

county of Santa Cruz

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HUMAN RESOURCES AGENCY

CECILIA ESPINOLA, ADMINISTRATOR

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September 16, 1999

Agenda: September 28, 1999

BOARD OF SUPERVISORS

County of Santa Cruz

701 Ocean Street

Santa Cruz, CA 95060

REPORT ON INTRASTATE FUNDING FORMULA ALLOCATION TO LOCAL AREA AGENCY ON AGING

Dear Members of the Board:

On June 21, 1999 following consideration of community programs funding requests, your Board requested a report back on the status of federal Title III funding allocated to the local Area Agency on Aging (AAA) by the state Department on Aging under the Intrastate Funding Formula (IFF). Specifically, your Board expressed concern that the local AAA is not receiving funding at the level prescribed by the IFF. The following will provide your Board with information regarding this issue.

BACKGROUND

As your Board is aware, in 1965 the Older Americans Act established federal grants for state and community programs to provide critically important supportive services for the elderly. The federal Administration on Aging distributes grants to the individual states for such programs as home-delivered meals, senior dining center, nursing home patient advocacy, homemaker and shopping assistance, transportation for medical appointments, and legal services.

The Older Americans Act is a federal-state cooperative arrangement, similar to many other public benefit programs. A state wishing to receive the federal assistance must meet many conditions, one of which is to provide matching funds to augment the federal grant. A state must also develop an Intrastate Funding Formula (IFF) for distribution of the funds within the state. The IFF determines how much federal and state matching money each local AAA receives for its respective Planning and Service Area (PSA).

In 1984, the California State Legislature enacted the Older Californians Act including former

Board of Supervisors
 Agenda: September 28, 1999
 REPORT ON INTRASTATE FUNDING FORMULA

Welfare and Institutions Code section 93 15 (reauthorized and recodified in 1996 as Welfare and Institutions Code section 9112), which requires the use of six factors in developing the IFF. One of the factors is the “hold-harmless” provision, requiring that the California Department of Aging, the state agency which administers these funds, is not to reduce the local area’s funding below its 1984-85 grant level. Apparently this provision was enacted to prevent reduction and disruption in services upon which seniors rely for their day to day well-being. In 1985, PSA 13, which incorporates Santa Cruz and San Benito Counties, received \$1,323,197. Under the provisions of the section former 93 15, this is the “hold-harmless” amount for our two-county area.

From 1991 through 1994, former section 93 15 was the subject of federal litigation challenging the Department of Aging’s method of determining the IFF. The litigation has been characterized as an attempt by larger urban and suburban counties to divert Older American Act funds from rural PSA’s in order to more fully fund senior services in larger urban areas. Although the litigation ceased in 1994 following a federal Court of Appeal ruling, its impact on the former section 93 15 hold-harmless provision is still the subject of controversy. Advocates for seniors in rural areas view the hold-harmless provision as unaffected by the federal litigation, and still a key provision to be factored in determining the IFF. The Department of Aging’s position is that an intrastate funding formula for allocation of federal funds and the state match, which excludes the 1984-85 hold-harmless requirement, has been approved by the federal commissioner (as required by the federal court in the litigation) and that there is no requirement to utilize the state overmatch (funds in excess of the required state match) to bring all PSA’s up to 1984-85 funding levels.

In 1996, the California Legislature reenacted the intrastate funding formula provisions of former section 9315 as new Welfare and Institutions Code section 9112. This new section requires that the intrastate funding formula include:

A hold-harmless factor that guarantees that no planning and service area shall have its federal and state allocation of funds under Title III of the federal Older Americans Act (42 U.S.C. Sec. 3021, et seq.), excluding area agency on aging administrative costs and funds carried over from the 1983-84 fiscal year, reduced below the 1984-85 fiscal year funding levels.

W&I Code §9112(b)(4) (emphasis added).

Despite this clear legislative direction, it appears that the Department on Aging still does not include this factor in establishing its allocation of Title III funds under the IFF. In correspondence to the local Seniors Council dated February 7, 1997 (included as Attachment A), the Department of Aging reiterated its position that the federal commissioner’s approval of the intrastate funding formula, which does not include the hold-harmless factor, means the hold-

Board of Supervisors
Agenda: September 28, 1999
REPORT ON INTRASTATE FUNDING FORMULA

harmless factor need not be considered. The Department further takes the position that fluctuations in senior population characteristics among the Planning and Service Areas will be the determinative factor in establishing annual Title III funding allocations.

CURRENT STATUS

Last April the Department of Aging released Planning Estimates for the Title III allocation to the thirty- three PSA's located throughout state. The Planning Estimate for the local Santa Cruz and San Benito Counties PSA estimates that it will receive \$834,581 in federal funding, and \$476,111 in state match funding, for a total allocation of \$1,310,692. This amount is \$12,505 less than the 1984-85 hold-harmless benchmark of \$1,323,197, and thus the local PSA is not receiving full Title III funding as authorized under the statutory intrastate funding formula.

While initially it would appear that the Department of Aging is in substantial compliance with the IFF hold-harmless requirement, this may not be the case. Certainly from the perspective of local Title III program service providers, the Department of Aging is not providing the same level of funding as it did in 1984-85. Food and Nutrition Services, for instance, has experienced a \$266,000 reduction in its senior congregate and home delivered meal programs since 1985. However cut-backs in Title III funding to the local PSA may be the major, but not the sole reason for these reductions. Seniors Council, the local Area Agency on Aging, has periodically exercised the right to reallocate Title III funds to different programs to address changing needs in the seniors population in the two county region. Recently, for example, a small amount of funding was set aside from existing programs to make grant awards to programs addressing new and emerging needs in the senior community.

Thus to accurately determine whether Title III funding received in 1999 is comparable to the funding allocations in 1984-85, further detailed analysis and historical research would be required. It would be necessary for instance, to determine whether new programs currently authorized and funded under Title III are to be considered in comparing current funding levels to the hold-harmless benchmark. Also unresolved is whether administrative expenses, now included in the Department of Aging's Title III Planning Estimate, were also included in 1984-85 allocations. Since the Department of Aging has essentially disregarded the hold-harmless factor in determining the intrastate funding formula, there is no formal guidance or regulation as to how the hold-harmless requirement is factored into the IFF. Such guidance is not likely to be forthcoming absent a dramatic shift in state policy, or a judicial determination as to the legal effect of the hold-harmless clause.

Adding further complexity to this issue is the availability of state funding to restore PSA's to 1984-85 hold-harmless levels. Federal law controls the allocation of Title III funds and the corresponding state match, and thus a California intrastate funding formula must be financed by state-only funds to the extent it deviates from the federal formula. Since the federal

Board of Supervisors
 Agenda: September 28, 1999
 REPORT ON INTRASTATE FUNDING FORMULA

commissioner has approved a California intrastate funding formula which does not include a hold-harmless provision, restoring PSA's to 1984-85 funding levels can be accomplished only with "overmatch" state dollars. Presently, the Santa Cruz and San Benito Counties PSA ranks fourth among all thirty-three California PSA's in the amount of state funding it receives for Title III programs, even though it ranks 25th in numbers of seniors who live in the region. The \$476,111 in state funding represents 36% of the total Title III funding allocation, which is much higher than the overall state average of 13% for all PSA's. Given the comparatively high level of state funding support to the local PSA, the Department of Aging may be reluctant to allocate more state dollars to restore the Santa Cruz-San Benito Counties region to 1984-85 funding levels.

In conclusion, although the current Title III funding allocation has nearly reached the 1984-85 levels, without further legal and fiscal research of the operative effect of the hold-harmless provision in the state Older Californians Act, it can not be ascertained by the Human Resources Agency if the local Planning and Service Area is receiving the correct allocation of Title III funds under the IFF.

IT IS THEREFORE RECOMMENDED that your Board accept and file this report on the Intrastate Funding Formula allocation to the local Area Agency on Aging.

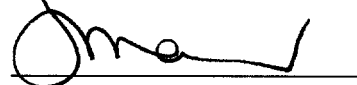
Very truly yours,



CECILIA ESPINOLA
 Administrator

CE/GM (n:\hra\board\brdltr.iff)

RECOMMENDED:



Susan A. Mauriello
 County Administrative Officer

Attachment

cc: County Administrative Officer
 County Counsel

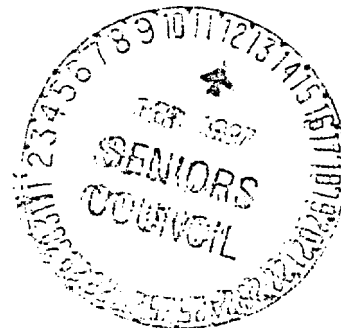
DEPARTMENT OF AGING

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IFF Binder
FILE

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February 7, 1997



Mo Khan, President
 Seniors Council
 Area Agency on Aging
 San Benito and Santa Cruz Counties
 234 Santa Cruz Avenue
 Aptos, California 95003

Dear Mr. Khan:

Thank you for your letter dated January 2, 1997, regarding allocations of funds through the Intrastate Funding Formula (IFF). It is true that the reauthorized Older Californians Act includes the "hold harmless" clause from the previous law. In fact, the reauthorized Act includes the bulk of the previous law related to allocations of funds through the IFF. As such, Section 9112(c) requires "In the event that additional federal or state funds, in excess of those appropriated under the 1984-85 Budget Act, or subsequent Budget Acts are made available for services, these funds shall be used to maintain existing service levels, with the remainder to be distributed to those planning and service areas which have been determined by the department to be under equity until parity is achieved." We anticipate very modest increases in federal funding for the 1997-98 fiscal year. Consistent with past practice, whenever increases are anticipated, allocations of funds have always been made in accordance with this section.

Despite increases in funding, our federally approved formula requires changes in population characteristics among the Planning and Service Areas (PSAs). Implementing these requirements has, in the past, made it impossible for us to fully maintain existing allocation levels for each one. PSAs who have documented increases in the proportion of their senior populations in 1997-98, compared to other PSAs in the State, will receive additional funds for that year; while those who will not, will receive corresponding reductions in their allocations. Because of this, maintaining all PSAs at their 1996-97 funding levels, which is a priority in the Act, will be very difficult, and likely not possible.

The California Department of Aging (CDA) has received several letters such as yours which suggest that the decision of The United States Court of Appeals for The Ninth Circuit in Martinez v. Wilson, D.C. No. CV-91-03343-RMT, vacating the decision of the trial court, effectively reinstated the provisions of Welfare and Institutions Code, Section 9315(a)(4), thereby requiring CDA to fund all Planning and

Service Areas (PSAs) at no less than 1984-85 fiscal year funding levels. California Department of Aging's Chief Counsel has reviewed The Ninth Circuit Court of Appeals' decision and has concluded that such an inference is not warranted.

Martinez v. Wilson arose when CDA developed an Intrastate Funding Formula as required by 42 USC 3025(a)(1)(E) & (2)(C). CDA developed its IFF utilizing a variety of factors, four of which were challenged, including the hold harmless provisions of Welfare and Institutions Code, Sections 9315(a)(4) and 9315(b). Large city plaintiffs contended CDA's IFF diverted funds from PSAs providing services in urban areas and overfunded PSAs that provide services in rural areas. The plaintiffs argued that the four factors used, including the hold harmless factor, violated the Older Americans Act's (OAA) mandate that the formula take into account "the distribution... of older individuals with greatest economic . . . and . . . social need, with particular attention to low-income minority older individuals." The trial court granted plaintiffs' motion for a preliminary injunction, enjoining CDA from implementing an IFF containing the four challenged factors.

While the matter was pending in the trial court, and before a final judgment was entered, two significant events occurred. The California Department of Aging willingly submitted a revised IFF (omitting the four challenged factors) which was subsequently approved by the trial court, and the OAA was amended to explicitly condition a state's receipt of federal funds on the approval of its IFF by the Assistant Secretary of Health and Human Services. It was these two events which formed the bases of The Ninth Circuit Court of Appeals' decision that the controversy had become moot before the final action by the trial court and, therefore, the matter should be remanded for dismissal. The court pointed out that the amendments to the OAA plainly gave the **Secretary** of Health and Human Services, not the courts, primary responsibility for assuring that state IFFs conform to OAA requirements.

In rejecting various challenges to the revised IFF approved by the trial court, The Court of Appeals noted:

"The four factors to which the [plaintiffs] objected [including the hold harmless factor] are not part of the present plan, have never been approved by the Secretary, and are most unlikely ever. to be approved."

Given the above, counsel for CDA believes The Ninth Circuit Court of Appeals inferentially agreed with the trial court that the revised IFF, omitting the four challenged factors, submitted by CDA complied with the requirements of the OAA, and any attempts by CDA to reintroduce the four challenged factors, including the hold harmless provisions of Welfare and Institutions Code, Sections 9315(a)(4) and 9315(b), to its IFF would be disapproved by the Assistant Secretary of Health and Human Services for Aging and, if approved by the Assistant Secretary, likely result in a strong and potentially successful legal challenge to the reintroduction of the four factors.

0167

We have not, as yet, computed allocations for 1997-98, so are unable to determine the impact of population changes on allotments for PSA 13. However, as you requested, we will be pleased to keep you advised on the progress of the Planning Estimate for 1997-98.

I hope this explains our priorities as we allocate funds for 1997-98. If you would like further discussion or additional clarification, please do not hesitate to contact us. Again, thank you for your interest in this matter.

Sincerely..



DIXON ARNETT
Director