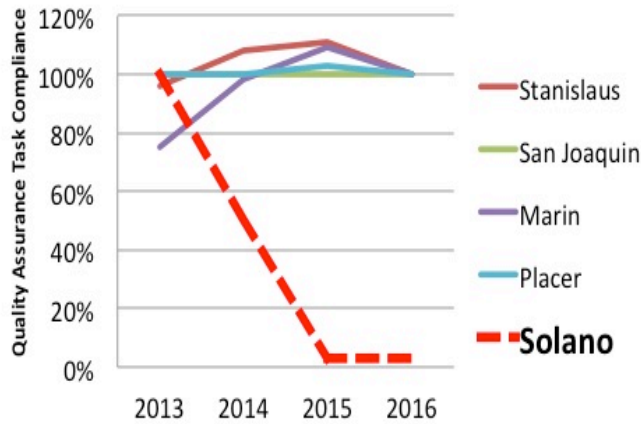
- 1.) Absence of a required supervisor's review and approval of initial IHSS case intake documentation in thirty sampled cases,
- 2.) Required IHSS annual case reassessments were not performed in a timely manner,
- 3.) The process for administering directed mailings did not meet the requirements of the IHSS Uniform Statewide Protocols and none were performed in FY 2015/2016,
- 4.) No required unannounced home visits were performed in FY 2015/2016,
- 5.) Alleged fraud referrals were not investigated on a timely basis and potential overpayments of over five hundred dollars were not consistently referred to the State for investigation,

- 6.) Solano’s IHSS Quality Assurance/Quality Improvement (QA/QI) Unit did not complete the minimum required number of desk reviews and home visits for FY 2014/2015 or FY 2015/2016,
- 7.) The required QA/QI Quarterly Activities report to the State (Form SOC 824) for 2015-2016 contained errors, omissions, and apparent misrepresentations of program data required to be reported to the CDSS.

California CDSS annual reports document that Solano County’s IHSS program continues to fail to meet minimum State standards of QA/QI compliance:

Solano County IHSS QA Home Visits

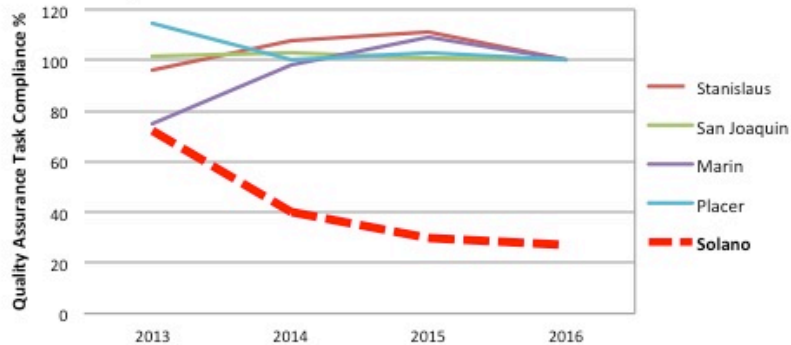
compared to benchmark counties with similar IHSS caseloads



Source: California Department of Social Services: IHSS Annual Reports of Program Integrity and Anti-Fraud Efforts for FY 2012-2015, Solano County Auditor-Controller’s Internal Control Review of the In-Home Support Services (IHSS) Program, Report No. 2017-17, April 27, 2017; Benchmark counties from Solano County Statistical Profile, FY 2017/18 Recommended Budget.

Solano County IHSS QA Desk Reviews

compared to benchmark counties with similar IHSS caseloads



Source: California Department of Social Services: IHSS Annual Reports of Program Integrity and Anti-Fraud Efforts for FY 2012-2015, Solano County Auditor-Controller’s Internal Control Review of the In-Home Support Services (IHSS) Program, Report No. 2017-17, April 27, 2017; Benchmark counties from Solano County Statistical Profile, FY 2017/18 Recommended Budget.

Despite monetary losses through overpayments, there is no organized process within the ODAS or other offices of Department of Health and Social Services to collect overpayments. After an overpayment has been identified, minimal attempts are made to recover monies. There is no tracking of outstanding overpayment debts and no apparent sanctions for the delinquent debtor.

IHSS Fraud Losses and Recovery Actions – 2013-2015

compared to benchmark counties with similar demographics and IHSS caseloads

County	Loss Identified	Court Ordered restitution	Identified for overpayment collection
San Joaquin	\$560,558	\$142,778	\$315,594
Solano	\$226,968	\$5,134	\$222,453
Stanislaus	\$179,600	\$18,009	\$178,767
Marin	\$122,173	\$42,995	\$55,066
Placer	\$75,909	\$146,562	\$25,673

Source: California Department of Social Services: IHSS Annual Reports of Program Integrity and Anti-Fraud Efforts for FY 2012-2015, Benchmark counties from Solano County Statistical Profile, FY 2017/18 Recommended Budget.

There have been **NO** IHSS program referrals to the Solano County District Attorney’s Office for prosecution of IHSS fraud between 2012 and the present. One misdemeanor conviction was reached in a case referred several years prior to this period. **NONE** of the cases referred to the California Department of Justice was returned for local prosecution. In Solano County, **NO** providers have been placed on the State’s suspended or ineligible list for having committed IHSS program fraud.

IHSS Fraud Prosecutions and Outcomes – 2012-2015

compared to benchmark counties with similar demographics and IHSS caseloads

County	Cases received by D.A.	Declined by D.A.	Plea	Prosecution with conviction	Felony	Misdemeanor	S&I *
Stanislaus	63	11	0	55	12	43	41
San Joaquin	61	2	1	52	1	51	43
Placer	9	0	0	6	5	2	0
Marin	1	0	0	1	2	0	0
Solano	0	0	0	1	0	1	0

* Number of referrals to the suspended and ineligible provider list

Source: California Department of Social Services: IHSS Annual Reports of Program Integrity and Anti-Fraud Efforts for FY 2012-2015, Benchmark counties from Solano County Statistical Profile, FY 2017/18 Recommended Budget

The H&SS Department’s Special Investigations Bureau is equipped to investigate fraud and pursue the collection of overpayments. The 2017-2018 Grand Jury learned that trained law enforcement personnel of the SIB have been excluded from investigating IHSS fraud efforts by budgetary decisions made within Solano County. The SIB Office provided evidence of ‘Time Study Codes’ for the cost accounting of their work effort that does not include State published time study codes specified for IHSS related investigations. We find no evidence of regular coordination, support or training of IHSS staff in anti-fraud activities with SIB personnel.

Welfare Program regulatory compliance is the responsibility of the Solano County H&SS office of Compliance and Quality Assurance. Compliance Office personnel provided testimony that they have been unable to access IHSS program files or to receive cooperation from ODAS office personnel. Staff of the H&SS Department management stated the Compliance Office “...is just beginning to be effective in working with ODAS”. Management indicated that one reason for IHSS’s lack of compliance oversight arises from “cultural related issues”. “Cultural related issues” was described to the Grand Jury as ODAS personnel perceiving compliance personnel in an adversarial role within the H&SS Department. There has been only one written report addressing the lack of IHSS regulatory compliance prepared by the Compliance Office during the last three years. Personnel from the office of the Director of H&SS stated the opinion that “responsibility for the regulatory compliance of the IHSS program rests with the State”.

V. FINDINGS AND RECOMMENDATIONS

Finding 1 – The Solano County In-Home Supportive Services program has failed to meet minimum state standards for quality assurance, quality improvement and anti-fraud efforts for four or more years. The root cause of this persistent failure of regulatory compliance results from a lack of effective program oversight and management by the Solano County Department of H&SS and the ODAS office in particular. There is a prevailing practice of regulatory non-compliance as an operational norm.

Recommendation 1 – The Solano County Board of Supervisors and County Administrative Officer hold Health and Social Services Department management personnel, particularly within the ODAS office, accountable for IHSS program compliance.

Finding 2 – Solano County’s IHSS program management and compliance oversight functions have failed to achieve minimum objective measures of program integrity over the last five years due to the lack of effective use of H&SS departmental resources.

Recommendation 2– The H&SS office of Compliance and Quality Assurance be placed under independent operational supervision such as the Solano County Auditor-Controller until the IHSS program achieves minimal QA/QI standards and earns a satisfactory follow-up Internal Control Audit by the Solano County Auditor-Controller’s office.

Finding 3 – The Solano County Department of Health and Social Services’ welfare fraud investigative unit, the Special Investigations Bureau, has been precluded from participating in In-Home Supportive Services program fraud investigation and prosecution by H&SS departmental policy and budget decisions.

Recommendation 3a – The Special Investigations Bureau be transferred to the District Attorney’s Office.

Recommendation 3b - The current ‘Purchase of Service Agreement for Investigation of Welfare Fraud’ between the Solano County H&SS Department and the D.A.’s Office be rewritten to specifically include investigation and prosecution of IHSS program fraud.

Finding 4 – IHSS provider time cards continue to be a significant source of potential fraud. The electronic IHSS provider electronic time card has been adopted by Solano County but is not mandatory.

Recommendation 4 – The Solano County Public Authority require that the IHSS electronic time card is a condition of employment for all providers. Granting of the power of proxy second signatures to the IHSS electronic time card should be limited to instances that meet the legal standard requiring a notarized power of attorney for a financial transaction.

Finding 5 – Health and Social Services Department management stated that its primary concern is IHSS Program sustainability and quality of services rather than program integrity and regulatory compliance.

Recommendation 5 – Program integrity and regulatory compliance be the primary focus of H&SS management to ensure IHSS program sustainability.

COMMENTS

The 2017-2018 Solano County Grand Jury shares the concerns of the Solano County Department of Health and Social Services management regarding IHSS program sustainability, but we feel strongly that the ultimate basis for community support is taxpayer confidence that the program is well managed and compliant with state requirements. H&SS Department efforts to combat fraud, waste and abuse within the program must be aggressive and transparent.

REQUIRED RESPONSES

Solano County Board of Supervisors (All Findings)
County Administrator's Office (All Findings)
Health and Social Services Department (All Findings)
Auditor/Controller Office (Finding 2)
District Attorney's Office (Finding 3)

COURTESY COPIES

California Department of Social Services
California Department of Health Care Services
United States Department of Health and Human Services