

**ASSEMBLY BILL**

**No. 182**

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**Introduced by Assembly Member Ma**

January 24, 2007

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An act to amend Section 12301.6 of the Welfare and Institutions Code, relating to public social services.

LEGISLATIVE COUNSEL'S DIGEST

AB 182, as introduced, Ma. In-home supportive services: provision of training for providers and recipients.

Existing law provides for the In-Home Supportive Services (IHSS) program, under which qualified aged, blind, and disabled persons receive services enabling them to remain in their own homes. Existing law permits services to be provided under the IHSS program either through the employment of individual providers, a contract between the county and an entity for the provision of services, the creation by the county of a public authority, or a contract between the county and a nonprofit consortium. Under existing law, the functions of a nonprofit consortium contracting with the county, or a public authority established for this purpose, include providing for training for providers and recipients.

This bill would require the State Department of Social Services, in consultation with counties and stakeholders, to develop a standardized curriculum and materials, which shall be used by a nonprofit consortium contracting with the county or public authority in providing this training.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 12301.6 of the Welfare and Institutions  
2 Code is amended to read:

3 12301.6. (a) Notwithstanding Sections 12302 and 12302.1, a  
4 county board of supervisors may, at its option, elect to do either  
5 of the following:

6 (1) Contract with a nonprofit consortium to provide for the  
7 delivery of in-home supportive services.

8 (2) Establish, by ordinance, a public authority to provide for  
9 the delivery of in-home supportive services.

10 (b) (1) To the extent that a county elects to establish a public  
11 authority pursuant to paragraph (2) of subdivision (a), the enabling  
12 ordinance shall specify the membership of the governing body of  
13 the public authority, the qualifications for individual members, the  
14 manner of appointment, selection, or removal of members, how  
15 long they shall serve, and other matters as the board of supervisors  
16 deems necessary for the operation of the public authority.

17 (2) A public authority established pursuant to paragraph (2) of  
18 subdivision (a) shall be both of the following:

19 (A) An entity separate from the county, and shall be required  
20 to file the statement required by Section 53051 of the Government  
21 Code.

22 (B) A corporate public body, exercising public and essential  
23 governmental functions and that has all powers necessary or  
24 convenient to carry out the delivery of in-home supportive services,  
25 including the power to contract for services pursuant to Sections  
26 12302 and 12302.1 and that makes or provides for direct payment  
27 to a provider chosen by the recipient for the purchase of services  
28 pursuant to Sections 12302 and 12302.2. Employees of the public  
29 authority shall not be employees of the county for any purpose.

30 (3) (A) As an alternative, the enabling ordinance may designate  
31 the board of supervisors as the governing body of the public  
32 authority.

33 (B) Any enabling ordinance that designates the board of  
34 supervisors as the governing body of the public authority shall  
35 also specify that no fewer than 50 percent of the membership of  
36 the advisory committee shall be individuals who are current or  
37 past users of personal assistance services paid for through public  
38 or private funds or recipients of services under this article.

1 (C) If the enabling ordinance designates the board of supervisors  
2 as the governing body of the public authority, it shall also require  
3 the appointment of an advisory committee of not more than 11  
4 individuals who shall be designated in accordance with  
5 subparagraph (B).

6 (D) Prior to making designations of committee members  
7 pursuant to subparagraph (C), or governing body members in  
8 accordance with paragraph (4), the board of supervisors shall solicit  
9 recommendations of qualified members of either the governing  
10 body of the public authority or of any advisory committee through  
11 a fair and open process that includes the provision of reasonable,  
12 written notice to, and a reasonable response time by, members of  
13 the general public and interested persons and organizations.

14 (4) If the enabling ordinance does not designate the board of  
15 supervisors as the governing body of the public authority, the  
16 enabling ordinance shall require the membership of the governing  
17 body to meet the requirements of subparagraph (B) of paragraph  
18 (3).

19 (c) (1) Any public authority created pursuant to this section  
20 shall be deemed to be the employer of in-home supportive services  
21 personnel referred to recipients under paragraph (3) of subdivision  
22 (e) within the meaning of Chapter 10 (commencing with Section  
23 3500) of Division 4 of Title 1 of the Government Code. Recipients  
24 shall retain the right to hire, fire, and supervise the work of any  
25 in-home supportive services personnel providing services to them.

26 (2) (A) Any nonprofit consortium contracting with a county  
27 pursuant to this section shall be deemed to be the employer of  
28 in-home supportive services personnel referred to recipients  
29 pursuant to paragraph (3) of subdivision (e) for the purposes of  
30 collective bargaining over wages, hours, and other terms and  
31 conditions of employment.

32 (B) Recipients shall retain the right to hire, fire, and supervise  
33 the work of any in-home supportive services personnel providing  
34 services for them.

35 (d) A public authority established pursuant to this section or a  
36 nonprofit consortium contracting with a county pursuant to this  
37 section, when providing for the delivery of services under this  
38 article by contract in accordance with Sections 12302 and 12302.1  
39 or by direct payment to a provider chosen by a recipient in  
40 accordance with Sections 12302 and 12302.2, shall comply with

1 and be subject to, all statutory and regulatory provisions applicable  
 2 to the respective delivery mode.

3 (e) Any nonprofit consortium contracting with a county pursuant  
 4 to this section or any public authority established pursuant to this  
 5 section shall provide for all of the following functions under this  
 6 article, but shall not be limited to those functions:

7 (1) The provision of assistance to recipients in finding in-home  
 8 supportive services personnel through the establishment of a  
 9 registry.

10 (2) Investigation of the qualifications and background of  
 11 potential personnel.

12 (3) Establishment of a referral system under which in-home  
 13 supportive services personnel shall be referred to recipients.

14 (4) Providing for training for providers and recipients. *The*  
 15 *department shall, in consultation with counties and stakeholders,*  
 16 *develop a standardized curriculum and materials for in-home*  
 17 *supportive services providers and recipients that shall be used for*  
 18 *the training required under this paragraph.*

19 (5) Performing any other functions related to the delivery of  
 20 in-home supportive services.

21 (6) Ensuring that the requirements of the personal care option  
 22 pursuant to Subchapter 19 (commencing with Section 1396) of  
 23 Chapter 7 of Title 42 of the United States Code are met.

24 (f) (1) Any nonprofit consortium contracting with a county  
 25 pursuant to this section or any public authority created pursuant  
 26 to this section shall be deemed not to be the employer of in-home  
 27 supportive services personnel referred to recipients under this  
 28 section for purposes of liability due to the negligence or intentional  
 29 torts of the in-home supportive services personnel.

30 (2) In no case shall a nonprofit consortium contracting with a  
 31 county pursuant to this section or any public authority created  
 32 pursuant to this section be held liable for action or omission of any  
 33 in-home supportive services personnel whom the nonprofit  
 34 consortium or public authority did not list on its registry or  
 35 otherwise refer to a recipient.

36 (3) Counties and the state shall be immune from any liability  
 37 resulting from their implementation of this section in the  
 38 administration of the In-Home Supportive Services ~~Program~~  
 39 *program*. Any obligation of the public authority or consortium  
 40 pursuant to this section, whether statutory, contractual, or

1 otherwise, shall be the obligation solely of the public authority or  
2 nonprofit consortium, and shall not be the obligation of the county  
3 or state.

4 (g) Any nonprofit consortium contracting with a county pursuant  
5 to this section shall ensure that it has a governing body that  
6 complies with the requirements of subparagraph (B) of paragraph  
7 (3) of subdivision (b) or an advisory committee that complies with  
8 subparagraphs (B) and (C) of paragraph (3) of subdivision (b).

9 (h) Recipients of services under this section may elect to receive  
10 services from in-home supportive services personnel who are not  
11 referred to them by the public authority or nonprofit consortium.  
12 Those personnel shall be referred to the public authority or  
13 nonprofit consortium for the purposes of wages, benefits, and other  
14 terms and conditions of employment.

15 (i) (1) Nothing in this section shall be construed to affect the  
16 state's responsibility with respect to the state payroll system,  
17 unemployment insurance, or workers' compensation and other  
18 provisions of Section 12302.2 for providers of in-home supportive  
19 services.

20 (2) The Controller shall make any deductions from the wages  
21 of in-home supportive services personnel, who are employees of  
22 a public authority pursuant to paragraph (1) of subdivision (c), that  
23 are agreed to by that public authority in collective bargaining with  
24 the designated representative of the in-home supportive services  
25 personnel pursuant to Chapter 10 (commencing with Section 3500)  
26 of Division 4 of Title 1 of the Government Code and transfer the  
27 deducted funds as directed in that agreement.

28 (3) Any county that elects to provide in-home supportive  
29 services pursuant to this section shall be responsible for any  
30 increased costs to the in-home supportive services case  
31 management, information, and payrolling system attributable to  
32 that election. The department shall collaborate with any county  
33 that elects to provide in-home supportive services pursuant to this  
34 section prior to implementing the amount of financial obligation  
35 for which the county shall be responsible.

36 (j) To the extent permitted by federal law, personal care option  
37 funds, obtained pursuant to Subchapter 19 (commencing with  
38 Section 1396) of Chapter 7 of Title 42 of the United States Code,  
39 along with matching funds using the state and county sharing ratio  
40 established in subdivision (c) of Section 12306, or any other funds

1 that are obtained pursuant to Subchapter 19 (commencing with  
2 Section 1396) of Chapter 7 of Title 42 of the United States Code,  
3 may be used to establish and operate an entity authorized by this  
4 section.

5 (k) Notwithstanding any other provision of law, the county, in  
6 exercising its option to establish a public authority, shall not be  
7 subject to competitive bidding requirements. However, contracts  
8 entered into by either the county, a public authority, or a nonprofit  
9 consortium pursuant to this section shall be subject to competitive  
10 bidding as otherwise required by law.

11 (l) (1) The department may adopt regulations implementing  
12 this section as emergency regulations in accordance with Chapter  
13 3.5 (commencing with Section 11340) of Part 1 of Division 3 of  
14 Title 2 of the Government Code. For the purposes of the  
15 Administrative Procedure Act, the adoption of the regulations shall  
16 be deemed an emergency and necessary for the immediate  
17 preservation of the public peace, health and safety, or general  
18 welfare. Notwithstanding Chapter 3.5 (commencing with Section  
19 11340) of Part 1 of Division 3 of Title 2 of the Government Code,  
20 these emergency regulations shall not be subject to the review and  
21 approval of the Office of Administrative Law.

22 (2) Notwithstanding subdivision (h) of Section ~~11364.1~~ 11346.1  
23 and Section 11349.6 of the Government Code, the department  
24 shall transmit these regulations directly to the Secretary of State  
25 for filing. The regulations shall become effective immediately  
26 upon filing by the Secretary of State.

27 (3) Except as otherwise provided for by Section 10554, the  
28 Office of Administrative Law shall provide for the printing and  
29 publication of these regulations in the California Code of  
30 Regulations. Emergency regulations adopted pursuant to this  
31 subdivision shall remain in effect for no more than 180 days.

32 (m) (1) In the event that a county elects to form a nonprofit  
33 consortium or public authority pursuant to subdivision (a) before  
34 the State Department of Health *Care* Services has obtained all  
35 necessary federal approvals pursuant to paragraph (3) of  
36 subdivision (j) of Section 14132.95, all of the following shall apply:

37 (A) Subdivision ~~(e)~~ (d) shall apply only to those matters that do  
38 not require federal approval.

39 (B) The second sentence of subdivision ~~(g)~~ (h) shall not be  
40 operative.

1 (C) The nonprofit consortium or public authority shall not  
2 provide services other than those specified in paragraphs (1), (2),  
3 (3), (4), and (5) of subdivision ~~(d)~~ (e).

4 (2) Paragraph (1) shall become inoperative when the State  
5 Department of Health *Care* Services has obtained all necessary  
6 federal approvals pursuant to paragraph (3) of subdivision (j) of  
7 Section 14132.95.

8 (n) (1) One year after the effective date of the first approval by  
9 the department granted to the first public authority, the Bureau of  
10 State Audits shall commission a study to review the performance  
11 of that public authority.

12 (2) The study shall be submitted to the Legislature and the  
13 Governor not later than two years after the effective date of the  
14 approval specified in subdivision (a). The study shall give special  
15 attention to the health and welfare of the recipients under the public  
16 authority, including the degree to which all required services have  
17 been delivered, out-of-home placement rates, prompt response to  
18 recipient complaints, and any other issue the director deems  
19 relevant.

20 (3) The report shall make recommendations to the Legislature  
21 and the Governor for any changes to this section that will further  
22 ensure the well-being of recipients and the most efficient delivery  
23 of required services.

24 (o) Commencing July 1, 1997, the department shall provide  
25 annual reports to the appropriate fiscal and policy committees of  
26 the Legislature on the efficacy of the implementation of this  
27 section, and shall include an assessment of the quality of care  
28 provided pursuant to this section.