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May 21, 2012

To: Supervisor Zev Yaroslavsky, Chairman
Supervisor Gloria Molina
Supervisor Mark Ridley-Thomas
Supervisor Don Knabe
Supervisor Michael D. Antonovich

From: William T Fujioka
Chief Executive Officer

STATUS ON COMMUNITY FIRST CHOICE OPTION AND RELATED FEDERAL MEDICAL ASSISTANCE PERCENTAGES FUNDING

On May 16, 2012, at the Board of Supervisors' Budget Hearing meeting, Supervisor Yaroslavsky instructed the Chief Executive Officer to report back by May 22, 2012 on the status of Community First Choice Option (CFCO), which, if approved, increases the Federal Medical Assistance Percentages from 50 percent to 56 percent for home- and community-based services. The attached fact sheet highlights our current level of understanding with respect to CFCO. However, there are a myriad of outstanding issues that need to be addressed by the state and federal government, as well as the courts. We will continue to provide updates to the Board as final decisions are made.

WTF:BC:AJ
DS:SMF:ljp

Attachment

c: Executive Officer, Board of Supervisors

CFCO.bm

GENERAL FACTS AND INFORMATION

CFCO is a component of the Affordable Care Act and increases the federal share from 50% to 56% for home- and community-based attendant services and supports. As listed below, there are currently many unknowns regarding CFCO.

Community First Choice Options – General Facts and Information

1. ***State Plan Amendment Approval Process***
   - *December 2011* – State submitted State Plan Amendment (SPA) to CMS for Approval. CMS has 90 days to respond; however, the clock stops if CMS submits questions to the state.
   - *February 2012* - CMS sent letter to State indicating that the SPS as submitted is **not** approvable and requested additional information from the State.
   - *May 2012* – State indicates that they will respond to CMS's questions by the end of May.
   - *August 2012* – If CMS does not have any more questions, the SPA could be approved by the end of August.

2. **In April of 2012, CMS published the final rule on CFCO which raised some issues and/or concerns:**
   - ***Effective Date*** – Although the final rule indicates an effective date of July 6, 2012, CMS has informed CDSS that the state would continue to rely on the "pre-final" rule for one year following the issuance of the final rule. The effective date will impact the total savings realized.
   - ***New Program*** – Final rule indicates that CFCO would **not** apply to the current program. If a new program needs to be created, our savings could be impacted, as we might not get the retroactive savings for FY11-12, currently estimated at $20.7M.
   - ***Qualified IHSS Consumers*** – The final rule requires that to qualify for CFCO the IHSS consumers must be able to demonstrate that they require care, typically provided in an institutional setting. Therefore, not all IHSS consumers would qualify for CFCO. CDSS preliminarily estimates that only 50 to 60% of the IHSS consumers would qualify. **This would change our original working assumptions of 99% of the consumers qualifying, resulting in $20.7M in realized savings. If only 50% qualified, the savings would be only $10.5M.**

3. **Governor's May Revision**
   - Governor's May Revision assumes the final rule will not take effect until May 2013 and assumes a projected savings for the County of $34.5M. However, if only 50% of the IHSS consumers qualify for the program, the revised **FY12-13 savings is approx $18.3M.** Please note that our original savings projections were based on 99% of the population qualifying, based on the language in the initial version of the rule issued by CMS.

4. **Sunset Provisions**
   - Final rule for CFCO does not indicate a sunset provision; therefore, we make an assumption that it is ongoing unless otherwise indicated.

5. **Affordable Care Act**
   - If the Supreme Court does not uphold the Affordable Care Act in its entirety, then CFCO would not apply. However, every lower court has upheld the Medicaid provisions, which includes CFCO.

6. **SEIU-ULTCW Provider Wage Increase**
   - SEIU-ULTCW is requesting a $0.65 increase for IHSS providers from $9.00 to $9.65.
   - We project that every 1-cent wage increase equates to a $330K increase in NCC. Estimated cost per year for the $0.65 increase is approximately $21.5M in NCC.
   - Given that our revised FY12-13 savings are $18.3M, the savings can only support a rate increase of $0.55.

Community First Choice Options – General Facts and Information

7. Other Important Facts to Consider

- **Preliminary Injunction to cap provider wage** – State law was amended to cap the State share of the provider wage at $9.50/hour and health benefits to $0.60 cent/hour. This law change has not been implemented due to a preliminary injunction; the court still needs to decide whether to issue a permanent injunction. In the meantime, the ceiling on the State contribution remains a combined total of $12.10/hour for IHSS provider wages and benefits.

- **20% Trigger Cut** – The FY 11-12 State Budget includes a 20% reduction in approved hours for IHSS consumers; however, a preliminary injunction has blocked implementation of that cut.

8. Dual Eligibles

- The State expects that the implementation of the Dual Eligible pilot will increase the total number of IHSS hours paid to providers, which will increase the overall cost of the IHSS program. The Governor has proposed trailer bill language to establish a county maintenance-of-effort for IHSS provider wages and benefits, which is intended to prevent any increase in the county share-of-cost due to the Dual Eligibles pilot.