

**ASSEMBLY BILL**

**No. 459**

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**Introduced by Assembly Member Cook**

February 20, 2007

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An act to amend Section 12301.6 of the Welfare and Institutions Code, relating to in-home supportive services.

LEGISLATIVE COUNSEL'S DIGEST

AB 459, as introduced, Cook. In-home supportive services: criminal background checks.

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 to operate the program, or a public authority established for this purpose, include investigating the qualifications and background of potential personnel.

This bill would authorize the investigation of certain potential personnel by a nonprofit consortium or public authority to include criminal background checks conducted by the Department of Justice or, in certain circumstances, by an investigative consumer reporting agency, upon the request of the nonprofit consortium or public authority, and upon written authorization by the potential personnel. The bill would authorize a nonprofit consortium or a public authority to charge a fee to a provider, potential personnel, or a recipient to cover any cost

related to administering requirements with respect to an investigation, or the costs to certain entities for processing a criminal background check, under these provisions.

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.

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

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

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

20 (4) If the enabling ordinance does not designate the board of  
21 supervisors as the governing body of the public authority, the  
22 enabling ordinance shall require the membership of the governing  
23 body to meet the requirements of subparagraph (B) of paragraph  
24 (3).

25 (c) (1) Any public authority created pursuant to this section  
26 shall be deemed to be the employer of in-home supportive services  
27 personnel referred to recipients under paragraph (3) of subdivision  
28 (e) within the meaning of Chapter 10 (commencing with Section  
29 3500) of Division 4 of Title 1 of the Government Code. Recipients  
30 shall retain the right to hire, fire, and supervise the work of any  
31 in-home supportive services personnel providing services to them.

32 (2) (A) Any nonprofit consortium contracting with a county  
33 pursuant to this section shall be deemed to be the employer of  
34 in-home supportive services personnel referred to recipients  
35 pursuant to paragraph (3) of subdivision (e) for the purposes of  
36 collective bargaining over wages, hours, and other terms and  
37 conditions of employment.

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

(d) A public authority established pursuant to this section or a nonprofit consortium contracting with a county pursuant to this section, when providing for the delivery of services under this article by contract in accordance with Sections 12302 and 12302.1 or by direct payment to a provider chosen by a recipient in accordance with Sections 12302 and 12302.2, shall comply with and be subject to, all statutory and regulatory provisions applicable to the respective delivery mode.

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

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

(2) Investigation of the qualifications and background of potential personnel. *The investigation may, with respect to any prospective registry applicant who is not employed with the nonprofit consortium or public authority until January 1, 2008, or thereafter include criminal background checks requested by the nonprofit consortium or public authority and conducted by either the Department of Justice or an investigative consumer reporting agency, for those public authorities or nonprofit consortia using the agencies on January 1, 2008. Any nonprofit consortium or public authority that obtains a criminal background check on potential personnel under this paragraph shall secure from that person a signed authorization form prior to obtaining criminal background information.*

(A) (i) *An investigative consumer reporting agency used by a public authority or nonprofit consortium for purposes of this section shall operate under and in compliance with Title 1.6A (commencing with Section 1786) of Part 4 of Division 3 of the Civil Code.*

(ii) *The investigative consumer reporting agency shall redact from its reports all personal information, other than out-of-state criminal records, that would not be contained in a similar report prepared by the Department of Justice.*

(B) *A nonprofit consortium or public authority may charge a fee to potential personnel, providers, or service recipients to cover the costs of administering this paragraph. Nothing in this*

1 *paragraph shall be construed to prohibit the Department of Justice*  
2 *from assessing a fee pursuant to Section 11105 or 11123 of the*  
3 *Penal Code to cover the cost of furnishing summary criminal*  
4 *history information.*

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

7 (4) Providing for training for providers and recipients.

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

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

13 (f) (1) Any nonprofit consortium contracting with a county  
14 pursuant to this section or any public authority created pursuant  
15 to this section shall be deemed not to be the employer of in-home  
16 supportive services personnel referred to recipients under this  
17 section for purposes of liability due to the negligence or intentional  
18 torts of the in-home supportive services personnel.

19 (2) In no case shall a nonprofit consortium contracting with a  
20 county pursuant to this section or any public authority created  
21 pursuant to this section be held liable for action or omission of any  
22 in-home supportive services personnel whom the nonprofit  
23 consortium or public authority did not list on its registry or  
24 otherwise refer to a recipient.

25 (3) Counties and the state shall be immune from any liability  
26 resulting from their implementation of this section in the  
27 administration of the In-Home Supportive Services ~~Program~~  
28 *program*. Any obligation of the public authority or consortium  
29 pursuant to this section, whether statutory, contractual, or  
30 otherwise, shall be the obligation solely of the public authority or  
31 nonprofit consortium, and shall not be the obligation of the county  
32 or state.

33 (g) Any nonprofit consortium contracting with a county pursuant  
34 to this section shall ensure that it has a governing body that  
35 complies with the requirements of subparagraph (B) of paragraph  
36 (3) of subdivision (b) or an advisory committee that complies with  
37 subparagraphs (B) and (C) of paragraph (3) of subdivision (b).

38 (h) Recipients of services under this section may elect to receive  
39 services from in-home supportive services personnel who are not  
40 referred to them by the public authority or nonprofit consortium.

1 Those personnel shall be referred to the public authority or  
2 nonprofit consortium for the purposes of wages, benefits, and other  
3 terms and conditions of employment.

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

9 (2) The Controller shall make any deductions from the wages  
10 of in-home supportive services personnel, who are employees of  
11 a public authority pursuant to paragraph (1) of subdivision (c), that  
12 are agreed to by that public authority in collective bargaining with  
13 the designated representative of the in-home supportive services  
14 personnel pursuant to Chapter 10 (commencing with Section 3500)  
15 of Division 4 of Title 1 of the Government Code and transfer the  
16 deducted funds as directed in that agreement.

17 (3) Any county that elects to provide in-home supportive  
18 services pursuant to this section shall be responsible for any  
19 increased costs to the in-home supportive services case  
20 management, information, and payrolling system attributable to  
21 that election. The department shall collaborate with any county  
22 that elects to provide in-home supportive services pursuant to this  
23 section prior to implementing the amount of financial obligation  
24 for which the county shall be responsible.

25 (j) To the extent permitted by federal law, personal care option  
26 funds, obtained pursuant to Subchapter 19 (commencing with  
27 Section 1396) of Chapter 7 of Title 42 of the United States Code,  
28 along with matching funds using the state and county sharing ratio  
29 established in subdivision (c) of Section 12306, or any other funds  
30 that are obtained pursuant to Subchapter 19 (commencing with  
31 Section 1396) of Chapter 7 of Title 42 of the United States Code,  
32 may be used to establish and operate an entity authorized by this  
33 section.

34 (k) Notwithstanding any other provision of law, the county, in  
35 exercising its option to establish a public authority, shall not be  
36 subject to competitive bidding requirements. However, contracts  
37 entered into by either the county, a public authority, or a nonprofit  
38 consortium pursuant to this section shall be subject to competitive  
39 bidding as otherwise required by law.

1 (l) (1) The department may adopt regulations implementing  
2 this section as emergency regulations in accordance with Chapter  
3 3.5 (commencing with Section 11340) of Part 1 of Division 3 of  
4 Title 2 of the Government Code. For the purposes of the  
5 Administrative Procedure Act, the adoption of the regulations shall  
6 be deemed an emergency and necessary for the immediate  
7 preservation of the public peace, health and safety, or general  
8 welfare. Notwithstanding Chapter 3.5 (commencing with Section  
9 11340) of Part 1 of Division 3 of Title 2 of the Government Code,  
10 these emergency regulations shall not be subject to the review and  
11 approval of the Office of Administrative Law.

12 (2) Notwithstanding subdivision (h) of Section 11364.1 and  
13 Section 11349.6 of the Government Code, the department shall  
14 transmit these regulations directly to the Secretary of State for  
15 filing. The regulations shall become effective immediately upon  
16 filing by the Secretary of State.

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

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

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

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

31 (C) The nonprofit consortium or public authority shall not  
32 provide services other than those specified in paragraphs (1), (2),  
33 (3), (4), and (5) of subdivision~~(d)~~ (e).

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

38 (n) (1) One year after the effective date of the first approval by  
39 the department granted to the first public authority, the Bureau of

1 State Audits shall commission a study to review the performance  
2 of that public authority.

3 (2) The study shall be submitted to the Legislature and the  
4 Governor not later than two years after the effective date of the  
5 approval specified in subdivision (a). The study shall give special  
6 attention to the health and welfare of the recipients under the public  
7 authority, including the degree to which all required services have  
8 been delivered, out-of-home placement rates, prompt response to  
9 recipient complaints, and any other issue the director deems  
10 relevant.

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

15 (o) Commencing July 1, 1997, the department shall provide  
16 annual reports to the appropriate fiscal and policy committees of  
17 the Legislature on the efficacy of the implementation of this  
18 section, and shall include an assessment of the quality of care  
19 provided pursuant to this section.