

AMENDED IN SENATE OCTOBER 6, 2010

AMENDED IN ASSEMBLY APRIL 19, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1612

Introduced by Committee on Budget (Blumenfield (Chair))

January 11, 2010

An act relating to the Budget Act of 2010: An act to amend Section 1798.24 of the Civil Code, to amend Sections 9205 and 17555 of the Family Code, to amend Sections 1522, 1596.871, and 102426 of the Health and Safety Code, to add Section 17131.9 to, and to add and repeal Article 4 (commencing with Section 6150) of Chapter 2 of Part 1 of Division 2 of, the Revenue and Taxation Code, to amend Sections 10533, 10545, 10545.2, 10553.1, 10553.2, 11320.32, 11322.64, 11460, 12301.6, 12302.2, 12305.86, 12306.1, 12309, 12309.2, and 15525 of, to add Sections 11053.2, 11462.045 and 12305.87 to, and to add and repeal Sections 11462.04, 12301.06, 12306.6, and 18906.55 of, the Welfare and Institutions Code, and to amend Section 43 of Chapter 4 of the Fourth Extraordinary Session of the Statutes of 2009, relating to human services, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1612, as amended, Committee on Budget. ~~Budget Act of 2010.~~
Human services.

(1) Existing law prohibits a state agency from disclosing any personal information in a manner that would link the information disclosed to the individual to whom it pertains, subject to prescribed exceptions. One of these exceptions authorizes a state agency to release personally

identifiable data to a nonprofit entity conducting scientific research, provided the request for information is approved by the Committee for the Protection of Human Subjects (CHS) for the California Health and Human Services Agency, or an institutional review board as specified.

This bill would, instead, authorize a state agency to release data to a nonprofit educational institution, and would authorize the release of data to another nonprofit entity if the data is related to education.

(2) Existing law contains various provisions relating to the disclosure of personal information between adoptees and their biological siblings, the implementation of which is delayed until July 1, 2010.

This bill would delay implementation of these provisions until July 1, 2011.

(3) Existing law requires an appropriation made available in the annual Budget Act for the purposes of augmenting funding for local child support agencies in the furtherance of their revenue collection responsibilities to be subject to specified requirements. One of these requirements is that the Department of Child Support Services submit an interim report to the fiscal committees of the Legislature by January 1, 2010, to track and evaluate the impact of the augmentation on revenue collections and cost-effectiveness.

This bill would revise this requirement to provide that the department submit an interim report by January 1 of the year for which a budget appropriation is made for these purposes.

(4) Existing law requires the State Department of Social Services, before issuing a license or special permit to any person to operate or manage a day care or community care facility, to secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other specified person has ever been convicted of various crimes. Existing law provides that, except during the 2003–04 to the 2009–10 fiscal years, neither the Department of Justice nor the State Department of Social Services may charge a fee for the fingerprinting of an applicant for a license to operate a facility that will provide nonmedical board, room, or care, a day care center, or a family day care home, that will serve 6 or fewer children, or for obtaining a criminal record of these applicants.

This bill would extend these fee exceptions through the 2011–12 fiscal year.

(5) Existing law requires the State Registrar to instruct all local registrars who have automated birth registration to automatically capture specified information in an electronic file, including the

mother's marital status. Existing law prohibits disclosure of this marital status information except to the State Department of Public Health and, without any personal identifying information, to the federal government, for demographic and statistical analysis.

This bill would also permit the disclosure of this information to the Department of Child Support Services for demographic and statistical analysis.

(6) Existing law requires the State Department of Social Services to establish a CalWORKs county peer review process and to implement the process first in pilot counties, and then statewide no later than July 1, 2007.

This bill would, instead, require the department to implement the process statewide no later than July 1, 2011.

(7) Existing law provides for the allocation of funds received by the state from the federal Emergency Contingency Fund for State Temporary Assistance for Needy Families Programs, in accordance with the federal American Recovery and Reinvestment Act of 2009 (ARRA), to pay county costs for certain wage subsidy programs and nonrecurrent short-term benefit programs, as defined, notwithstanding the provisions of the existing allocation. These provisions become inoperative on October 1, 2010, and are repealed as of January 1, 2011.

This bill would, instead, provide that these provisions become inoperative, and are repealed, upon the expiration of federal authority for the Emergency Contingency Fund, as provided in ARRA, or subsequent federal legislation that extends the fund. This bill would also provide that, for the purposes of these provisions, services may be provided to needy youth, as defined.

(8) Existing law authorizes the Director of Social Services to enter into an agreement, in accordance with specified federal law, with any California Indian tribe or any out-of-state Indian tribe regarding the care and custody of Indian children and jurisdiction over Indian child custody proceedings, as prescribed.

This bill would expressly limit an out-of-state Indian tribe with which the department may enter into a new agreement to one which has reservation land that extends into this state. The bill would require an agreement of this nature that relates to adoption assistance to meet certain service delivery standards, and to provide the total matching share of costs, as specified.

(9) Existing law provides for the intercounty transfer of benefits for recipients of CalWORKs or Medi-Cal benefits that move from one county to another within the state, as prescribed.

This bill would require counties, no later than April 1, 2011, to begin using the applicable intercounty transfer process of eligibility, as specified, for food stamp recipients who are also recipients of CalWORKs or Medi-Cal benefits, when a food stamp recipient moves from one county to another within the state. This bill would require the State Department of Social Services to establish, and the counties to begin using, no later than July 1, 2011, a process of intercounty transfer of eligibility for benefits for food stamp recipients who are not receiving CalWORKs or Medi-Cal benefits.

To the extent that this would increase the duties of county officials who administer public social services programs, this bill would impose a state-mandated local program.

(10) Existing law requires the State Department of Social Services to administer a voluntary Temporary Assistance Program (TAP) to provide cash assistance and other benefits to specified current and future CalWORKs recipients who meet the exemption criteria for participation in welfare-to-work activities and are not single parents who have a child under one year of age. Existing law requires that the TAP commence on or before October 1, 2011.

This bill would extend the date by which the TAP shall commence to October 1, 2012.

(11) Existing law requires the State Department of Social Services, with respect to counties that implement a welfare-to-work plan that includes designated subsidized work activities, to pay the county 50% of the participant's wage subsidy, subject to specified conditions. Under existing law, these provisions are inoperative until September 30, 2010, unless the department makes specified determinations concerning the provisions relating to the allocation of funds received from the federal Emergency Contingency Fund for State Temporary Assistance for Needy Families Programs.

This bill would instead make these provisions inoperative until the expiration date of federal authority for the Emergency Contingency Fund for State Temporary Assistance for Needy Families Programs subject to the above-described conditions.

(12) Existing law, the Aid to Families with Dependent Children-Foster Care (AFDC-FC) program, provides for payments to group home providers at a per child per month rate, and in accordance

with prescribed rate classification levels, for the care and supervision of the AFDC-FC child placed with the provider. Existing law defines care and supervision for purposes of the AFDC-FC program to include reasonable travel to and from the child's home for visitation.

This bill would also include within the definition of care and supervision for purposes of the AFDC-FC program reasonable travel for the child to remain in the school in which he or she is enrolled at the time of placement. This bill would authorize the department to implement these provisions by all-county letters or similar instructions from the department until regulations are adopted.

This bill would provide that, commencing on the effective date of this bill, no new group home rate or change to an existing rate shall be established for a period of one year.

This bill would also require the State Department of Social Services to establish a working group to develop revisions to the current system of setting reimbursement rates for group homes, as specified.

(13) Existing law requires the State Department of Social Services to establish a Work Incentive Nutritional Supplement (WINS) program, under which each county is required to provide a \$40 monthly additional food assistance benefit for each eligible food stamp household, as defined. Existing law requires the state to pay the counties 100% of the cost of WINS benefits, using funds that qualify for the state's Temporary Assistance for Needy Families (TANF) program maintenance of effort requirements, as specified. Existing law prohibits WINS benefits from being paid before October 1, 2011, and requires full implementation of the program on or before April 1, 2012.

This bill would extend the time for payment of WINS benefits to commence to October 1, 2012, and the time for full implementation of the program to April 1, 2013.

Existing law authorizes the director to implement the WINS program by all-county letters by March 1, 2011, pending the adoption of emergency regulations.

This bill would extend the time for issuance of all-county letters to March 1, 2012.

Existing law requires the department to convene a workgroup on or before December 1, 2010, comprised of designated representatives, to consider the progress of the WINS automation effort in tandem with a preassistance employment readiness system (PAERS) program and any other program options that may provide offsetting benefits to the caseload reduction credit in the CalWORKs program. Existing law

prohibits full implementation of the WINS program until the workgroup is convened.

This bill would extend the date by which the department is required to establish the WINS/PAERS workgroup to December 1, 2011, and would make conforming changes.

(14) (a) Existing law provides for the county-administered 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 specifies the maximum hours of services per month for an IHSS recipient.

This bill would reduce the hours of service for IHSS recipients by 3.6%, commencing 90 days following the enactment of the bill, through the 2011–12 fiscal year, after which the recipients authorized service hours would be restored, as specified. The bill would authorize the department to implement and administer these provisions through all-county letters or similar instructions from the department.

(b) Existing law provides that when any increase in IHSS provider wages or benefits is negotiated or agreed to by a public authority or nonprofit consortium, the county shall use county-only funds for the state and county share of any increase in the program, unless otherwise provided in the Budget Act or appropriated by statute.

Existing law establishes a formula with regard to provider wages or benefits increases negotiated or agreed to by a public authority or nonprofit consortium, and specifies the percentages required to be paid by the state and counties, beginning with the 2000–01 fiscal year, with regard to the nonfederal share of any increases. Notwithstanding the existing formula, existing law limits state participation to a total cost of wages up to \$9.50 per hour and individual health benefits up to \$0.60 per hour, commencing July 1, 2009, unless a specified notice is made by the Director of Finance to the Joint Legislative Budget Committee, in accordance with a designated section of the Government Code.

This bill would delay implementation of the provisions that limit state participation in IHSS wages and benefits to \$9.50 per hour and \$0.60 per hour, respectively until July 1, 2012, and would further condition implementation on issuance by a court of competent jurisdiction of a specified order validating the wage and benefit reductions.

(c) Existing law limits eligibility for each domestic or related service under the IHSS program to a recipient who is assessed at a rank 4 or 5, as defined.

This bill would delay implementation of this eligibility limitation, until July 1, 2012, and would further condition implementation on issuance by a court of competent jurisdiction of a specified order validating the eligibility limitation.

(d) Existing law, subject to prescribed exceptions, requires a recipient of IHSS services to be assigned a functional index score, as defined, and requires a determination of eligibility for services to be based upon these scores, as specified.

This bill would delay implementation of the requirement for a functional index score, until July 1, 2012, and would further condition implementation on issuance by a court of competent jurisdiction of a specified order validating the functional index score requirement.

(e) To the extent that the foregoing provisions of this bill relating to program reductions would increase the duties of counties administering the IHSS program, the bill would impose a state-mandated local program.

(f) Existing law requires that criminal background checks be conducted for prospective and existing IHSS providers. Under existing law, if an applicant or provider is rejected as a result of information in a criminal background report, the applicant or provider shall receive a copy of the report to review the information for accuracy and completeness. Existing law requires the applicant or provider to be advised of his or her right to submit a formal challenge, as specified, if the applicant or provider finds information in the report to be inaccurate or incomplete.

The bill would require a nonprofit consortium, public authority, or county with criminal background check authority to secure a criminal background check clearance to accept a clearance for certain individuals who have been deemed eligible to receive payment under the IHSS program by another nonprofit consortium, public authority, or county with criminal background check authority. To the extent that these procedures would impose additional duties on counties administering the IHSS program, this bill would create a state-mandated local program.

(g) Existing law prohibits a person from providing supportive services if he or she has been convicted of specified crimes in the previous 10 years. Under existing law, the State Department of Social Services and the State Department of Health Care Services are required to develop a provider enrollment form that each person seeking to provide supportive services shall complete, sign under penalty of perjury, and

submit to the county, containing designated statements relating to the provider's criminal history.

This bill would specify other criminal convictions, including convictions for certain violent and serious felonies, fraud in the obtaining of aid, and designated felony sex offenses, that would preclude specified provider applicants from becoming a provider of in-home supportive services, in addition to the criminal convictions that exclude a person from providing or being paid to provide in-home supportive services under existing law. The bill would apply the new criminal conviction exclusions commencing 90 days following the effective date of the bill. The bill would require the provider enrollment form to be revised to include the excludable criminal convictions provided for by the bill.

This bill would authorize a recipient of in-home supportive services to employ a particular provider who has been convicted of an excludable offense identified in the bill, by submitting an individual waiver to the county, as specified. The bill would prescribe the county's duties with respect to processing and granting these individual waivers. The bill also would authorize a provider applicant with an excludable criminal conviction to seek a general exception, in order to provide in-home supportive services to the general recipient population, and would prescribe criteria to be used by the State Department of Social Services in determining whether to grant the exception. This bill would specify applicable notice and administrative hearing requirements, and other duties of the department in connection with the implementation of the bill.

By changing the definition of the crime of perjury, and by increasing duties of counties administering the In-Home Supportive Services program, this bill would impose a state-mandated local program.

(15) The Sales and Use Tax Law imposes a sales tax on retailers for the privilege of selling tangible personal property at retail, measured by the gross receipts from the sale of tangible personal property sold at retail in this state. A violation of specified provisions of this law is a crime.

This bill would impose a sales tax on providers of support services for the privilege of selling support services at retail, measured by the gross receipts from the sale of those services in this state at a specified rate of those gross receipts. This bill would specify that a seller is the State Department of Social Services, a county, or other person or entity, as provided. It would require sellers to collect, report, and pay the sales

tax. This bill would provide for the administration of the tax by the State Board of Equalization. By changing the definition of a crime, the bill would impose a state-mandated local program.

The bill would also create the Personal Care IHSS Quality Assurance Revenue Fund in the State Treasury, and would require the revenue from the tax, less refunds, to be deposited in the fund. The bill would provide that the fund is continuously appropriated to the State Department of Social Services for purposes of supplementary payments to providers of in-home supportive services.

This bill would require providers of in-home supportive services to be paid a supplementary payment equal to a prescribed percentage of the gross receipts of the provider, plus additional amounts, as specified. The bill would require the supplementary payment to be made from the Personal Care IHSS Quality Assurance Fund. The bill would require specified amounts to be transferred, on an ongoing basis, from the General Fund to the Personal Care IHSS Quality Assurance Fund, thereby making an appropriation. This bill would also require an amount to be transferred from the General Fund to the Personal Care IHSS Quality Assurance Fund, in the form of a loan, for initial implementation costs. The bill would exclude the supplementary payment from gross income and would make related changes. To the extent that the bill would increase the duties of counties administering the IHSS program, this bill would impose a state-mandated local program.

This bill would provide that its provisions shall be operative only if the Director of Health Care Services obtains necessary federal approvals, and be implemented commencing on the date permitted under that federal approval. This bill would make the provisions of the bill inoperative and repeal the provisions under specified circumstances.

(16) Existing law requires each county to pay 30% of the nonfederal costs of administering the Food Stamp program.

Existing law also requires counties to expend an amount for programs that provide services to needy families that, when combined with the funds expended above for the administration of the Food Stamp program, equals or exceeds the amount spent by the county for corresponding activities during the 1996–97 fiscal year.

This bill would provide that any county that equals or exceeds the amount spent by the county for corresponding activities during the 1996–97 fiscal year entirely through expenditures for the administration of the Food Stamp program in fiscal years 2010–11 and 2011–12, shall receive the full state General Fund allocation for the administration of

food stamps without paying the county’s share of the nonfederal costs for the amount above the 1996–97 expenditure requirement.

(17) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

(18) This bill would declare that it is to take effect immediately as an urgency statute.

~~This bill would express the intent of the Legislature to enact statutory changes relating to the Budget Act of 2010:~~

Vote: ~~majority~~^{2/3}. Appropriation: ~~no~~-yes. Fiscal committee: ~~no~~ yes. State-mandated local program: ~~no~~-yes.

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

1 SECTION 1. Section 1798.24 of the Civil Code is amended to
2 read:

3 1798.24. No agency may disclose any personal information in
4 a manner that would link the information disclosed to the individual
5 to whom it pertains unless the information is disclosed, as follows:

- 6 (a) To the individual to whom the information pertains.
- 7 (b) With the prior written voluntary consent of the individual
8 to whom the record pertains, but only if that consent has been
9 obtained not more than 30 days before the disclosure, or in the
10 time limit agreed to by the individual in the written consent.
- 11 (c) To the duly appointed guardian or conservator of the
12 individual or a person representing the individual if it can be proven
13 with reasonable certainty through the possession of agency forms,
14 documents or correspondence that this person is the authorized
15 representative of the individual to whom the information pertains.
- 16 (d) To those officers, employees, attorneys, agents, or volunteers
17 of the agency that has custody of the information if the disclosure
18 is relevant and necessary in the ordinary course of the performance

1 of their official duties and is related to the purpose for which the
2 information was acquired.

3 (e) To a person, or to another agency where the transfer is
4 necessary for the transferee agency to perform its constitutional
5 or statutory duties, and the use is compatible with a purpose for
6 which the information was collected and the use or transfer is
7 accounted for in accordance with Section 1798.25. With respect
8 to information transferred from a law enforcement or regulatory
9 agency, or information transferred to another law enforcement or
10 regulatory agency, a use is compatible if the use of the information
11 requested is needed in an investigation of unlawful activity under
12 the jurisdiction of the requesting agency or for licensing,
13 certification, or regulatory purposes by that agency.

14 (f) To a governmental entity when required by state or federal
15 law.

16 (g) Pursuant to the California Public Records Act (Chapter 3.5
17 (commencing with Section 6250) of Division 7 of Title 1 of the
18 Government Code).

19 (h) To a person who has provided the agency with advance,
20 adequate written assurance that the information will be used solely
21 for statistical research or reporting purposes, but only if the
22 information to be disclosed is in a form that will not identify any
23 individual.

24 (i) Pursuant to a determination by the agency that maintains
25 information that compelling circumstances exist that affect the
26 health or safety of an individual, if upon the disclosure notification
27 is transmitted to the individual to whom the information pertains
28 at his or her last known address. Disclosure shall not be made if
29 it is in conflict with other state or federal laws.

30 (j) To the State Archives as a record that has sufficient historical
31 or other value to warrant its continued preservation by the
32 California state government, or for evaluation by the Director of
33 General Services or his or her designee to determine whether the
34 record has further administrative, legal, or fiscal value.

35 (k) To any person pursuant to a subpoena, court order, or other
36 compulsory legal process if, before the disclosure, the agency
37 reasonably attempts to notify the individual to whom the record
38 pertains, and if the notification is not prohibited by law.

39 (l) To any person pursuant to a search warrant.

1 (m) Pursuant to Article 3 (commencing with Section 1800) of
2 Chapter 1 of Division 2 of the Vehicle Code.

3 (n) For the sole purpose of verifying and paying government
4 health care service claims made pursuant to Division 9
5 (commencing with Section 10000) of the Welfare and Institutions
6 Code.

7 (o) To a law enforcement or regulatory agency when required
8 for an investigation of unlawful activity or for licensing,
9 certification, or regulatory purposes, unless the disclosure is
10 otherwise prohibited by law.

11 (p) To another person or governmental organization to the extent
12 necessary to obtain information from the person or governmental
13 organization as necessary for an investigation by the agency of a
14 failure to comply with a specific state law that the agency is
15 responsible for enforcing.

16 (q) To an adopted person and is limited to general background
17 information pertaining to the adopted person's natural parents,
18 provided that the information does not include or reveal the identity
19 of the natural parents.

20 (r) To a child or a grandchild of an adopted person and
21 disclosure is limited to medically necessary information pertaining
22 to the adopted person's natural parents. However, the information,
23 or the process for obtaining the information, shall not include or
24 reveal the identity of the natural parents. The State Department of
25 Social Services shall adopt regulations governing the release of
26 information pursuant to this subdivision by July 1, 1985. The
27 regulations shall require licensed adoption agencies to provide the
28 same services provided by the department as established by this
29 subdivision.

30 (s) To a committee of the Legislature or to a Member of the
31 Legislature, or his or her staff when authorized in writing by the
32 member, where the member has permission to obtain the
33 information from the individual to whom it pertains or where the
34 member provides reasonable assurance that he or she is acting on
35 behalf of the individual.

36 (t) (1) To the University of California ~~or, a nonprofit entity~~
37 *educational institution, or, in the case of education-related data,*
38 *another nonprofit entity,* conducting scientific research, provided
39 the request for information is approved by the Committee for the
40 Protection of Human Subjects (CPHS) for the California Health

1 and Human Services Agency (CHHSA) or an institutional review
2 board, as authorized in paragraphs (4) and (5) ~~of this subdivision.~~

3 The approval required under this subdivision shall include a review
4 and determination that all the following criteria have been satisfied:

5 (A) The researcher has provided a plan sufficient to protect
6 personal information from improper use and disclosures, including
7 sufficient administrative, physical, and technical safeguards to
8 protect personal information from reasonable anticipated threats
9 to the security or confidentiality of the information.

10 (B) The researcher has provided a sufficient plan to destroy or
11 return all personal information as soon as it is no longer needed
12 for the research project, unless the researcher has demonstrated
13 an ongoing need for the personal information for the research
14 project and has provided a long-term plan sufficient to protect the
15 confidentiality of that information.

16 (C) The researcher has provided sufficient written assurances
17 that the personal information will not be reused or disclosed to
18 any other person or entity, or used in any manner, not approved
19 in the research protocol, except as required by law or for authorized
20 oversight of the research project.

21 (2) The CPHS or institutional review board shall, at a minimum,
22 accomplish all of the following as part of its review and approval
23 of the research project for the purpose of protecting personal
24 information held in agency databases:

25 (A) Determine whether the requested personal information is
26 needed to conduct the research.

27 (B) Permit access to personal information only if it is needed
28 for the research project.

29 (C) Permit access only to the minimum necessary personal
30 information needed for the research project.

31 (D) Require the assignment of unique subject codes that are not
32 derived from personal information in lieu of social security
33 numbers if the research can still be conducted without social
34 security numbers.

35 (E) If feasible, and if cost, time, and technical expertise permit,
36 require the agency to conduct a portion of the data processing for
37 the researcher to minimize the release of personal information.

38 (3) Reasonable costs to the agency associated with the agency's
39 process of protecting personal information under the conditions
40 of CPHS approval may be billed to the researcher, including, but

1 not limited to, the agency’s costs for conducting a portion of the
 2 data processing for the researcher, removing personal information,
 3 encrypting or otherwise securing personal information, or assigning
 4 subject codes.

5 (4) The CPHS may enter into written agreements to enable other
 6 institutional review boards to provide the data security approvals
 7 required by this subdivision, provided the data security
 8 requirements set forth in this subdivision are satisfied.

9 (5) Pursuant to paragraph (4), the CPHS shall enter into a written
 10 agreement with the institutional review board established pursuant
 11 to Section 49079.5 of the Education Code. The agreement shall
 12 authorize, commencing July 1, 2010, or the date upon which the
 13 written agreement is executed, whichever is later, that board to
 14 provide the data security approvals required by this subdivision,
 15 provided the data security requirements set forth in this subdivision
 16 and the act specified in paragraph (1) of subdivision (a) of Section
 17 49079.5 are satisfied.

18 (u) To an insurer if authorized by Chapter 5 (commencing with
 19 Section 10900) of Division 4 of the Vehicle Code.

20 (v) Pursuant to Section 280, 282, 8009, or 18396 of the Financial
 21 Code.

22 This article shall not be construed to require the disclosure of
 23 personal information to the individual to whom the information
 24 pertains when that information may otherwise be withheld as set
 25 forth in Section 1798.40.

26 *SEC. 2. Section 9205 of the Family Code is amended to read:*

27 9205. (a) Notwithstanding any other law, the department or
 28 adoption agency that joined in the adoption petition shall release
 29 the names and addresses of siblings to one another if both of the
 30 siblings have attained 18 years of age and have filed the following
 31 with the department or agency:

- 32 (1) A current address.
- 33 (2) A written request for contact with any sibling whose
 34 existence is known to the person making the request.
- 35 (3) A written waiver of the person’s rights with respect to the
 36 disclosure of the person’s name and address to the sibling, if the
 37 person is an adoptee.

38 (b) Upon inquiry and proof that a person is the sibling of an
 39 adoptee who has filed a waiver pursuant to this section, the
 40 department or agency may advise the sibling that a waiver has

1 been filed by the adoptee. The department or agency may charge
2 a reasonable fee, not to exceed fifty dollars (\$50), for providing
3 the service required by this section.

4 (c) An adoptee may revoke a waiver filed pursuant to this section
5 by giving written notice of revocation to the department or agency.

6 (d) The department shall adopt a form for the request authorized
7 by this section. The form shall provide for an affidavit to be
8 executed by a person seeking to employ the procedure provided
9 by this section that, to the best of the person's knowledge, the
10 person is an adoptee or sibling of an adoptee. The form also shall
11 contain a notice of an adoptee's rights pursuant to subdivision (c)
12 and a statement that information will be disclosed only if there is
13 a currently valid waiver on file with the department or agency.
14 The department may adopt regulations requiring any additional
15 means of identification from a person making a request pursuant
16 to this section as it deems necessary.

17 (e) The department or agency may not solicit the execution of
18 a waiver authorized by this section. However, the department shall
19 announce the availability of the procedure authorized by this
20 section, utilizing a means of communication appropriate to inform
21 the public effectively.

22 (f) Notwithstanding the age requirement described in subdivision
23 (a), an adoptee or sibling who is under 18 years of age may file a
24 written waiver of confidentiality for the release of his or her name,
25 address, and telephone number pursuant to this section provided
26 that, if an adoptee, the adoptive parent consents, and, if a sibling,
27 the sibling's legal parent or guardian consents. If the sibling is
28 under the jurisdiction of the dependency court and has no legal
29 parent or guardian able or available to provide consent, the
30 dependency court may provide that consent.

31 (g) Notwithstanding subdivisions (a) and (e), an adoptee or
32 sibling who seeks contact with the other for whom no waiver is
33 on file may petition the court to appoint a confidential intermediary.
34 If the sibling being sought is the adoptee, the intermediary shall
35 be the department or licensed adoption agency that provided
36 adoption services as described in Section 8521 or 8533. If the
37 sibling being sought was formerly under the jurisdiction of the
38 juvenile court, but is not an adoptee, the intermediary shall be the
39 department, the county child welfare agency that provided services
40 to the dependent child, or the licensed adoption agency that

1 provided adoption services to the sibling seeking contact, as
2 appropriate. If the court finds that the licensed adoption agency
3 that conducted the adoptee’s adoption is unable, due to economic
4 hardship, to serve as the intermediary, then the agency shall provide
5 all records related to the adoptee or the sibling to the court and the
6 court shall appoint an alternate confidential intermediary. The
7 court shall grant the petition unless it finds that it would be
8 detrimental to the adoptee or sibling with whom contact is sought.
9 The intermediary shall have access to all records of the adoptee
10 or the sibling and shall make all reasonable efforts to locate and
11 attempt to obtain the consent of the adoptee, sibling, or adoptive
12 or birth parent, as required to make the disclosure authorized by
13 this section. The confidential intermediary shall notify any located
14 adoptee, sibling, or adoptive or birth parent that consent is optional,
15 not required by law, and does not affect the status of the adoption.
16 If that individual denies the request for consent, the confidential
17 intermediary shall not make any further attempts to obtain consent.
18 The confidential intermediary shall use information found in the
19 records of the adoptee or the sibling for authorized purposes only,
20 and may not disclose that information without authorization. If
21 contact is sought with an adoptee or sibling who is under 18 years
22 of age, the confidential intermediary shall contact and obtain the
23 consent of that child’s legal parent before contacting the child. If
24 the sibling is under 18 years of age, under the jurisdiction of the
25 dependency court, and has no legal parent or guardian able or
26 available to provide consent, the intermediary shall obtain that
27 consent from the dependency court. If the adoptee is seeking
28 information regarding a sibling who is known to be a dependent
29 child of the juvenile court, the procedures set forth in subdivision
30 (b) of Section 388 of the Welfare and Institutions Code shall be
31 utilized. If the adoptee is foreign born and was the subject of an
32 intercountry adoption as defined in Section 8527, the adoption
33 agency may fulfill the reasonable efforts requirement by utilizing
34 all information in the agency’s case file, and any information
35 received upon request from the foreign adoption agency that
36 conducted the adoption, if any, to locate and attempt to obtain the
37 consent of the adoptee, sibling, or adoptive or birth parent. If that
38 information is neither in the agency’s case file, nor received from
39 the foreign adoption agency, or if the attempts to locate are

1 unsuccessful, then the agency shall be relieved of any further
2 obligation to search for the adoptee or the sibling.

3 (h) For purposes of this section, “sibling” means a biological
4 sibling, half-sibling, or step-sibling of the adoptee.

5 (i) Implementation of the amendments made to this section by
6 Chapter 386 of the Statutes of 2006 shall be delayed until July 1,
7 ~~2010~~ 2011. It is the intent of the Legislature that ~~counties that are~~
8 ~~already implementing~~ *implementation* of some or all of the changes
9 made to Section 9205 of the Family Code by Chapter 386 of the
10 Statutes of 2006 shall continue to implement these provisions, to
11 the extent possible.

12 *SEC. 3. Section 17555 of the Family Code is amended to read:*

13 17555. (a) Any appropriation made available in the annual
14 Budget Act for the purposes of augmenting funding for local child
15 support agencies in the furtherance of their revenue collection
16 responsibilities shall be subject to all of the following requirements:

17 (1) Each local child support agency shall submit to the
18 department an early intervention plan with all components to take
19 effect upon receipt of their additional allocation as a result of this
20 proposal.

21 (2) Funds shall be distributed to counties based on their
22 performance on the following two federal performance measures:

23 (A) Measure 3: Collections on Current Support.

24 (B) Measure 4: Cases with Collections on Arrears.

25 (3) ~~The~~ *Notwithstanding Section 10231.5 of the Government*
26 *Code, the department shall submit an interim report to the fiscal*
27 *committees of the Legislature by January 1, ~~2010~~ of any year for*
28 *which a budget appropriation for this purpose is made, to track*
29 *and evaluate the impact of the augmentation on revenue collections*
30 *and cost-effectiveness, with an additional oral report to be provided*
31 *during the spring subcommittee review process.*

32 (4) A local child support agency shall be required to use and
33 ensure that 100 percent of the new funds allocated are dedicated
34 to maintaining caseworker staffing levels in order to stabilize child
35 support collections.

36 (5) At the end of each fiscal year that this augmentation is in
37 effect, the department shall provide a report on the
38 cost-effectiveness of this augmentation, including an assessment
39 of caseload changes over time.

1 (b) It is the intent of the Legislature to review the results of this
2 augmentation and the level of related appropriation during the
3 legislative budget review process.

4 *SEC. 4. Section 1522 of the Health and Safety Code is amended*
5 *to read:*

6 1522. The Legislature recognizes the need to generate timely
7 and accurate positive fingerprint identification of applicants as a
8 condition of issuing licenses, permits, or certificates of approval
9 for persons to operate or provide direct care services in a
10 community care facility, foster family home, or a certified family
11 home of a licensed foster family agency. Therefore, the Legislature
12 supports the use of the fingerprint live-scan technology, as
13 identified in the long-range plan of the Department of Justice for
14 fully automating the processing of fingerprints and other data by
15 the year 1999, otherwise known as the California Crime
16 Information Intelligence System (CAL-CII), to be used for
17 applicant fingerprints. It is the intent of the Legislature in enacting
18 this section to require the fingerprints of those individuals whose
19 contact with community care clients may pose a risk to the clients'
20 health and safety. An individual shall be required to obtain either
21 a criminal record clearance or a criminal record exemption from
22 the State Department of Social Services before his or her initial
23 presence in a community care facility.

24 (a) (1) Before issuing a license or special permit to any person
25 or persons to operate or manage a community care facility, the
26 State Department of Social Services shall secure from an
27 appropriate law enforcement agency a criminal record to determine
28 whether the applicant or any other person specified in subdivision
29 (b) has ever been convicted of a crime other than a minor traffic
30 violation or arrested for any crime specified in Section 290 of the
31 Penal Code, for violating Section 245 or 273.5, of the Penal Code,
32 subdivision (b) of Section 273a of the Penal Code, or, prior to
33 January 1, 1994, paragraph (2) of Section 273a of the Penal Code,
34 or for any crime for which the department cannot grant an
35 exemption if the person was convicted and the person has not been
36 exonerated.

37 (2) The criminal history information shall include the full
38 criminal record, if any, of those persons, and subsequent arrest
39 information pursuant to Section 11105.2 of the Penal Code.

1 (3) Except during the 2003–04 to the ~~2009–10~~ 2011–12 fiscal
2 years, inclusive, neither the Department of Justice nor the State
3 Department of Social Services may charge a fee for the
4 fingerprinting of an applicant for a license or special permit to
5 operate a facility providing nonmedical board, room, and care for
6 six or less children or for obtaining a criminal record of the
7 applicant pursuant to this section.

8 (4) The following shall apply to the criminal record information:

9 (A) If the State Department of Social Services finds that the
10 applicant, or any other person specified in subdivision (b), has
11 been convicted of a crime other than a minor traffic violation, the
12 application shall be denied, unless the director grants an exemption
13 pursuant to subdivision (g).

14 (B) If the State Department of Social Services finds that the
15 applicant, or any other person specified in subdivision (b) is
16 awaiting trial for a crime other than a minor traffic violation, the
17 State Department of Social Services may cease processing the
18 application until the conclusion of the trial.

19 (C) If no criminal record information has been recorded, the
20 Department of Justice shall provide the applicant and the State
21 Department of Social Services with a statement of that fact.

22 (D) If the State Department of Social Services finds after
23 licensure that the licensee, or any other person specified in
24 paragraph (1) of subdivision (b), has been convicted of a crime
25 other than a minor traffic violation, the license may be revoked,
26 unless the director grants an exemption pursuant to subdivision
27 (g).

28 (E) An applicant and any other person specified in subdivision
29 (b) shall submit fingerprint images and related information to the
30 Department of Justice for the purpose of searching the criminal
31 records of the Federal Bureau of Investigation, in addition to the
32 criminal records search required by this subdivision. If an applicant
33 and all other persons described in subdivision (b) meet all of the
34 conditions for licensure, except receipt of the Federal Bureau of
35 Investigation’s criminal offender record information search
36 response for the applicant or any of the persons described in
37 subdivision (b), the department may issue a license if the applicant
38 and each person described in subdivision (b) has signed and
39 submitted a statement that he or she has never been convicted of
40 a crime in the United States, other than a traffic infraction, as

1 defined in paragraph (1) of subdivision (a) of Section 42001 of
2 the Vehicle Code. If, after licensure, the department determines
3 that the licensee or any other person specified in subdivision (b)
4 has a criminal record, the license may be revoked pursuant to
5 Section 1550. The department may also suspend the license
6 pending an administrative hearing pursuant to Section 1550.5.

7 (F) The State Department of Social Services shall develop
8 procedures to provide the individual's state and federal criminal
9 history information with the written notification of his or her
10 exemption denial or revocation based on the criminal record.
11 Receipt of the criminal history information shall be optional on
12 the part of the individual, as set forth in the agency's procedures.
13 The procedure shall protect the confidentiality and privacy of the
14 individual's record, and the criminal history information shall not
15 be made available to the employer.

16 (G) Notwithstanding any other law, the department is authorized
17 to provide an individual with a copy of his or her state or federal
18 level criminal offender record information search response as
19 provided to that department by the Department of Justice if the
20 department has denied a criminal background clearance based on
21 this information and the individual makes a written request to the
22 department for a copy specifying an address to which it is to be
23 sent. The state or federal level criminal offender record information
24 search response shall not be modified or altered from its form or
25 content as provided by the Department of Justice and shall be
26 provided to the address specified by the individual in his or her
27 written request. The department shall retain a copy of the
28 individual's written request and the response and date provided.

29 (b) (1) In addition to the applicant, this section shall be
30 applicable to criminal convictions of the following persons:

31 (A) Adults responsible for administration or direct supervision
32 of staff.

33 (B) Any person, other than a client, residing in the facility.

34 (C) Any person who provides client assistance in dressing,
35 grooming, bathing, or personal hygiene. Any nurse assistant or
36 home health aide meeting the requirements of Section 1338.5 or
37 1736.6, respectively, who is not employed, retained, or contracted
38 by the licensee, and who has been certified or recertified on or
39 after July 1, 1998, shall be deemed to meet the criminal record
40 clearance requirements of this section. A certified nurse assistant

1 and certified home health aide who will be providing client
2 assistance and who falls under this exemption shall provide one
3 copy of his or her current certification, prior to providing care, to
4 the community care facility. The facility shall maintain the copy
5 of the certification on file as long as care is being provided by the
6 certified nurse assistant or certified home health aide at the facility.
7 Nothing in this paragraph restricts the right of the department to
8 exclude a certified nurse assistant or certified home health aide
9 from a licensed community care facility pursuant to Section 1558.

10 (D) Any staff person, volunteer, or employee who has contact
11 with the clients.

12 (E) If the applicant is a firm, partnership, association, or
13 corporation, the chief executive officer or other person serving in
14 like capacity.

15 (F) Additional officers of the governing body of the applicant,
16 or other persons with a financial interest in the applicant, as
17 determined necessary by the department by regulation. The criteria
18 used in the development of these regulations shall be based on the
19 person's capability to exercise substantial influence over the
20 operation of the facility.

21 (2) The following persons are exempt from the requirements
22 applicable under paragraph (1):

23 (A) A medical professional as defined in department regulations
24 who holds a valid license or certification from the person's
25 governing California medical care regulatory entity and who is
26 not employed, retained, or contracted by the licensee if all of the
27 following apply:

28 (i) The criminal record of the person has been cleared as a
29 condition of licensure or certification by the person's governing
30 California medical care regulatory entity.

31 (ii) The person is providing time-limited specialized clinical
32 care or services.

33 (iii) The person is providing care or services within the person's
34 scope of practice.

35 (iv) The person is not a community care facility licensee or an
36 employee of the facility.

37 (B) A third-party repair person or similar retained contractor if
38 all of the following apply:

39 (i) The person is hired for a defined, time-limited job.

40 (ii) The person is not left alone with clients.

1 (iii) When clients are present in the room in which the repair
2 person or contractor is working, a staff person who has a criminal
3 record clearance or exemption is also present.

4 (C) Employees of a licensed home health agency and other
5 members of licensed hospice interdisciplinary teams who have a
6 contract with a client or resident of the facility and are in the
7 facility at the request of that client or resident's legal
8 decisionmaker. The exemption does not apply to a person who is
9 a community care facility licensee or an employee of the facility.

10 (D) Clergy and other spiritual caregivers who are performing
11 services in common areas of the community care facility or who
12 are advising an individual client at the request of, or with the
13 permission of, the client or legal decisionmaker, are exempt from
14 fingerprint and criminal background check requirements imposed
15 by community care licensing. This exemption does not apply to a
16 person who is a community care licensee or employee of the
17 facility.

18 (E) Members of fraternal, service, or similar organizations who
19 conduct group activities for clients if all of the following apply:

20 (i) Members are not left alone with clients.

21 (ii) Members do not transport clients off the facility premises.

22 (iii) The same organization does not conduct group activities
23 for clients more often than defined by the department's regulations.

24 (3) In addition to the exemptions in paragraph (2), the following
25 persons in foster family homes, certified family homes, and small
26 family homes are exempt from the requirements applicable under
27 paragraph (1):

28 (A) Adult friends and family of the licensed or certified foster
29 parent, who come into the home to visit for a length of time no
30 longer than defined by the department in regulations, provided
31 that the adult friends and family of the licensee are not left alone
32 with the foster children. However, the licensee, acting as a
33 reasonable and prudent parent, as defined in paragraph (2) of
34 subdivision (a) of Section 362.04 of the Welfare and Institutions
35 Code, may allow his or her adult friends and family to provide
36 short-term care to the foster child and act as an appropriate
37 occasional short-term babysitter for the child.

38 (B) Parents of a foster child's friend when the foster child is
39 visiting the friend's home and the friend, licensed or certified foster
40 parent, or both are also present. However, the licensee, acting as

1 a reasonable and prudent parent, may allow the parent of the foster
2 child's friend to act as an appropriate short-term babysitter for the
3 child without the friend being present.

4 (C) Individuals who are engaged by any licensed or certified
5 foster parent to provide short-term care to the child for periods not
6 to exceed 24 hours. Caregivers shall use a reasonable and prudent
7 parent standard in selecting appropriate individuals to act as
8 appropriate occasional short-term babysitters.

9 (4) In addition to the exemptions specified in paragraph (2), the
10 following persons in adult day care and adult day support centers
11 are exempt from the requirements applicable under paragraph (1):

12 (A) Unless contraindicated by the client's individualized
13 program plan (IPP) or needs and service plan, a spouse, significant
14 other, relative, or close friend of a client, or an attendant or a
15 facilitator for a client with a developmental disability if the
16 attendant or facilitator is not employed, retained, or contracted by
17 the licensee. This exemption applies only if the person is visiting
18 the client or providing direct care and supervision to the client.

19 (B) A volunteer if all of the following applies:

20 (i) The volunteer is supervised by the licensee or a facility
21 employee with a criminal record clearance or exemption.

22 (ii) The volunteer is never left alone with clients.

23 (iii) The volunteer does not provide any client assistance with
24 dressing, grooming, bathing, or personal hygiene other than
25 washing of hands.

26 (5) (A) In addition to the exemptions specified in paragraph
27 (2), the following persons in adult residential and social
28 rehabilitation facilities, unless contraindicated by the client's
29 individualized program plan (IPP) or needs and services plan, are
30 exempt from the requirements applicable under paragraph (1): a
31 spouse, significant other, relative, or close friend of a client, or an
32 attendant or a facilitator for a client with a developmental disability
33 if the attendant or facilitator is not employed, retained, or
34 contracted by the licensee. This exemption applies only if the
35 person is visiting the client or providing direct care and supervision
36 to that client.

37 (B) Nothing in this subdivision shall prevent a licensee from
38 requiring a criminal record clearance of any individual exempt
39 from the requirements of this section, provided that the individual
40 has client contact.

1 (6) Any person similar to those described in this subdivision,
2 as defined by the department in regulations.

3 (c) (1) Subsequent to initial licensure, a person specified in
4 subdivision (b) who is not exempted from fingerprinting shall
5 obtain either a criminal record clearance or an exemption from
6 disqualification pursuant to subdivision (g) from the State
7 Department of Social Services prior to employment, residence, or
8 initial presence in the facility. A person specified in subdivision
9 (b) who is not exempt from fingerprinting shall be fingerprinted
10 and shall sign a declaration under penalty of perjury regarding any
11 prior criminal convictions. The licensee shall submit fingerprint
12 images and related information to the Department of Justice and
13 the Federal Bureau of Investigation, through the Department of
14 Justice, for a state and federal level criminal offender record
15 information search, or comply with paragraph (1) of subdivision
16 (h). These fingerprint images and related information shall be sent
17 by electronic transmission in a manner approved by the State
18 Department of Social Services and the Department of Justice for
19 the purpose of obtaining a permanent set of fingerprints, and shall
20 be submitted to the Department of Justice by the licensee. A
21 licensee's failure to prohibit the employment, residence, or initial
22 presence of a person specified in subdivision (b) who is not exempt
23 from fingerprinting and who has not received either a criminal
24 record clearance or an exemption from disqualification pursuant
25 to subdivision (g) or to comply with paragraph (1) of subdivision
26 (h), as required in this section, shall result in the citation of a
27 deficiency and the immediate assessment of civil penalties in the
28 amount of one hundred dollars (\$100) per violation per day for a
29 maximum of five days, unless the violation is a second or
30 subsequent violation within a 12-month period in which case the
31 civil penalties shall be in the amount of one hundred dollars (\$100)
32 per violation for a maximum of 30 days, and shall be grounds for
33 disciplining the licensee pursuant to Section 1550. The department
34 may assess civil penalties for continued violations as permitted by
35 Section 1548. The fingerprint images and related information shall
36 then be submitted to the Department of Justice for processing.
37 Upon request of the licensee, who shall enclose a self-addressed
38 stamped postcard for this purpose, the Department of Justice shall
39 verify receipt of the fingerprints.

1 (2) Within 14 calendar days of the receipt of the fingerprint
2 images, the Department of Justice shall notify the State Department
3 of Social Services of the criminal record information, as provided
4 for in subdivision (a). If no criminal record information has been
5 recorded, the Department of Justice shall provide the licensee and
6 the State Department of Social Services with a statement of that
7 fact within 14 calendar days of receipt of the fingerprint images.
8 Documentation of the individual's clearance or exemption from
9 disqualification shall be maintained by the licensee and be available
10 for inspection. If new fingerprint images are required for
11 processing, the Department of Justice shall, within 14 calendar
12 days from the date of receipt of the fingerprints, notify the licensee
13 that the fingerprints were illegible, the Department of Justice shall
14 notify the State Department of Social Services, as required by
15 Section 1522.04, and shall also notify the licensee by mail, within
16 14 days of electronic transmission of the fingerprints to the
17 Department of Justice, if the person has no criminal history
18 recorded. A violation of the regulations adopted pursuant to Section
19 1522.04 shall result in the citation of a deficiency and an immediate
20 assessment of civil penalties in the amount of one hundred dollars
21 (\$100) per violation per day for a maximum of five days, unless
22 the violation is a second or subsequent violation within a 12-month
23 period in which case the civil penalties shall be in the amount of
24 one hundred dollars (\$100) per violation for a maximum of 30
25 days, and shall be grounds for disciplining the licensee pursuant
26 to Section 1550. The department may assess civil penalties for
27 continued violations as permitted by Section 1548.

28 (3) Except for persons specified in subdivision (b) who are
29 exempt from fingerprinting, the licensee shall endeavor to ascertain
30 the previous employment history of persons required to be
31 fingerprinted. If it is determined by the State Department of Social
32 Services, on the basis of the fingerprint images and related
33 information submitted to the Department of Justice, that subsequent
34 to obtaining a criminal record clearance or exemption from
35 disqualification pursuant to subdivision (g), the person has been
36 convicted of, or is awaiting trial for, a sex offense against a minor,
37 or has been convicted for an offense specified in Section 243.4,
38 273a, 273d, 273g, or 368 of the Penal Code, or a felony, the State
39 Department of Social Services shall notify the licensee to act
40 immediately to terminate the person's employment, remove the

1 person from the community care facility, or bar the person from
2 entering the community care facility. The State Department of
3 Social Services may subsequently grant an exemption from
4 disqualification pursuant to subdivision (g). If the conviction or
5 arrest was for another crime, except a minor traffic violation, the
6 licensee shall, upon notification by the State Department of Social
7 Services, act immediately to either (A) terminate the person's
8 employment, remove the person from the community care facility,
9 or bar the person from entering the community care facility; or
10 (B) seek an exemption from disqualification pursuant to subdivision
11 (g). The State Department of Social Services shall determine if
12 the person shall be allowed to remain in the facility until a decision
13 on the exemption from disqualification is rendered. A licensee's
14 failure to comply with the department's prohibition of employment,
15 contact with clients, or presence in the facility as required by this
16 paragraph shall result in a citation of deficiency and an immediate
17 assessment of civil penalties in the amount of one hundred dollars
18 (\$100) per violation per day and shall be grounds for disciplining
19 the licensee pursuant to Section 1550.

20 (4) The department may issue an exemption from
21 disqualification on its own motion pursuant to subdivision (g) if
22 the person's criminal history indicates that the person is of good
23 character based on the age, seriousness, and frequency of the
24 conviction or convictions. The department, in consultation with
25 interested parties, shall develop regulations to establish the criteria
26 to grant an exemption from disqualification pursuant to this
27 paragraph.

28 (5) Concurrently with notifying the licensee pursuant to
29 paragraph (3), the department shall notify the affected individual
30 of his or her right to seek an exemption from disqualification
31 pursuant to subdivision (g). The individual may seek an exemption
32 from disqualification only if the licensee terminates the person's
33 employment or removes the person from the facility after receiving
34 notice from the department pursuant to paragraph (3).

35 (d) (1) Before issuing a license or certificate of approval to any
36 person or persons to operate a foster family home or certified
37 family home as described in Section 1506, the State Department
38 of Social Services or other approving authority shall secure
39 California and Federal Bureau of Investigation criminal history
40 information to determine whether the applicant or any person

1 specified in subdivision (b) who is not exempt from fingerprinting
2 has ever been convicted of a crime other than a minor traffic
3 violation or arrested for any crime specified in subdivision (c) of
4 Section 290 of the Penal Code, for violating Section 245 or 273.5,
5 subdivision (b) of Section 273a or, prior to January 1, 1994,
6 paragraph (2) of Section 273a of the Penal Code, or for any crime
7 for which the department cannot grant an exemption if the person
8 was convicted and the person has not been exonerated. The State
9 Department of Social Services or other approving authority shall
10 not issue a license or certificate of approval to any foster family
11 home or certified family home applicant who has not obtained
12 both a California and Federal Bureau of Investigation criminal
13 record clearance or exemption from disqualification pursuant to
14 subdivision (g).

15 (2) The criminal history information shall include the full
16 criminal record, if any, of those persons.

17 (3) Neither the Department of Justice nor the State Department
18 of Social Services may charge a fee for the fingerprinting of an
19 applicant for a license, special permit, or certificate of approval
20 described in this subdivision. The record, if any, shall be taken
21 into consideration when evaluating a prospective applicant.

22 (4) The following shall apply to the criminal record information:

23 (A) If the applicant or other persons specified in subdivision
24 (b) who are not exempt from fingerprinting have convictions that
25 would make the applicant's home unfit as a foster family home or
26 a certified family home, the license, special permit, or certificate
27 of approval shall be denied.

28 (B) If the State Department of Social Services finds that the
29 applicant, or any person specified in subdivision (b) who is not
30 exempt from fingerprinting is awaiting trial for a crime other than
31 a minor traffic violation, the State Department of Social Services
32 or other approving authority may cease processing the application
33 until the conclusion of the trial.

34 (C) For purposes of this subdivision, a criminal record clearance
35 provided under Section 8712 of the Family Code may be used by
36 the department or other approving agency.

37 (D) To the same extent required for federal funding, an applicant
38 for a foster family home license or for certification as a family
39 home, and any other person specified in subdivision (b) who is
40 not exempt from fingerprinting, shall submit a set of fingerprint

1 images and related information to the Department of Justice and
2 the Federal Bureau of Investigation, through the Department of
3 Justice, for a state and federal level criminal offender record
4 information search, in addition to the criminal records search
5 required by subdivision (a).

6 (5) Any person specified in this subdivision shall, as a part of
7 the application, be fingerprinted and sign a declaration under
8 penalty of perjury regarding any prior criminal convictions or
9 arrests for any crime against a child, spousal or cohabitant abuse
10 or, any crime for which the department cannot grant an exemption
11 if the person was convicted and shall submit these fingerprints to
12 the licensing agency or other approving authority.

13 (6) (A) Subsequent to initial licensure or certification, a person
14 specified in subdivision (b) who is not exempt from fingerprinting
15 shall obtain both a California and Federal Bureau of Investigation
16 criminal record clearance, or an exemption from disqualification
17 pursuant to subdivision (g), prior to employment, residence, or
18 initial presence in the foster family or certified family home. A
19 foster family home licensee or foster family agency shall submit
20 fingerprint images and related information of persons specified in
21 subdivision (b) who are not exempt from fingerprinting to the
22 Department of Justice and the Federal Bureau of Investigation,
23 through the Department of Justice, for a state and federal level
24 criminal offender record information search, or to comply with
25 paragraph (1) of subdivision (h). A foster family home licensee's
26 or a foster family agency's failure to either prohibit the
27 employment, residence, or initial presence of a person specified
28 in subdivision (b) who is not exempt from fingerprinting and who
29 has not received either a criminal record clearance or an exemption
30 from disqualification pursuant to subdivision (g), or comply with
31 paragraph (1) of subdivision (h), as required in this section, shall
32 result in a citation of a deficiency, and the immediate civil penalties
33 of one hundred dollars (\$100) per violation per day for a maximum
34 of five days, unless the violation is a second or subsequent violation
35 within a 12-month period in which case the civil penalties shall
36 be in the amount of one hundred dollars (\$100) per violation for
37 a maximum of 30 days, and shall be grounds for disciplining the
38 licensee pursuant to Section 1550. A violation of the regulation
39 adopted pursuant to Section 1522.04 shall result in the citation of
40 a deficiency and an immediate assessment of civil penalties in the

1 amount of one hundred dollars (\$100) per violation per day for a
2 maximum of five days, unless the violation is a second or
3 subsequent violation within a 12-month period in which case the
4 civil penalties shall be in the amount of one hundred dollars (\$100)
5 per violation for a maximum of 30 days, and shall be grounds for
6 disciplining the foster family home licensee or the foster family
7 agency pursuant to Section 1550. The State Department of Social
8 Services may assess penalties for continued violations, as permitted
9 by Section 1548. The fingerprint images shall then be submitted
10 to the Department of Justice for processing.

11 (B) Upon request of the licensee, who shall enclose a
12 self-addressed envelope for this purpose, the Department of Justice
13 shall verify receipt of the fingerprints. Within five working days
14 of the receipt of the criminal record or information regarding
15 criminal convictions from the Department of Justice, the
16 department shall notify the applicant of any criminal arrests or
17 convictions. If no arrests or convictions are recorded, the
18 Department of Justice shall provide the foster family home licensee
19 or the foster family agency with a statement of that fact concurrent
20 with providing the information to the State Department of Social
21 Services.

22 (7) If the State Department of Social Services finds that the
23 applicant, or any other person specified in subdivision (b) who is
24 not exempt from fingerprinting, has been convicted of a crime
25 other than a minor traffic violation, the application shall be denied,
26 unless the director grants an exemption from disqualification
27 pursuant to subdivision (g).

28 (8) If the State Department of Social Services finds after
29 licensure or the granting of the certificate of approval that the
30 licensee, certified foster parent, or any other person specified in
31 subdivision (b) who is not exempt from fingerprinting, has been
32 convicted of a crime other than a minor traffic violation, the license
33 or certificate of approval may be revoked by the department or the
34 foster family agency, whichever is applicable, unless the director
35 grants an exemption from disqualification pursuant to subdivision
36 (g). A licensee's failure to comply with the department's
37 prohibition of employment, contact with clients, or presence in
38 the facility as required by paragraph (3) of subdivision (c) shall
39 be grounds for disciplining the licensee pursuant to Section 1550.

1 (e) The State Department of Social Services shall not use a
2 record of arrest to deny, revoke, or terminate any application,
3 license, employment, or residence unless the department
4 investigates the incident and secures evidence, whether or not
5 related to the incident of arrest, that is admissible in an
6 administrative hearing to establish conduct by the person that may
7 pose a risk to the health and safety of any person who is or may
8 become a client. The State Department of Social Services is
9 authorized to obtain any arrest or conviction records or reports
10 from any law enforcement agency as necessary to the performance
11 of its duties to inspect, license, and investigate community care
12 facilities and individuals associated with a community care facility.

13 (f) (1) For purposes of this section or any other provision of
14 this chapter, a conviction means a plea or verdict of guilty or a
15 conviction following a plea of nolo contendere. Any action that
16 the State Department of Social Services is permitted to take
17 following the establishment of a conviction may be taken when
18 the time for appeal has elapsed, when the judgment of conviction
19 has been affirmed on appeal, or when an order granting probation
20 is made suspending the imposition of sentence, notwithstanding
21 a subsequent order pursuant to Sections 1203.4 and 1203.4a of the
22 Penal Code permitting the person to withdraw his or her plea of
23 guilty and to enter a plea of not guilty, or setting aside the verdict
24 of guilty, or dismissing the accusation, information, or indictment.
25 For purposes of this section or any other provision of this chapter,
26 the record of a conviction, or a copy thereof certified by the clerk
27 of the court or by a judge of the court in which the conviction
28 occurred, shall be conclusive evidence of the conviction. For
29 purposes of this section or any other provision of this chapter, the
30 arrest disposition report certified by the Department of Justice, or
31 documents admissible in a criminal action pursuant to Section
32 969b of the Penal Code, shall be prima facie evidence of the
33 conviction, notwithstanding any other law prohibiting the
34 admission of these documents in a civil or administrative action.

35 (2) For purposes of this section or any other provision of this
36 chapter, the department shall consider criminal convictions from
37 another state or federal court as if the criminal offense was
38 committed in this state.

39 (g) (1) After review of the record, the director may grant an
40 exemption from disqualification for a license or special permit as

1 specified in paragraph (4) of subdivision (a), or for a license,
2 special permit, or certificate of approval as specified in paragraphs
3 (4), (7), and (8) of subdivision (d), or for employment, residence,
4 or presence in a community care facility as specified in paragraphs
5 (3), (4), and (5) of subdivision (c), if the director has substantial
6 and convincing evidence to support a reasonable belief that the
7 applicant and the person convicted of the crime, if other than the
8 applicant, are of good character as to justify issuance of the license
9 or special permit or granting an exemption for purposes of
10 subdivision (c). Except as otherwise provided in this subdivision,
11 an exemption shall not be granted pursuant to this subdivision if
12 the conviction was for any of the following offenses:

13 (A) (i) An offense specified in Section 220, 243.4, or 264.1,
14 subdivision (a) of Section 273a or, prior to January 1, 1994,
15 paragraph (1) of Section 273a, Section 273d, 288, or 289,
16 subdivision (c) of Section 290, or Section 368 of the Penal Code,
17 or was a conviction of another crime against an individual specified
18 in subdivision (c) of Section 667.5 of the Penal Code.

19 (ii) Notwithstanding clause (i), the director may grant an
20 exemption regarding the conviction for an offense described in
21 paragraph (1), (2), (7), or (8) of subdivision (c) of Section 667.5
22 of the Penal Code, if the employee or prospective employee has
23 been rehabilitated as provided in Section 4852.03 of the Penal
24 Code, has maintained the conduct required in Section 4852.05 of
25 the Penal Code for at least 10 years, and has the recommendation
26 of the district attorney representing the employee's county of
27 residence, or if the employee or prospective employee has received
28 a certificate of rehabilitation pursuant to Chapter 3.5 (commencing
29 with Section 4852.01) of Title 6 of Part 3 of the Penal Code. This
30 clause shall not apply to foster care providers, including relative
31 caregivers, nonrelated extended family members, or any other
32 person specified in subdivision (b), in those homes where the
33 individual has been convicted of an offense described in paragraph
34 (1) of subdivision (c) of Section 667.5 of the Penal Code.

35 (B) A felony offense specified in Section 729 of the Business
36 and Professions Code or Section 206 or 215, subdivision (a) of
37 Section 347, subdivision (b) of Section 417, or subdivision (a) of
38 Section 451 of the Penal Code.

39 (C) Under no circumstances shall an exemption be granted
40 pursuant to this subdivision to any foster care provider applicant

1 if that applicant, or any other person specified in subdivision (b)
2 in those homes, has a felony conviction for either of the following
3 offenses:

4 (i) A felony conviction for child abuse or neglect, spousal abuse,
5 crimes against a child, including child pornography, or for a crime
6 involving violence, including rape, sexual assault, or homicide,
7 but not including other physical assault and battery. For purposes
8 of this subparagraph, a crime involving violence means a violent
9 crime specified in clause (i) of subparagraph (A), or subparagraph
10 (B).

11 (ii) A felony conviction, within the last five years, for physical
12 assault, battery, or a drug- or alcohol-related offense.

13 (iii) This subparagraph shall not apply to licenses or approvals
14 wherein a caregiver was granted an exemption to a criminal
15 conviction described in clause (i) or (ii) prior to the enactment of
16 this subparagraph.

17 (iv) This subparagraph shall remain operative only to the extent
18 that compliance with its provisions is required by federal law as
19 a condition for receiving funding under Title IV-E of the federal
20 Social Security Act (42 U.S.C. Sec. 670 et seq.).

21 (2) The department shall not prohibit a person from being
22 employed or having contact with clients in a facility on the basis
23 of a denied criminal record exemption request or arrest information
24 unless the department complies with the requirements of Section
25 1558.

26 (h) (1) For purposes of compliance with this section, the
27 department may permit an individual to transfer a current criminal
28 record clearance, as defined in subdivision (a), from one facility
29 to another, as long as the criminal record clearance has been
30 processed through a state licensing district office, and is being
31 transferred to another facility licensed by a state licensing district
32 office. The request shall be in writing to the State Department of
33 Social Services, and shall include a copy of the person's driver's
34 license or valid identification card issued by the Department of
35 Motor Vehicles, or a valid photo identification issued by another
36 state or the United States government if the person is not a
37 California resident. Upon request of the licensee, who shall enclose
38 a self-addressed envelope for this purpose, the State Department
39 of Social Services shall verify whether the individual has a
40 clearance that can be transferred.

1 (2) The State Department of Social Services shall hold criminal
2 record clearances in its active files for a minimum of three years
3 after an employee is no longer employed at a licensed facility in
4 order for the criminal record clearance to be transferred.

5 (3) The following shall apply to a criminal record clearance or
6 exemption from the department or a county office with
7 department-delegated licensing authority:

8 (A) A county office with department-delegated licensing
9 authority may accept a clearance or exemption from the
10 department.

11 (B) The department may accept a clearance or exemption from
12 any county office with department-delegated licensing authority.

13 (C) A county office with department-delegated licensing
14 authority may accept a clearance or exemption from any other
15 county office with department-delegated licensing authority.

16 (4) With respect to notifications issued by the Department of
17 Justice pursuant to Section 11105.2 of the Penal Code concerning
18 an individual whose criminal record clearance was originally
19 processed by the department or a county office with
20 department-delegated licensing authority, all of the following shall
21 apply:

22 (A) The Department of Justice shall process a request from the
23 department or a county office with department-delegated licensing
24 authority to receive the notice only if all of the following conditions
25 are met:

26 (i) The request shall be submitted to the Department of Justice
27 by the agency to be substituted to receive the notification.

28 (ii) The request shall be for the same applicant type as the type
29 for which the original clearance was obtained.

30 (iii) The request shall contain all prescribed data elements and
31 format protocols pursuant to a written agreement between the
32 department and the Department of Justice.

33 (B) (i) On or before January 7, 2005, the department shall notify
34 the Department of Justice of all county offices that have
35 department-delegated licensing authority.

36 (ii) The department shall notify the Department of Justice within
37 15 calendar days of the date on which a new county office receives
38 department-delegated licensing authority or a county's delegated
39 licensing authority is rescinded.

1 (C) The Department of Justice shall charge the department, a
2 county office with department-delegated licensing authority, or a
3 county child welfare agency with criminal record clearance and
4 exemption authority, a fee for each time a request to substitute the
5 recipient agency is received for purposes of this paragraph. This
6 fee shall not exceed the cost of providing the service.

7 (5) (A) A county child welfare agency with authority to secure
8 clearances pursuant to Section 16504.5 of the Welfare and
9 Institutions Code and to grant exemptions pursuant to Section
10 361.4 of the Welfare and Institutions Code may accept a clearance
11 or exemption from another county with criminal record and
12 exemption authority pursuant to these sections.

13 (B) With respect to notifications issued by the Department of
14 Justice pursuant to Section 11105.2 of the Penal Code concerning
15 an individual whose criminal record clearance was originally
16 processed by a county child welfare agency with criminal record
17 clearance and exemption authority, the Department of Justice shall
18 process a request from a county child welfare agency with criminal
19 record and exemption authority to receive the notice only if all of
20 the following conditions are met:

21 (i) The request shall be submitted to the Department of Justice
22 by the agency to be substituted to receive the notification.

23 (ii) The request shall be for the same applicant type as the type
24 for which the original clearance was obtained.

25 (iii) The request shall contain all prescribed data elements and
26 format protocols pursuant to a written agreement between the State
27 Department of Social Services and the Department of Justice.

28 (i) The full criminal record obtained for purposes of this section
29 may be used by the department or by a licensed adoption agency
30 as a clearance required for adoption purposes.

31 (j) If a licensee or facility is required by law to deny employment
32 or to terminate employment of any employee based on written
33 notification from the state department that the employee has a prior
34 criminal conviction or is determined unsuitable for employment
35 under Section 1558, the licensee or facility shall not incur civil
36 liability or unemployment insurance liability as a result of that
37 denial or termination.

38 (k) The State Department of Social Services may charge a fee
39 for the costs of processing electronic fingerprint images and related
40 information.

1 (l) Amendments to this section made in the 1999 portion of the
2 1999–2000 Regular Session shall be implemented commencing
3 60 days after the effective date of the act amending this section in
4 the 1999 portion of the 1999–2000 Regular Session, except that
5 those provisions for the submission of fingerprints for searching
6 the records of the Federal Bureau of Investigation shall be
7 implemented 90 days after the effective date of that act.

8 *SEC. 5. Section 1596.871 of the Health and Safety Code is*
9 *amended to read:*

10 1596.871. The Legislature recognizes the need to generate
11 timely and accurate positive fingerprint identification of applicants
12 as a condition of issuing licenses, permits, or certificates of
13 approval for persons to operate or provide direct care services in
14 a child care center or family child care home. It is the intent of the
15 Legislature in enacting this section to require the fingerprints of
16 those individuals whose contact with child day care facility clients
17 may pose a risk to the children’s health and safety. An individual
18 shall be required to obtain either a criminal record clearance or a
19 criminal record exemption from the State Department of Social
20 Services before his or her initial presence in a child day care
21 facility.

22 (a) (1) Before issuing a license or special permit to any person
23 to operate or manage a day care facility, the department shall secure
24 from an appropriate law enforcement agency a criminal record to
25 determine whether the applicant or any other person specified in
26 subdivision (b) has ever been convicted of a crime other than a
27 minor traffic violation or arrested for any crime specified in
28 subdivision (c) of Section 290 of the Penal Code, for violating
29 Section 245 or 273.5, subdivision (b) of Section 273a or, prior to
30 January 1, 1994, paragraph (2) of Section 273a of the Penal Code,
31 or for any crime for which the department cannot grant an
32 exemption if the person was convicted and the person has not been
33 exonerated.

34 (2) The criminal history information shall include the full
35 criminal record, if any, of those persons, and subsequent arrest
36 information pursuant to Section 11105.2 of the Penal Code.

37 (3) Except during the 2003–04 through ~~2009–10~~ 2011–12 fiscal
38 years, inclusive, neither the Department of Justice nor the
39 department may charge a fee for the fingerprinting of an applicant
40 who will serve six or fewer children or any family day care

1 applicant for a license, or for obtaining a criminal record of an
2 applicant pursuant to this section.

3 (4) The following shall apply to the criminal record information:

4 (A) If the State Department of Social Services finds that the
5 applicant or any other person specified in subdivision (b) has been
6 convicted of a crime, other than a minor traffic violation, the
7 application shall be denied, unless the director grants an exemption
8 pursuant to subdivision (f).

9 (B) If the State Department of Social Services finds that the
10 applicant, or any other person specified in subdivision (b), is
11 awaiting trial for a crime other than a minor traffic violation, the
12 State Department of Social Services may cease processing the
13 application until the conclusion of the trial.

14 (C) If no criminal record information has been recorded, the
15 Department of Justice shall provide the applicant and the State
16 Department of Social Services with a statement of that fact.

17 (D) If the State Department of Social Services finds after
18 licensure that the licensee, or any other person specified in
19 paragraph (2) of subdivision (b), has been convicted of a crime
20 other than a minor traffic violation, the license may be revoked,
21 unless the director grants an exemption pursuant to subdivision
22 (f).

23 (E) An applicant and any other person specified in subdivision
24 (b) shall submit fingerprint images and related information to the
25 Department of Justice and the Federal Bureau of Investigation,
26 through the Department of Justice, for a state and federal level
27 criminal offender record information search, in addition to the
28 search required by subdivision (a). If an applicant meets all other
29 conditions for licensure, except receipt of the Federal Bureau of
30 Investigation's criminal history information for the applicant and
31 persons listed in subdivision (b), the department may issue a license
32 if the applicant and each person described by subdivision (b) has
33 signed and submitted a statement that he or she has never been
34 convicted of a crime in the United States, other than a traffic
35 infraction as defined in paragraph (1) of subdivision (a) of Section
36 42001 of the Vehicle Code. If, after licensure, the department
37 determines that the licensee or person specified in subdivision (b)
38 has a criminal record, the license may be revoked pursuant to
39 Section 1596.885. The department may also suspend the license
40 pending an administrative hearing pursuant to Section 1596.886.

1 (b) (1) In addition to the applicant, this section shall be
2 applicable to criminal convictions of the following persons:

3 (A) Adults responsible for administration or direct supervision
4 of staff.

5 (B) Any person, other than a child, residing in the facility.

6 (C) Any person who provides care and supervision to the
7 children.

8 (D) Any staff person, volunteer, or employee who has contact
9 with the children.

10 (i) A volunteer providing time-limited specialized services shall
11 be exempt from the requirements of this subdivision if this person
12 is directly supervised by the licensee or a facility employee with
13 a criminal record clearance or exemption, the volunteer spends no
14 more than 16 hours per week at the facility, and the volunteer is
15 not left alone with children in care.

16 (ii) A student enrolled or participating at an accredited
17 educational institution shall be exempt from the requirements of
18 this subdivision if the student is directly supervised by the licensee
19 or a facility employee with a criminal record clearance or
20 exemption, the facility has an agreement with the educational
21 institution concerning the placement of the student, the student
22 spends no more than 16 hours per week at the facility, and the
23 student is not left alone with children in care.

24 (iii) A volunteer who is a relative, legal guardian, or foster parent
25 of a client in the facility shall be exempt from the requirements of
26 this subdivision.

27 (iv) A contracted repair person retained by the facility, if not
28 left alone with children in care, shall be exempt from the
29 requirements of this subdivision.

30 (v) Any person similar to those described in this subdivision,
31 as defined by the department in regulations.

32 (E) If the applicant is a firm, partnership, association, or
33 corporation, the chief executive officer, other person serving in
34 like capacity, or a person designated by the chief executive officer
35 as responsible for the operation of the facility, as designated by
36 the applicant agency.

37 (F) If the applicant is a local educational agency, the president
38 of the governing board, the school district superintendent, or a
39 person designated to administer the operation of the facility, as
40 designated by the local educational agency.

1 (G) Additional officers of the governing body of the applicant,
2 or other persons with a financial interest in the applicant, as
3 determined necessary by the department by regulation. The criteria
4 used in the development of these regulations shall be based on the
5 person’s capability to exercise substantial influence over the
6 operation of the facility.

7 (H) This section does not apply to employees of child care and
8 development programs under contract with the State Department
9 of Education who have completed a criminal record clearance as
10 part of an application to the Commission on Teacher Credentialing,
11 and who possess a current credential or permit issued by the
12 commission, including employees of child care and development
13 programs that serve both children subsidized under, and children
14 not subsidized under, a State Department of Education contract.
15 The Commission on Teacher Credentialing shall notify the
16 department upon revocation of a current credential or permit issued
17 to an employee of a child care and development program under
18 contract with the State Department of Education.

19 (I) This section does not apply to employees of a child care and
20 development program operated by a school district, county office
21 of education, or community college district under contract with
22 the State Department of Education who have completed a criminal
23 record clearance as a condition of employment. The school district,
24 county office of education, or community college district upon
25 receiving information that the status of an employee’s criminal
26 record clearance has changed shall submit that information to the
27 department.

28 (2) Nothing in this subdivision shall prevent a licensee from
29 requiring a criminal record clearance of any individuals exempt
30 from the requirements under this subdivision.

31 (c) (1) (A) Subsequent to initial licensure, any person specified
32 in subdivision (b) and not exempted from fingerprinting shall, as
33 a condition to employment, residence, or presence in a child day
34 care facility be fingerprinted and sign a declaration under penalty
35 of perjury regarding any prior criminal conviction. The licensee
36 shall submit fingerprint images and related information to the
37 Department of Justice and the Federal Bureau of Investigation,
38 through the Department of Justice, or to comply with paragraph
39 (1) of subdivision (h), prior to the person’s employment, residence,
40 or initial presence in the child day care facility.

1 (B) These fingerprint images for the purpose of obtaining a
2 permanent set of fingerprints shall be electronically submitted to
3 the Department of Justice in a manner approved by the State
4 Department of Social Services and to the Department of Justice,
5 or to comply with paragraph (1) of subdivision (h), as required in
6 this section, shall result in the citation of a deficiency, and an
7 immediate assessment of civil penalties in the amount of one
8 hundred dollars (\$100) per violation per day for a maximum of
9 five days, unless the violation is a second or subsequent violation
10 within a 12-month period in which case the civil penalties shall
11 be in the amount of one hundred dollars (\$100) per violation for
12 a maximum of 30 days, and shall be grounds for disciplining the
13 licensee pursuant to Section 1596.885 or Section 1596.886. The
14 State Department of Social Services may assess civil penalties for
15 continued violations permitted by Sections 1596.99 and 1597.62.
16 The fingerprint images and related information shall then be
17 submitted to the department for processing. Within 14 calendar
18 days of the receipt of the fingerprint images, the Department of
19 Justice shall notify the State Department of Social Services of the
20 criminal record information, as provided in this subdivision. If no
21 criminal record information has been recorded, the Department of
22 Justice shall provide the licensee and the State Department of
23 Social Services with a statement of that fact within 14 calendar
24 days of receipt of the fingerprint images. If new fingerprint images
25 are required for processing, the Department of Justice shall, within
26 14 calendar days from the date of receipt of the fingerprint images,
27 notify the licensee that the fingerprints were illegible.

28 (C) Documentation of the individual's clearance or exemption
29 shall be maintained by the licensee, and shall be available for
30 inspection. When live-scan technology is operational, as defined
31 in Section 1522.04, the Department of Justice shall notify the
32 department, as required by that section, and notify the licensee by
33 mail within 14 days of electronic transmission of the fingerprints
34 to the Department of Justice, if the person has no criminal record.
35 Any violation of the regulations adopted pursuant to Section
36 1522.04 shall result in the citation of a deficiency and an immediate
37 assessment of civil penalties in the amount of one hundred dollars
38 (\$100) per violation per day for a maximum of five days, unless
39 the violation is a second or subsequent violation within a 12-month
40 period in which case the civil penalties shall be in the amount of

1 one hundred dollars (\$100) per violation for a maximum of 30
2 days, and shall be grounds for disciplining the licensee pursuant
3 to Section 1596.885 or Section 1596.886. The department may
4 assess civil penalties for continued violations, as permitted by
5 Sections 1596.99 and 1597.62.

6 (2) Except for persons specified in paragraph (2) of subdivision
7 (b), the licensee shall endeavor to ascertain the previous
8 employment history of persons required to be fingerprinted under
9 this subdivision. If it is determined by the department, on the basis
10 of fingerprints submitted to the Department of Justice, that the
11 person has been convicted of a sex offense against a minor, an
12 offense specified in Section 243.4, 273a, 273d, 273g, or 368 of
13 the Penal Code, or a felony, the State Department of Social
14 Services shall notify the licensee to act immediately to terminate
15 the person’s employment, remove the person from the child day
16 care facility, or bar the person from entering the child day care
17 facility. The department may subsequently grant an exemption
18 pursuant to subdivision (f). If the conviction was for another crime
19 except a minor traffic violation, the licensee shall, upon notification
20 by the State Department of Social Services, act immediately to
21 either (1) terminate the person’s employment, remove the person
22 from the child day care facility, or bar the person from entering
23 the child day care facility; or (2) seek an exemption pursuant to
24 subdivision (f). The department shall determine if the person shall
25 be allowed to remain in the facility until a decision on the
26 exemption is rendered. A licensee’s failure to comply with the
27 department’s prohibition of employment, contact with clients, or
28 presence in the facility as required by this paragraph shall result
29 in a citation of deficiency and an immediate assessment of civil
30 penalties by the department against the licensee, in the amount of
31 one hundred dollars (\$100) per violation per day for a maximum
32 of five days, unless the violation is a second or subsequent violation
33 within a 12-month period in which case the civil penalties shall
34 be in the amount of one hundred dollars (\$100) per violation for
35 a maximum of 30 days, and shall be grounds for disciplining the
36 licensee pursuant to Section 1596.885 or 1596.886.

37 (3) The department may issue an exemption on its own motion
38 pursuant to subdivision (f) if the person’s criminal history indicates
39 that the person is of good character based on the age, seriousness,
40 and frequency of the conviction or convictions. The department,

1 in consultation with interested parties, shall develop regulations
2 to establish the criteria to grant an exemption pursuant to this
3 paragraph.

4 (4) Concurrently with notifying the licensee pursuant to
5 paragraph (3), the department shall notify the affected individual
6 of his or her right to seek an exemption pursuant to subdivision
7 (f). The individual may seek an exemption only if the licensee
8 terminates the person's employment or removes the person from
9 the facility after receiving notice from the department pursuant to
10 paragraph (3).

11 (d) (1) For purposes of this section or any other provision of
12 this chapter, a conviction means a plea or verdict of guilty or a
13 conviction following a plea of nolo contendere. Any action that
14 the department is permitted to take following the establishment of
15 a conviction may be taken when the time for appeal has elapsed,
16 when the judgment of conviction has been affirmed on appeal, or
17 when an order granting probation is made suspending the
18 imposition of sentence, notwithstanding a subsequent order
19 pursuant to Sections 1203.4 and 1203.4a of the Penal Code
20 permitting the person to withdraw his or her plea of guilty and to
21 enter a plea of not guilty, or setting aside the verdict of guilty, or
22 dismissing the accusation, information, or indictment. For purposes
23 of this section or any other provision of this chapter, the record of
24 a conviction, or a copy thereof certified by the clerk of the court
25 or by a judge of the court in which the conviction occurred, shall
26 be conclusive evidence of the conviction. For purposes of this
27 section or any other provision of this chapter, the arrest disposition
28 report certified by the Department of Justice, or documents
29 admissible in a criminal action pursuant to Section 969b of the
30 Penal Code, shall be prima facie evidence of conviction,
31 notwithstanding any other provision of law prohibiting the
32 admission of these documents in a civil or administrative action.

33 (2) For purposes of this section or any other provision of this
34 chapter, the department shall consider criminal convictions from
35 another state or federal court as if the criminal offense was
36 committed in this state.

37 (e) The State Department of Social Services may not use a
38 record of arrest to deny, revoke, or terminate any application,
39 license, employment, or residence unless the department
40 investigates the incident and secures evidence, whether or not

1 related to the incident of arrest, that is admissible in an
2 administrative hearing to establish conduct by the person that may
3 pose a risk to the health and safety of any person who is or may
4 become a client. The State Department of Social Services is
5 authorized to obtain any arrest or conviction records or reports
6 from any law enforcement agency as necessary to the performance
7 of its duties to inspect, license, and investigate community care
8 facilities and individuals associated with a community care facility.

9 (f) (1) After review of the record, the director may grant an
10 exemption from disqualification for a license or special permit as
11 specified in paragraphs (1) and (4) of subdivision (a), or for
12 employment, residence, or presence in a child day care facility as
13 specified in paragraphs (3), (4), and (5) of subdivision (c) if the
14 director has substantial and convincing evidence to support a
15 reasonable belief that the applicant and the person convicted of
16 the crime, if other than the applicant, are of good character so as
17 to justify issuance of the license or special permit or granting an
18 exemption for purposes of subdivision (c). However, an exemption
19 may not be granted pursuant to this subdivision if the conviction
20 was for any of the following offenses:

21 (A) An offense specified in Section 220, 243.4, or 264.1,
22 subdivision (a) of Section 273a or, prior to January 1, 1994,
23 paragraph (1) of Section 273a, Section 273d, 288, or 289,
24 subdivision (c) of Section 290, or Section 368 of the Penal Code,
25 or was a conviction of another crime against an individual specified
26 in subdivision (c) of Section 667.5 of the Penal Code.

27 (B) A felony offense specified in Section 729 of the Business
28 and Professions Code or Section 206 or 215, subdivision (a) of
29 Section 347, subdivision (b) of Section 417, or subdivision (a) or
30 (b) of Section 451 of the Penal Code.

31 (2) The department may not prohibit a person from being
32 employed or having contact with clients in a facility on the basis
33 of a denied criminal record exemption request or arrest information
34 unless the department complies with the requirements of Section
35 1596.8897.

36 (g) Upon request of the licensee, who shall enclose a
37 self-addressed stamped postcard for this purpose, the Department
38 of Justice shall verify receipt of the fingerprint images.

39 (h) (1) For the purposes of compliance with this section, the
40 department may permit an individual to transfer a current criminal

1 record clearance, as defined in subdivision (a), from one facility
2 to another, as long as the criminal record clearance has been
3 processed through a state licensing district office, and is being
4 transferred to another facility licensed by a state licensing district
5 office. The request shall be in writing to the department, and shall
6 include a copy of the person's driver's license or valid
7 identification card issued by the Department of Motor Vehicles,
8 or a valid photo identification issued by another state or the United
9 States government if the person is not a California resident. Upon
10 request of the licensee, who shall enclose a self-addressed stamped
11 envelope for this purpose, the department shall verify whether the
12 individual has a clearance that can be transferred.

13 (2) The State Department of Social Services shall hold criminal
14 record clearances in its active files for a minimum of two years
15 after an employee is no longer employed at a licensed facility in
16 order for the criminal record clearances to be transferred.

17 (3) The following shall apply to a criminal record clearance or
18 exemption from the department or a county office with
19 department-delegated licensing authority:

20 (A) A county office with department-delegated licensing
21 authority may accept a clearance or exemption from the
22 department.

23 (B) The department may accept a clearance or exemption from
24 any county office with department-delegated licensing authority.

25 (C) A county office with department-delegated licensing
26 authority may accept a clearance or exemption from any other
27 county office with department-delegated licensing authority.

28 (4) With respect to notifications issued by the Department of
29 Justice pursuant to Section 11105.2 of the Penal Code concerning
30 an individual whose criminal record clearance was originally
31 processed by the department or a county office with
32 department-delegated licensing authority, all of the following shall
33 apply:

34 (A) The Department of Justice shall process a request from the
35 department or a county office with department-delegated licensing
36 authority to receive the notice, only if all of the following
37 conditions are met:

38 (i) The request shall be submitted to the Department of Justice
39 by the agency to be substituted to receive the notification.

1 (ii) The request shall be for the same applicant type as the type
 2 for which the original clearance was obtained.

3 (iii) The request shall contain all prescribed data elements and
 4 format protocols pursuant to a written agreement between the
 5 department and the Department of Justice.

6 (B) (i) On or before January 7, 2005, the department shall notify
 7 the Department of Justice of all county offices that have
 8 department-delegated licensing authority.

9 (ii) The department shall notify the Department of Justice within
 10 15 calendar days of the date on which a new county office receives
 11 department-delegated licensing authority or a county's delegated
 12 licensing authority is rescinded.

13 (C) The Department of Justice shall charge the department or
 14 a county office with department-delegated licensing authority a
 15 fee for each time a request to substitute the recipient agency is
 16 received for purposes of this paragraph. This fee shall not exceed
 17 the cost of providing the service.

18 (i) Notwithstanding any other provision of law, the department
 19 may provide an individual with a copy of his or her state or federal
 20 level criminal offender record information search response as
 21 provided to that department by the Department of Justice if the
 22 department has denied a criminal background clearance based on
 23 this information and the individual makes a written request to the
 24 department for a copy specifying an address to which it is to be
 25 sent. The state or federal level criminal offender record information
 26 search response shall not be modified or altered from its form or
 27 content as provided by the Department of Justice and shall be
 28 provided to the address specified by the individual in his or her
 29 written request. The department shall retain a copy of the
 30 individual's written request and the response and date provided.

31 *SEC. 6. Section 102426 of the Health and Safety Code is*
 32 *amended to read:*

33 102426. (a) (1) In addition to the items of information
 34 collected pursuant to Section 102425, the State Registrar shall
 35 instruct all local registrars that have automated birth registration
 36 to electronically capture the information specified in paragraph
 37 (2) in an electronic file. The information shall not be transcribed
 38 onto the actual hard copy of the certificate of live birth.

39 (2) The information required pursuant to paragraph (1) shall
 40 consist of the following:

1 (A) The mother's marital status.

2 (B) The mother's mailing address. The mother may designate
3 an alternate address at her discretion.

4 (C) Information about whether the birth mother received food
5 for herself during the pregnancy pursuant to the Women, Infants,
6 and Children (WIC) program.

7 (D) The Activity, Pulse, Grimace, Appearance, and Respiration
8 (Apgar) scores of 5 and 10 minutes.

9 (E) The birth mother's prepregnancy weight, weight at delivery,
10 and height.

11 (F) Information about smoking before and during pregnancy,
12 including the average number of cigarettes or packs of cigarettes
13 smoked during the three months before pregnancy and the average
14 number of cigarettes or packs of cigarettes smoked during each
15 trimester of pregnancy.

16 (3) Subparagraphs (B) to (F), inclusive, of paragraph (2) shall
17 become operative on January 1, 2007.

18 (b) Notwithstanding any ~~provisions~~ *provision* of law to the
19 contrary, information collected pursuant to subparagraph (A) of
20 paragraph (2) of subdivision (a) shall not under any circumstances
21 be disclosed or available to anyone, except ~~to~~ *for both of the*
22 ~~department~~ *for following:*

23 (1) *The State Department of Public Health and the Department*
24 *of Child Support Services for demographic and statistical analysis;*
25 ~~and to the.~~ *The Department of Child Support Services shall keep*
26 *information received pursuant to this subdivision confidential in*
27 *accordance with Section 17212 of the Family Code.*

28 (2) *The federal government, without any personal identifying*
29 *information, for demographic and statistical analysis.*

30 *SEC. 7. Article 4 (commencing with Section 6150) is added to*
31 *Chapter 2 of Part 1 of Division 2 of the Revenue and Taxation*
32 *Code, to read:*

33

34 *Article 4. Inclusion of Support Services in Sales Tax*

35

36 *6150. For purposes of this article, notwithstanding any*
37 *provision of Chapter 1 (commencing with Section 6001), the*
38 *following words have the following meanings in extending the*
39 *sales tax to support services:*

1 (a) “County” means a county, city and county, or a public
2 authority or nonprofit consortium, as defined in Section 12301.6
3 of the Welfare and Institutions Code.

4 (b) “Gross receipts” means the total amount of the sales of a
5 provider, valued in money, whether paid in money or otherwise,
6 without any deduction for the cost of materials used, any costs of
7 transportation of the provider, or any other expenses. “Gross
8 receipts” shall not include a supplementary payment received by
9 a provider pursuant to Section 12306.6 of the Welfare and
10 Institutions Code.

11 (c) “Personal care services” means (1) assistance with
12 ambulation, (2) bathing, oral hygiene, and grooming, (3) dressing,
13 (4) care and assistance with prosthetic devices, (5) bowel, bladder,
14 and menstrual care, (6) repositioning, skin care, range of motion
15 exercises, and transfers, (7) feeding and assurance of adequate
16 fluid intake, (8) respiration, and (9) assistance with
17 self-administration of medications.

18 (d) (1) “Provider” means a natural person who is authorized
19 by law to provide all of the support services defined in subdivision
20 (i) and who makes a retail sale.

21 (2) “Provider” also means a nongovernmental person that
22 arranges for the retail sale of all support services defined in
23 subdivision (i). When this definition applies, any natural person
24 described by paragraph (1) who provides services under the
25 direction of the nongovernmental person is not a provider.

26 (e) “Recipient” means a natural person who receives support
27 services.

28 (f) “Retail sale” means a sale to a recipient.

29 (g) “Sale” means the furnishing of support services for a
30 consideration.

31 (h) “Seller” includes the State Department of Social Services
32 in its capacity as the state agency that oversees the In-Home
33 Supportive Services program, or a county in which county staff
34 serve as homemakers pursuant to Section 12302 of the Welfare
35 and Institutions Code in those instances where the department is
36 not the seller, or a county that contracts with a nongovernmental
37 contractor to arrange for the retail sale of support services to
38 eligible recipients pursuant to Section 12301.6 or 12302 of the
39 Welfare and Institutions Code, or any other nongovernmental

1 *person that arranges for the retail sale of support services,*
2 *wherever located.*

3 (i) *“Support services” means the following services provided*
4 *by a provider:*

5 (1) *Domestic services and services related to domestic services.*

6 (2) *Heavy cleaning.*

7 (3) *Personal care services, as defined in subdivision (c).*

8 (4) *Accompaniment when needed during necessary travel to*
9 *health-related appointments or to alternative resource sites.*

10 (5) *Yard hazard abatement.*

11 (6) *Protective supervision.*

12 (7) *Teaching and demonstration directed at reducing the need*
13 *for other supportive services.*

14 (8) *Paramedical services that make it possible for the recipient*
15 *to establish and maintain an independent living arrangement,*
16 *including those necessary paramedical services that are ordered*
17 *by a licensed health care professional who is lawfully authorized*
18 *to do so, which persons could provide for themselves but for their*
19 *functional limitations. Paramedical services include the*
20 *administration of medications, puncturing the skin, or inserting a*
21 *medical device into a body orifice, activities requiring sterile*
22 *procedures, or other activities requiring judgment based on*
23 *training given by a licensed health care professional.*

24 6151. (a) *Beginning on the date for which the federal Centers*
25 *for Medicare and Medicaid Services approves implementation of*
26 *the state plan amendment described in subdivision (c) of Section*
27 *12306.6 of the Welfare and Institutions Code, but no earlier than*
28 *July 1, 2010, for the privilege of selling support services at retail,*
29 *the sales tax is hereby extended to all providers at the rate, as*
30 *described in subdivision (b), of the gross receipts of any provider*
31 *from the sale of all support services sold at retail in this state.*

32 (b) *The rate extended by subdivision (a) is the rate, as may be*
33 *amended from time to time, imposed by Article 1 (commencing*
34 *with Section 6051) plus the rate imposed by Section 35 of Article*
35 *XIII of the California Constitution for the privilege of selling*
36 *tangible personal property at retail in this state.*

37 (c) *Notwithstanding the implementation date of this article as*
38 *provided for in subdivision (a), no tax shall be collected pursuant*
39 *to this article prior to the receipt of approval by the federal Centers*

1 *for Medicare and Medicaid Services of the implementation of*
2 *Section 12306.6 of the Welfare and Institutions Code.*

3 *6152. For the efficient administration of this article and the*
4 *collection of tax from providers, a seller shall register with the*
5 *board, collect the tax from the provider, and report and pay the*
6 *tax to the board.*

7 *6154. For the efficient administration of this article and the*
8 *collection of tax from providers, Article 1.1 (commencing with*
9 *Section 6470) of Chapter 5, pertaining to prepayment of taxes,*
10 *shall not apply to sellers until no later than three months after the*
11 *date that federal approval is obtained pursuant to subdivision (c)*
12 *of Section 12306.6 of the Welfare and Institutions Code.*

13 *6156. A seller shall file with the board an application pursuant*
14 *to Section 6066, which shall state that the applicant will actively*
15 *engage in arranging for the retail sale of support services.*

16 *6158. After compliance by the seller with Section 6156 and by*
17 *the seller and the board with Section 6067, the board shall grant*
18 *and issue a permit or permits to each applicant pursuant to Section*
19 *6067, except that the board shall grant and issue a single permit*
20 *to the State Department of Social Services without regard to its*
21 *multiple places of business.*

22 *6160. A permit issued pursuant to this article shall be held*
23 *only by a seller that is actively engaged in arranging for the retail*
24 *sale of support services. Any seller not so engaged shall forthwith*
25 *surrender its permit to the board for cancellation. The board may*
26 *revoke the permit of a seller found to be not actively engaged in*
27 *arranging for the retail sale of support services.*

28 *6162. For purposes of Section 6486, a seller is a retailer.*

29 *6164. Every provider and seller shall keep any records,*
30 *receipts, invoices, and other pertinent papers in such form as the*
31 *board may require.*

32 *6166. The board, or any person authorized in writing by the*
33 *board, may examine the books, papers, records, and equipment*
34 *of any seller or provider, and may investigate the character of the*
35 *business of the seller, pursuant to Section 7054.*

36 *6168. Notwithstanding Section 7101, all revenues, less refunds,*
37 *derived from the taxes extended by this article shall be deposited*
38 *in the State Treasury to the credit of the Personal Care IHSS*
39 *Quality Assurance Revenue Fund, which is hereby created.*
40 *Notwithstanding Section 13340 of the Government Code, the money*

1 *in the fund is continuously appropriated, without regard to fiscal*
2 *years, to the State Department of Social Services for disbursement*
3 *in the manner, and for the purposes, set forth in Section 12306.6*
4 *of the Welfare and Institutions Code. All interest or other increment*
5 *resulting from investment or deposit of moneys in the fund shall*
6 *be deposited in the fund, notwithstanding Section 16305.7 of the*
7 *Government Code.*

8 6170. (a) (1) *This article shall become operative only if*
9 *federal Medicaid approval sought by the Director of Health Care*
10 *Services pursuant to paragraph (1) of subdivision (c) of Section*
11 *12306.6 of the Welfare and Institutions Code is granted.*

12 (2) *If approval is granted as described in paragraph (1), within*
13 *10 days of that approval the Director of Health Care Services shall*
14 *notify the State Board of Equalization, and the fiscal and*
15 *appropriate policy committees of the Legislature, of the approval*
16 *pursuant to paragraph (3) of subdivision (c) of Section 12306.6*
17 *of the Welfare and Institutions Code.*

18 (b) *The Department of Finance shall notify the board, within*
19 *10 days of the final decision, of a final decision by the California*
20 *Supreme Court or any California Court of Appeal that the revenues*
21 *collected pursuant to this article that are deposited in the Personal*
22 *Care IHSS Quality Assurance Revenue Fund are “General Fund*
23 *revenues which may be appropriated pursuant to Article XIII B”*
24 *or “General Fund proceeds of taxes appropriated pursuant to*
25 *Article XIII B” as used in subdivision (b) of Section 8 of Article*
26 *XVI of the California Constitution, without regard to the validity*
27 *of this section. This article shall become inoperative on the first*
28 *day of the next calendar quarter following 30 days after the date*
29 *of that final decision.*

30 6172. *This article shall remain in effect only until the January*
31 *1 following the date the tax extended by this article becomes*
32 *inoperative pursuant to subdivision (b) of Section 6170, and as of*
33 *that date is repealed.*

34 SEC. 8. *Section 17131.9 is added to the Revenue and Taxation*
35 *Code, to read:*

36 17131.9. *Gross income does not include any supplementary*
37 *payment received by an individual pursuant to Section 12306.6 of*
38 *the Welfare and Institutions Code.*

39 SEC. 9. *Section 10533 of the Welfare and Institutions Code is*
40 *amended to read:*

1 10533. ~~The Commencing July 1, 2011, the~~ department shall
2 establish a CalWORKs county peer review process, ~~and shall~~
3 ~~implement this process first in pilot counties, and then statewide~~
4 *which shall be implemented on a statewide basis* no later than July
5 1, ~~2007~~ 2012. The peer review process shall include individual
6 CalWORKs data reviews of counties, based on existing data.
7 Counties shall receive programmatic technical assistance from
8 teams made up of state and peer-county administrators to assist
9 with implementing best practices to improve their performance
10 and make progress toward meeting established state performance
11 goals, as specified in Chapter 1.5 (commencing with Section
12 10540) and Section 15204.6.

13 *SEC. 10. Section 10545 of the Welfare and Institutions Code*
14 *is amended to read:*

15 10545. (a) (1) Notwithstanding any other law, the State
16 Department of Social Services shall pay counties for base year
17 costs of the county, in accordance with Section 2101 of the
18 American Recovery and Reinvestment Act of 2009 (Public Law
19 111-5), which establishes the Emergency Contingency Fund for
20 State Temporary Assistance for Needy Families Programs, to
21 provide for both of the following:

22 (A) Wage subsidy programs for purposes of public or private
23 subsidized employment.

24 (B) Nonrecurrent short-term benefit programs, as defined in
25 subdivision ~~(d)~~ (e).

26 (2) After consultation with the County Welfare Directors
27 Association of California, the State Department of Social Services
28 shall develop a methodology for allocating the funds provided in
29 paragraph (1) among counties.

30 (3) The payment described in paragraph (1) shall be in addition
31 to the single allocation required in Section 15204.2 and shall not
32 exceed the amount budgeted by the State Department of Social
33 Services for purposes of Section 11322.63 in the 2008–09 fiscal
34 year and CalWORKs grant savings accomplished via subsidized
35 employment programs.

36 (b) (1) Notwithstanding Section 15204.2 or any other law, the
37 State Department of Social Services, in accordance with Section
38 2101 of the American Recovery and Reinvestment Act of 2009
39 (Public Law 111-5), shall reimburse a county for 80 percent of the
40 amounts that exceed the base year costs that are paid to the county

1 under subdivision (a) and are expended by that county for the
2 benefit of needy families, as defined in subdivision (c), for either
3 of the following purposes:

4 (A) Wage subsidy programs for purposes of public or private
5 subsidized employment.

6 (B) Nonrecurrent short-term benefit programs, as defined in
7 subdivision ~~(d)~~ (e).

8 (2) Notwithstanding Section 15204.2 or any other law, the State
9 Department of Social Services, in accordance with Section 2101
10 of the American Recovery and Reinvestment Act of 2009 (Public
11 Law 111-5), shall reimburse a community college district for 80
12 percent of the amounts expended in excess of base year costs by
13 that community college district for wage subsidy programs
14 conducted in accordance with Article 5 (commencing with Section
15 79200) of Chapter 9 of Part 48 of Division 7 of Title 3 of the
16 Education Code.

17 (3) Notwithstanding Section 15204.2 or any other law, the State
18 Department of Social Services, in accordance with Section 2101
19 of the American Recovery and Reinvestment Act of 2009 (Public
20 Law 111-5), shall reimburse a county for 80 percent of the amounts
21 expended by that county for basic assistance for families receiving
22 assistance under the CalWORKs program, provided that the
23 reimbursement shall only be provided for basic assistance to which
24 the family is not otherwise entitled under Chapter 2 (commencing
25 with Section 11200) of Part 3.

26 (c) Notwithstanding Section 11250 or any other law, exclusively
27 for purposes of funds provided under this section and exclusively
28 for purposes of providing nonassistance services pursuant to
29 Section 601(a)(1) and (2) of Title 42 of the United States Code,
30 “needy families” also includes a family in which the income of
31 the family is less than 200 percent of the current federal poverty
32 level guidelines applicable to a family of the size involved if the
33 family is any of the following:

34 (1) A family in which a minor child is living with a parent or
35 adult relative caregiver, including a noncustodial parent who does
36 not reside with the minor child.

37 (2) A woman in the third trimester of pregnancy.

38 (3) A family in which a minor child is temporarily absent for a
39 period of time, not to exceed 12 months, due to child abuse and

1 neglect, and the parent or parents of the child are engaged in family
2 reunification services.

3 *(d) (1) Notwithstanding Section 11250 or any other law,*
4 *exclusively for purposes of funds provided under this section and*
5 *exclusively for purposes of providing nonassistance services*
6 *pursuant to Section 601(a)(1), (3), and (4) of Title 42 of the United*
7 *States Code, services may be provided to needy youth.*

8 *(2) For the purposes of this section, “needy youth” are*
9 *individuals 18 to 24 years of age in which the income for their*
10 *family, which may include the youth living alone, is less than 200*
11 *percent of the current federal poverty level guidelines applicable*
12 *to a family of the size involved.*

13 ~~(d)~~

14 *(e) Notwithstanding any other law, for purposes of this section,*
15 *“nonrecurrent short-term benefits” means benefits that meet all of*
16 *the following requirements:*

17 *(1) The benefits are designed to deal with a specific crisis*
18 *situation or episode of need.*

19 *(2) The benefits are not intended to meet recurrent or ongoing*
20 *needs.*

21 *(3) The benefits will not extend beyond four months.*

22 ~~(e)~~

23 *(f) The funds paid or reimbursed to counties pursuant to this*
24 *section shall be used only for purposes for which federal*
25 *Temporary Assistance for Needy Families program (42 U.S.C.*
26 *Sec. 601 et seq.) block grant funds may be used.*

27 ~~(f)~~

28 *(g) A county that receives payment for a welfare-to-work*
29 *participant’s wage subsidy in accordance with Section 11322.63*
30 *may not also receive reimbursement for that same wage subsidy*
31 *expense under this section.*

32 ~~(g)~~

33 *(h) The reimbursement authorized in this section shall only be*
34 *available to the extent that funds are provided to the state in*
35 *accordance with Section 2101 of the American Recovery and*
36 *Reinvestment Act of 2009 (Public Law 111-5), and to the extent*
37 *that those funds are appropriated for the purposes of this section*
38 *by the Legislature.*

39 ~~(h)~~

1 (i) (1) The reimbursement authorized in subdivision (b) shall
2 be provided to counties to the extent that the state receives funding
3 under Section 2101 of the American Recovery and Reinvestment
4 Act of 2009 (Public Law 111-5) that is based on county
5 expenditures described in subdivision (b).

6 (2) If the state receives advance funding under Section 2101 of
7 the American Recovery and Reinvestment Act of 2009 (Public
8 Law 111-5) based on expenditures described in subdivision (b),
9 the state shall provide that advance funding to counties and
10 community colleges based on the most current projected
11 expenditures of the State Department of Social Services.

12 *SEC. 11. Section 10545.2 of the Welfare and Institutions Code*
13 *is amended to read:*

14 10545.2. (a) This chapter shall become inoperative ~~on October~~
15 ~~1, 2010, and as of January 1, 2011,~~ *upon the expiration of federal*
16 *authority for the Emergency Contingency Fund, as provided in*
17 *the American Recovery and Reinvestment Act of 2009 (Public Law*
18 *111-5), or subsequent federal legislation that extends the*
19 *Emergency Contingency Fund, and on that date is repealed.*

20 (b) This section shall not limit the claiming, payment,
21 reimbursement, or reconciliation of funds relating to expenditures
22 made prior to the inoperative date of this chapter, as long as all
23 requirements of the American Recovery and Reinvestment Act of
24 2009 (Public Law 111-5) are met.

25 *SEC. 12. Section 10553.1 of the Welfare and Institutions Code*
26 *is amended to read:*

27 10553.1. (a) Notwithstanding any other provision of law, the
28 director may enter into an agreement, in accordance with Section
29 1919 of Title 25 of the United States Code, *and consistent with*
30 *Section 16000.6, with any California Indian tribe or any out-of-state*
31 *Indian tribe that has reservation lands that extend into this state,*
32 *consortium of tribes, or tribal organization, regarding the care and*
33 *custody of Indian children and jurisdiction over Indian child*
34 *custody proceedings, including, but not limited to, agreements that*
35 *provide for orderly transfer of jurisdiction on a case-by-case basis,*
36 *for exclusive tribal or state jurisdiction, or for concurrent*
37 *jurisdiction between the state and tribes.*

38 (b) (1) An agreement under subdivision (a) regarding the care
39 and custody of Indian children shall provide for the delegation to
40 the tribe ~~or tribes,~~ *consortium of tribes, or tribal organization, of*

1 the responsibility that would otherwise be the responsibility of the
2 county for the provision of child welfare services or assistance
3 payments under the AFDC-FC program, or both.

4 (2) An agreement under subdivision (a) concerning the provision
5 of child welfare services shall ensure that a tribe, *consortium of*
6 *tribes, or tribal organization*, meets current service delivery
7 standards provided for under Chapter 5 (commencing with Section
8 16500) of Part 4, and provides the local matching share of costs
9 required by Section 10101.

10 (3) An agreement under subdivision (a) concerning assistance
11 payments under the AFDC-FC program shall ensure that a tribe,
12 *consortium of tribes, or tribal organization*, meets current foster
13 care standards provided for under Article 5 (commencing with
14 Section 11400) of Chapter 2 of Part 3, and provides the local
15 matching share of costs required by Section 15200.

16 (4) *An agreement under subdivision (a) concerning adoption*
17 *assistance shall ensure that a tribe, consortium of tribes, or tribal*
18 *organization, meets the current service delivery standards provided*
19 *for under Chapter 2.1 (commencing with Section 16115), and*
20 *provides the local matching share of costs, as required by Section*
21 *15200.*

22 (c) Upon the implementation date of an agreement authorized
23 by subdivision (b), the county that would otherwise be responsible
24 for providing the child welfare services or AFDC-FC payments
25 specified in the agreement as being provided by the tribe,
26 *consortium of tribes, or tribal organization*, shall no longer be
27 subject to that responsibility to children served under the
28 agreement.

29 (d) Upon the effective date of an agreement authorized by
30 subdivision (b), the tribe, *consortium of tribes, or tribal*
31 *organization*, shall comply with fiscal reporting requirements
32 specified by the department for federal and state reimbursement
33 child welfare or AFDC-FC services *for programs operated under*
34 *the agreement.*

35 (e) An Indian tribe, *consortium of tribes, or tribal organization*,
36 that is a party to an agreement under subdivision (a), shall, in
37 accordance with the agreement, be eligible to receive allocations
38 of child welfare services funds pursuant to Section 10102.

39 (f) Implementation of an agreement under subdivision (a) may
40 not be construed to impose liability upon, or to require

1 indemnification by, the participating county or the State of
2 California for any act or omission performed by an officer, agent,
3 or employee of the participating tribe, *consortium of tribes, or*
4 *tribal organization*, pursuant to this section.

5 *SEC. 13. Section 10553.2 of the Welfare and Institutions Code*
6 *is amended to read:*

7 10553.2. Child welfare services allocation methodologies for
8 ~~Indian tribes~~ *agreements entered into* pursuant to Section 10553.1
9 shall be developed in consultation with, ~~and agreed to by,~~ the State
10 Department of Social Services, the affected counties, and the
11 affected Indian tribe, *consortium of tribes, or tribal organization*.

12 *SEC. 14. Section 11053.2 is added to the Welfare and*
13 *Institutions Code, to read:*

14 11053.2. (a) *Notwithstanding any other law, the department*
15 *shall establish a process of intercounty transfer of eligibility for*
16 *food stamp benefits provided under Chapter 10 (commencing with*
17 *Section 18900) of Part 6 when a recipient changes residence from*
18 *one county to another within the state. The intercounty transfer*
19 *process shall facilitate a recipient's move from one county to*
20 *another without a break in benefits and without requiring a new*
21 *application to be submitted to the new county of residence.*

22 (b) (1) *For food stamp recipients who are receiving CalWORKs*
23 *benefits pursuant to Chapter 2 (commencing with Section 11200),*
24 *the intercounty transfer process utilized for CalWORKs shall be*
25 *used.*

26 (2) *For food stamp recipients who are receiving Medi-Cal*
27 *benefits pursuant to Chapter 7 (commencing with Section 14000),*
28 *but are not receiving CalWORKs benefits pursuant to Chapter 2*
29 *(commencing with Section 11200), the intercounty transfer process*
30 *utilized for the Medi-Cal program shall be used.*

31 (3) *This subdivision shall be implemented no later than April*
32 *1, 2011.*

33 (c) *For food stamp recipients who are not receiving CalWORKs*
34 *or Medi-Cal benefits as described in paragraphs (1) and (2) of*
35 *subdivision (b), an intercounty transfer process shall be developed,*
36 *in consultation with representatives of county human services*
37 *departments and advocates for recipients. To the greatest extent*
38 *possible, the process shall be simple, client friendly, ensure the*
39 *client does not need to provide copies of documents that were*
40 *previously provided to the prior county of residence, build on*

1 existing processes for the programs described in paragraphs (1)
 2 and (2) of subdivision (b), and minimize workload for county
 3 eligibility operations. The process developed pursuant to this
 4 subdivision shall be implemented no later than July 1, 2011.

5 (d) Upon the implementation of the intercounty transfer
 6 procedures set forth in this section, it shall be the responsibility
 7 of a recipient changing residence from one county to another
 8 within the state to notify his or her prior county of residence of
 9 his or her move. The prior county of residence shall notify the new
 10 county of the recipient's move as soon as the recipient's location
 11 in the new county is known. The new county of residence shall be
 12 responsible for determining the recipient's continued eligibility
 13 for payment of food stamp benefits. To the extent permitted by
 14 federal law, the new county of residence shall not be required to
 15 interview persons in the food stamp household to determine
 16 continued eligibility until the next scheduled recertification or
 17 other regularly scheduled interview.

18 (e) Notwithstanding the Administrative Procedure Act (Chapter
 19 3.5 (commencing with Section 11340) of Part 1 of Division 3 of
 20 Title 2 of the Government Code), the department may implement
 21 this section through all-county letters, or similar instructions from
 22 the director no later than April 1, 2011, with respect to subdivision
 23 (b), and no later than July 1, 2011, with respect to subdivision (c).

24 (f) The department shall adopt regulations as otherwise
 25 necessary to implement this section no later than July 1, 2012.
 26 Emergency regulations adopted for implementation of this section
 27 may be adopted by the director in accordance with the
 28 Administrative Procedure Act (Chapter 3.5 (commencing with
 29 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
 30 Code). The adoption of emergency regulations shall be deemed to
 31 be an emergency and necessary for immediate preservation of the
 32 public peace, health and safety, or general welfare. The emergency
 33 regulations shall be exempt from review by the Office of
 34 Administrative Law. The emergency regulations authorized by this
 35 section shall be submitted to the Office of Administrative Law for
 36 filing with the Secretary of State and shall remain in effect for no
 37 more than 180 days.

38 SEC. 15. Section 11320.32 of the Welfare and Institutions Code
 39 is amended to read:

1 11320.32. (a) The department shall administer a voluntary
2 Temporary Assistance Program (TAP) for current and future
3 CalWORKs recipients who meet the exemption criteria for work
4 participation activities set forth in Section 11320.3, and are not
5 single parents who have a child under the age of one year.
6 Temporary Assistance Program recipients shall be entitled to the
7 same assistance payments and other benefits as recipients under
8 the CalWORKs program. The purpose of this program is to provide
9 cash assistance and other benefits to eligible families without any
10 federal restrictions or requirements and without any adverse impact
11 on recipients. The Temporary Assistance Program shall commence
12 no later than October 1, ~~2011~~ 2012.

13 (b) CalWORKs recipients who meet the exemption criteria for
14 work participation activities set forth in subdivision (b) of Section
15 11320.3, and are not single parents with a child under the age of
16 one year, shall have the option of receiving grant payments, child
17 care, and transportation services from the Temporary Assistance
18 Program. The department shall notify all CalWORKs recipients
19 and applicants meeting the exemption criteria specified in
20 subdivision (b) of Section 11320.3, except for single parents with
21 a child under the age of one year, of their option to receive benefits
22 under the Temporary Assistance Program. Absent written
23 indication that these recipients or applicants choose not to receive
24 assistance from the Temporary Assistance Program, the department
25 shall enroll CalWORKs recipients and applicants into the program.
26 However, exempt volunteers shall remain in the CalWORKs
27 program unless they affirmatively indicate, in writing, their interest
28 in enrolling in the Temporary Assistance Program. A Temporary
29 Assistance Program recipient who no longer meets the exemption
30 criteria set forth in Section 11320.3 shall be enrolled in the
31 CalWORKs program.

32 (c) Funding for grant payments, child care, transportation, and
33 eligibility determination activities for families receiving benefits
34 under the Temporary Assistance Program shall be funded with
35 General Fund resources that do not count toward the state's
36 maintenance of effort requirements under clause (i) of subparagraph
37 (B) of paragraph (7) of subdivision (a) of Section 609 of Title 42
38 of the United States Code, up to the caseload level equivalent to
39 the amount of funding provided for this purpose in the annual
40 Budget Act.

1 (d) It is the intent of the Legislature that recipients shall have
2 and maintain access to the hardship exemption and the services
3 necessary to begin and increase participation in welfare-to-work
4 activities, regardless of their county of origin, and that the number
5 of recipients exempt under subdivision (b) of Section 11320.3 not
6 significantly increase due to factors other than changes in caseload
7 characteristics. All relevant state law applicable to CalWORKs
8 recipients shall also apply to families funded under this section.
9 Nothing in this section modifies the criteria for exemption in
10 Section 11320.3.

11 (e) To the extent that this section is inconsistent with federal
12 regulations regarding implementation of the Deficit Reduction Act
13 of 2005, the department may amend the funding structure for
14 exempt families to ensure consistency with these regulations, not
15 later than 30 days after providing written notification to the chair
16 of the Joint Legislative Budget Committee and the chairs of the
17 appropriate policy and fiscal committees of the Legislature.

18 *SEC. 16. Section 11322.64 of the Welfare and Institutions Code*
19 *is amended to read:*

20 11322.64. (a) Section 11322.63 shall be inoperative during
21 the period commencing on the day the act that added this section
22 takes effect until ~~September 30, 2010~~ *the date of the expiration of*
23 *federal authority for the Emergency Contingency Fund, as provided*
24 *in the American Recovery and Reinvestment Act of 2009 (Public*
25 *Law 111-5) or subsequent federal legislation that extends*
26 *subsidized employment funding under the Emergency Contingency*
27 *Fund, inclusive, unless the State Department of Social Services*
28 *determines that Section 10545 is suspended, implementation of*
29 *Section 10545 is significantly delayed, or counties are otherwise*
30 *prevented by the state or federal government from receiving*
31 *reimbursement for subsidized employment expenditures that are*
32 *authorized and in compliance with Section 2101 of the American*
33 *Recovery and Reinvestment Act of 2009 (Public Law 111-5), or*
34 *subsequent federal legislation.*

35 (b) In accordance with subdivision (a), the deadline for the
36 report required by subdivision ~~(e)~~ (b) of Section 11322.63 shall
37 be extended by two years.

38 *SEC. 17. Section 11460 of the Welfare and Institutions Code*
39 *is amended to read:*

1 11460. (a) Foster care providers shall be paid a per child per
2 month rate in return for the care and supervision of the AFDC-FC
3 child placed with them. The department is designated the single
4 organizational unit whose duty it shall be to administer a state
5 system for establishing rates in the AFDC-FC program. State
6 functions shall be performed by the department or by delegation
7 of the department to county welfare departments or Indian tribes,
8 *consortia of tribes, or tribal organizations* that have entered into
9 an agreement pursuant to Section 10553.1.

10 (b) "Care and supervision" includes food, clothing, shelter, daily
11 supervision, school supplies, a child's personal incidentals, liability
12 insurance with respect to a child, ~~and~~ reasonable travel to the
13 child's home for visitation, *and reasonable travel for the child to*
14 *remain in the school in which he or she is enrolled at the time of*
15 *placement. Reimbursement for the costs of educational travel, as*
16 *provided for in this subdivision, shall be made pursuant to*
17 *procedures determined by the department, in consultation with*
18 *representatives of county welfare and probation directors, and*
19 *additional stakeholders, as appropriate.*

20 (1) For a child placed in a group home, care and supervision
21 shall also include reasonable administration and operational
22 activities necessary to provide the items listed in this subdivision.

23 (2) For a child placed in a group home, care and supervision
24 may also include reasonable activities performed by social workers
25 employed by the group home provider which are not otherwise
26 considered daily supervision or administration activities.

27 (c) It is the intent of the Legislature to establish the maximum
28 level of state participation in out-of-state foster care group home
29 program rates effective January 1, 1992.

30 (1) The department shall develop regulations that establish the
31 method for determining the level of state participation for each
32 out-of-state group home program. The department shall consider
33 all of the following methods:

34 (A) A standardized system based on the level of care and
35 services per child per month as detailed in Section 11462.

36 (B) A system which considers the actual allowable and
37 reasonable costs of care and supervision incurred by the program.

38 (C) A system which considers the rate established by the host
39 state.

1 (D) Any other appropriate methods as determined by the
2 department.

3 (2) State reimbursement for the AFDC-FC group home rate to
4 be paid to an out-of-state program on or after January 1, 1992,
5 shall only be paid to programs which have done both of the
6 following:

7 (A) Submitted a rate application to the department and received
8 a determination of the level of state participation.

9 (i) The level of state participation shall not exceed the current
10 fiscal year's standard rate for rate classification level 14.

11 (ii) The level of state participation shall not exceed the rate
12 determined by the ratesetting authority of the state in which the
13 facility is located.

14 (iii) The level of state participation shall not decrease for any
15 child placed prior to January 1, 1992, who continues to be placed
16 in the same out-of-state group home program.

17 (B) Agreed to comply with information requests, and program
18 and fiscal audits as determined necessary by the department.

19 (3) State reimbursement for an AFDC-FC rate paid on or after
20 January 1, 1993, shall only be paid to a group home organized and
21 operated on a nonprofit basis.

22 (d) A foster care provider that accepts payments, following the
23 effective date of this section, based on a rate established under this
24 section, shall not receive rate increases or retroactive payments as
25 the result of litigation challenging rates established prior to the
26 effective date of this section. This shall apply regardless of whether
27 a provider is a party to the litigation or a member of a class covered
28 by the litigation.

29 (e) Nothing shall preclude a county from using a portion of its
30 county funds to increase rates paid to family homes and foster
31 family agencies within that county, and to make payments for
32 specialized care increments, clothing allowances, or infant
33 supplements to homes within that county, solely at that county's
34 expense.

35 *SEC. 18. Section 11462.04 is added to the Welfare and*
36 *Institutions Code, to read:*

37 *11462.04. (a) (1) Notwithstanding any other provision of law,*
38 *no new group home rate or change to an existing rate shall be*
39 *established pursuant to Section 11462. No application shall be*
40 *accepted or processed for any of the following:*

- 1 (A) A new program.
2 (B) A new provider.
3 (C) A program change, such as a rate classification level
4 increase.
5 (D) A program capacity increase.
6 (E) A program reinstatement.
7 (2) Notwithstanding paragraph (1), the department may grant
8 exceptions as appropriate on a case-by-case basis, based upon a
9 written request and supporting documentation provided by county
10 placing agencies, including county welfare or probation directors.
11 (b) Immediately prior to the inoperative date of this section, the
12 department shall provide feedback regarding the implementation
13 of this section to the Legislature.
14 (c) This section shall become inoperative one year after the
15 effective date of the act that adds this section, and on January 1,
16 2012, is repealed, unless a later enacted statute, that becomes
17 operative before January 1, 2012, deletes or extends the dates on
18 which it becomes inoperative and is repealed
19 SEC. 19. Section 11462.045 is added to the Welfare and
20 Institutions Code, to read:
21 11462.045. (a) The State Department of Social Services shall
22 establish a working group to develop recommended revisions to
23 the current system of setting reimbursement rates for group home
24 providers.
25 (b) In developing recommended revisions to the group home
26 rate setting system, the working group shall consider the larger
27 context for how the system can better incorporate a spectrum of
28 placements and services that promote positive outcomes for
29 children and families and shall address all of the following:
30 (1) The provision of mental health and other critical services
31 for children and youth.
32 (2) The provision of services in family-like settings.
33 (3) The provision of services that support families and relatives.
34 (4) Outcome-based evaluation or other quality improvement
35 concepts.
36 (c) The working group shall include legislative policy and
37 budget staff, stakeholders that are representative of foster youth,
38 providers, children's advocates, and county welfare and probation
39 directors and staff.

1 SEC. 20. Section 12301.06 is added to the Welfare and
2 Institutions Code, to read:

3 12301.06. (a) (1) Notwithstanding any other provision of law,
4 except as provided in subdivision (d), the department shall
5 implement a 3.6-percent reduction in hours of service to each
6 recipient of services under this article which shall be applied to
7 the recipient's hours as authorized pursuant to the most recent
8 assessment. This reduction shall be effective 90 days after the
9 enactment of the act that adds this section. The reduction required
10 by this section shall not preclude any reassessment to which a
11 recipient would otherwise be entitled. However, hours authorized
12 pursuant to a reassessment shall be subject to the 3.6-percent
13 reduction required by this section.

14 (2) A recipient of services under this article may direct the
15 manner in which the reduction of hours is applied to the recipient's
16 previously authorized services.

17 (3) For those individuals who have a documented unmet need
18 excluding protective supervision because of the limitations on
19 authorized hours under Section 12303.4, the reduction shall be
20 taken first from the documented unmet need.

21 (b) (1) The reduction in hours of service pursuant to subdivision
22 (a) shall cease to be implemented on July 1, 2012.

23 (2) It is the intent of the Legislature that on July 1, 2012,
24 services shall be restored to the level authorized pursuant to the
25 recipient's most recent assessment, and increased by the previously
26 deducted 3.6 percent.

27 (c) The notice of action informing the recipient of the reduction
28 pursuant to subdivision (a) shall be mailed at least 30 days prior
29 to the reduction going into effect. The notice of action shall be
30 understandable to the recipient and translated into all languages
31 spoken by a substantial number of the public served by the In-Home
32 Supportive Services program, in accordance with Section 7295.2
33 of the Government Code. The notice shall not contain any recipient
34 financial or confidential identifying information other than the
35 recipient's name, address, and Case Management Information
36 and Payroll System (CMIPS) client identification number, and
37 shall include, but not be limited to, all of the following information:

38 (1) The aggregate number of authorized hours before the
39 reduction pursuant to subdivision (a) and the aggregate number
40 of authorized hours after the reduction.

1 (2) That the recipient may direct the manner in which the
2 reduction of authorized hours is applied to the recipient's
3 previously authorized services.

4 (3) That the reduction of hours shall remain in effect until July
5 1, 2012, at which time service hours shall be restored to the
6 recipient's authorized level, based on the most recent assessment,
7 and increased by the previously deducted 3.6 percent.

8 (d) A recipient shall have all appeal rights otherwise provided
9 for under Chapter 7 (commencing with Section 10950) of Part 2.

10 (e) (1) Notwithstanding the rulemaking provisions of the
11 Administrative Procedure Act (Chapter 3.5 (commencing with
12 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
13 Code), the department may implement and administer this section
14 through all-county letters or similar instructions from the
15 department.

16 (f) This section shall become inoperative on July 1, 2012, and,
17 as of January 1, 2013, this section is repealed, unless a later
18 enacted statute that is enacted before January 1, 2013, deletes or
19 extends the dates on which it becomes inoperative and is repealed.

20 SEC. 21. Section 12301.6 of the Welfare and Institutions Code
21 is amended to read:

22 12301.6. (a) Notwithstanding Sections 12302 and 12302.1, a
23 county board of supervisors may, at its option, elect to do either
24 of the following:

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

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

29 (b) (1) To the extent that a county elects to establish a public
30 authority pursuant to paragraph (2) of subdivision (a), the enabling
31 ordinance shall specify the membership of the governing body of
32 the public authority, the qualifications for individual members, the
33 manner of appointment, selection, or removal of members, how
34 long they shall serve, and other matters as the board of supervisors
35 deems necessary for the operation of the public authority.

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

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

1 (B) A corporate public body, exercising public and essential
2 governmental functions and that has all powers necessary or
3 convenient to carry out the delivery of in-home supportive services,
4 including the power to contract for services pursuant to Sections
5 12302 and 12302.1 and that makes or provides for direct payment
6 to a provider chosen by the recipient for the purchase of services
7 pursuant to Sections 12302 and 12302.2. Employees of the public
8 authority shall not be employees of the county for any purpose.

9 (3) (A) As an alternative, the enabling ordinance may designate
10 the board of supervisors as the governing body of the public
11 authority.

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

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

23 (D) Prior to making designations of committee members
24 pursuant to subparagraph (C), or governing body members in
25 accordance with paragraph (4), the board of supervisors shall solicit
26 recommendations of qualified members of either the governing
27 body of the public authority or of any advisory committee through
28 a fair and open process that includes the provision of reasonable
29 written notice to, and a reasonable response time by, members of
30 the general public and interested persons and organizations.

31 (4) If the enabling ordinance does not designate the board of
32 supervisors as the governing body of the public authority, the
33 enabling ordinance shall require the membership of the governing
34 body to meet the requirements of subparagraph (B) of paragraph
35 (3).

36 (c) (1) Any public authority created pursuant to this section
37 shall be deemed to be the employer of in-home supportive services
38 personnel referred to recipients under paragraph (3) of subdivision
39 (e) within the meaning of Chapter 10 (commencing with Section
40 3500) of Division 4 of Title 1 of the Government Code. Recipients

1 shall retain the right to hire, fire, and supervise the work of any
2 in-home supportive services personnel providing services to them.

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

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

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

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

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

27 (2) (A) (i) The investigation of the qualifications and
28 background of potential personnel. Upon the effective date of the
29 amendments to this section made during the 2009–10 Fourth
30 Extraordinary Session of the Legislature, the investigation with
31 respect to any provider in the registry or prospective registry
32 applicant shall include criminal background checks requested by
33 the nonprofit consortium or public authority and conducted by the
34 Department of Justice pursuant to Section 15660, for those public
35 authorities or nonprofit consortia using the agencies on the effective
36 date of the amendments to this section made during the 2009–10
37 Fourth Extraordinary Session of the Legislature. Criminal
38 background checks shall be performed no later than July 1, 2010,
39 for any provider who is already on the registry on the effective
40 date of amendments to this section made during the 2009–10 Fourth

1 Extraordinary Session of the Legislature, for whom a criminal
2 background check pursuant to this section has not previously been
3 provided, as a condition of the provider's continued enrollment in
4 the IHSS program. Criminal background checks shall be conducted
5 at the provider's expense.

6 (ii) Upon notice from the Department of Justice notifying the
7 public authority or nonprofit consortium that the prospective
8 registry applicant has been convicted of a criminal offense specified
9 in Section 12305.81, the public authority or nonprofit consortium
10 shall deny the request to be placed on the registry for providing
11 supportive services to any recipient of the In-Home Supportive
12 Services program.

13 (iii) *Commencing 90 days after the effective date of the act that*
14 *adds Section 12305.87, and upon notice from the Department of*
15 *Justice that an applicant who is subject to the provisions of that*
16 *section has been convicted of, or incarcerated following conviction*
17 *for, an offense described in subdivision (b) of that section, the*
18 *public authority or nonprofit consortium shall deny the applicant's*
19 *request to become a provider of supportive services to any recipient*
20 *of in-home supportive services, subject to the individual waiver*
21 *and exception processes described in that section. An applicant*
22 *who is denied on the basis of Section 12305.87 shall be informed*
23 *by the public authority or nonprofit consortium of the individual*
24 *waiver and exception processes described in that section.*

25 (B) (i) If an applicant or provider is rejected as a result of
26 information contained in the criminal background report, the
27 applicant or provider shall receive a copy of his or her own criminal
28 history record from the Department of Justice, as provided in
29 Article 5 (commencing with Section 11120) of Chapter 1 of Title
30 1 of Part 4 of the Penal Code, to review the information for
31 accuracy and completeness. The applicant or provider shall be
32 advised that if, upon review of his or her own criminal history
33 record he or she finds the information to be inaccurate or
34 incomplete, the applicant or provider shall have the right to submit
35 a formal challenge to the Department of Justice to contest the
36 criminal background report.

37 (ii) The department shall develop a written appeal process for
38 the current and prospective providers who are determined ineligible
39 to receive payment for the provision of services in the In-Home
40 Supportive Services program.

1 (C) An applicant shall be informed of his or her right to a waiver
2 of the fee for obtaining a copy of a criminal history record, and of
3 how to submit a claim and proof of indigency, as required by
4 Section 11123 of the Penal Code.

5 (D) Nothing in this paragraph shall be construed to prohibit the
6 Department of Justice from assessing a fee pursuant to Section
7 11105 or 11123 of the Penal Code to cover the cost of furnishing
8 summary criminal history information.

9 (E) As used in this section, “nonprofit consortium” means a
10 nonprofit public benefit corporation that has all powers necessary
11 to carry out the delivery of in-home supportive services under the
12 delegated authority of a government entity.

13 (F) *A nonprofit consortium or a public authority authorized to*
14 *secure a criminal background check clearance pursuant to this*
15 *section shall accept a clearance for an applicant described in*
16 *clause (i) of subparagraph (A) who has been deemed eligible by*
17 *another nonprofit consortium, public authority, or county with*
18 *criminal background check authority pursuant to either Section*
19 *12305.86 or this section, to receive payment for providing services*
20 *pursuant to this article. Existence of a clearance shall be*
21 *determined by verification through the case management,*
22 *information, and payroll system, that another county, nonprofit*
23 *consortium, or public authority with criminal background check*
24 *authority pursuant to Section 12305.86 or this section has deemed*
25 *the current or prospective provider to be eligible to receive*
26 *payment for providing services pursuant to this article.*

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

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

30 (5) (A) Performing any other functions related to the delivery
31 of in-home supportive services.

32 (B) (i) Upon request of a recipient of in-home supportive
33 services pursuant to this chapter, or a recipient of personal care
34 services under the Medi-Cal program pursuant to Section 14132.95,
35 a public authority or nonprofit consortium may provide a criminal
36 background check on a nonregistry applicant or provider from the
37 Department of Justice, in accordance with clause (i) of
38 subparagraph (A) of paragraph (2) of subdivision (e). If the person
39 who is the subject of the criminal background check is not hired
40 or is terminated because of the information contained in the

1 criminal background report, the provisions of subparagraph (B)
 2 of paragraph (2) of subdivision (e) shall apply.

3 (ii) A recipient of in-home supportive services pursuant to this
 4 chapter or a recipient of personal care services under the Medi-Cal
 5 program may elect to employ an individual as their service provider
 6 notwithstanding the individual’s record of previous criminal
 7 convictions, unless those convictions include any of the offenses
 8 specified in Section 12305.81.

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

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

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

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

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

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

1 nonprofit consortium for the purposes of wages, benefits, and other
2 terms and conditions of employment.

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

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

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

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

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

39 (l) (1) The department may adopt regulations implementing
40 this section as emergency regulations in accordance with Chapter

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

10 (2) Notwithstanding subdivision (h) of Section 11346.1 and
11 Section 11349.6 of the Government Code, the department shall
12 transmit these regulations directly to the Secretary of State for
13 filing. The regulations shall become effective immediately upon
14 filing by the Secretary of State.

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

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

25 (A) Subdivision (d) shall apply only to those matters that do
26 not require federal approval.

27 (B) The second sentence of subdivision (h) shall not be
28 operative.

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

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

36 (n) (1) One year after the effective date of the first approval by
37 the department granted to the first public authority, the Bureau of
38 State Audits shall commission a study to review the performance
39 of that public authority.

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

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

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

18 (p) (1) Notwithstanding any other provision of law, and except
19 as provided in paragraph (2), the department shall, no later than
20 January 1, 2009, implement subparagraphs (A) and (B) through
21 an all county letter from the director:

22 (A) Subparagraphs (A) and (B) of paragraph (2) of subdivision
23 (e).

24 (B) Subparagraph (B) of paragraph (5) of subdivision (e).

25 (2) The department shall, no later than July 1, 2009, adopt
26 regulations to implement subparagraphs (A) and (B) of paragraph
27 (1).

28 (q) The amendments made to paragraphs (2) and (5) of
29 subdivision (e) made by the act that added this subdivision during
30 the 2007–08 Regular Session of the Legislature shall only be
31 implemented to the extent that an appropriation is made in the
32 annual Budget Act or other statute, except for the amendments
33 that added subparagraph (D) of paragraph (2) of subdivision (e),
34 which shall go into effect January 1, 2009.

35 *SEC. 22. Section 12302.2 of the Welfare and Institutions Code*
36 *is amended to read:*

37 12302.2. (a) (1) If the state or a county makes or provides for
38 direct payment to a provider chosen by a recipient or to the
39 recipient for the purchase of in-home supportive services, the
40 department shall perform or assure the performance of all rights,

1 duties and obligations of the recipient relating to those services as
2 required for purposes of unemployment compensation,
3 unemployment compensation disability benefits, workers'
4 compensation, federal and state income tax, and federal old-age
5 survivors and disability insurance benefits. Those rights, duties,
6 and obligations include, but are not limited to, registration and
7 obtaining employer account numbers, providing information,
8 notices, and reports, making applications and returns, and
9 withholding in trust from the payments made to or on behalf of a
10 recipient amounts to be withheld from the wages of the provider
11 by the recipient as an employer, *including the sales tax extended*
12 *to support services by Article 4 (commencing with Section 6150)*
13 *of Chapter 2 of Part 1 of Division 2 of the Revenue and Taxation*
14 *Code*, and transmitting those amounts along with amounts required
15 for all contributions, premiums, and taxes payable by the recipient
16 as the employer to the appropriate person or state or federal agency.
17 The department may assure the performance of any or all of these
18 rights, duties, and obligations by contract with any person, or any
19 public or private agency.

20 (2) Contributions, premiums, and taxes shall be paid or
21 transmitted on the recipient's behalf as the employer for any period
22 commencing on or after January 1, 1978, except that contributions,
23 premiums, and taxes for federal and state income taxes and federal
24 old-age, survivors and disability insurance contributions shall be
25 paid or transmitted pursuant to this section commencing with the
26 first full month that begins 90 days after the effective date of this
27 section.

28 (3) Contributions, premiums, and taxes paid or transmitted on
29 the recipient's behalf for unemployment compensation, workers'
30 compensation, and the employer's share of federal old-age
31 survivors and disability insurance benefits shall be payable in
32 addition to the maximum monthly amount established pursuant to
33 Section 12303.5 or subdivision (a) of Section 12304 or other
34 amount payable to or on behalf of a recipient. Contributions,
35 premiums, or taxes resulting from liability incurred by the recipient
36 as employer for unemployment compensation, workers'
37 compensation, and federal old-age, survivors and disability
38 insurance benefits with respect to any period commencing on or
39 after January 1, 1978, and ending on or before the effective date
40 of this section shall also be payable in addition to the maximum

1 monthly amount established pursuant to Section 12303.5 or
2 subdivision (a) of Section 12304 or other amount payable to or on
3 behalf of the recipient. Nothing in this section shall be construed
4 to permit any interference with the recipient's right to select the
5 provider of services or to authorize a charge for administrative
6 costs against any amount payable to or on behalf of a recipient.

7 (b) If the state makes or provides for direct payment to a
8 provider chosen by a recipient, the Controller shall make any
9 deductions from the wages of in-home supportive services
10 personnel that are authorized by Sections 1152 and 1153 of the
11 Government Code, as limited by Section 3515.6 of the Government
12 Code, *and for the sales tax extended to support services by Article*
13 *4 (commencing with Section 6150) of Chapter 2 of Part 1 of*
14 *Division 2 of the Revenue and Taxation Code.*

15 (c) Funding for the costs of administering this section and for
16 contributions, premiums, and taxes paid or transmitted on the
17 recipient's behalf as an employer pursuant to this section shall
18 qualify, where possible, for the maximum federal reimbursement.
19 To the extent that federal funds are inadequate, notwithstanding
20 Section 12306, the state shall provide funding for the purposes of
21 this section.

22 *SEC. 23. Section 12305.86 of the Welfare and Institutions Code*
23 *is amended to read:*

24 12305.86. (a) Effective October 1, 2009, a county shall
25 investigate the background of a person who seeks to become a
26 supportive services provider and who is not listed on the registry
27 of a public authority or nonprofit consortium pursuant to Section
28 12301.6. This investigation shall include criminal background
29 checks conducted by the Department of Justice pursuant to Section
30 15660.

31 (b) No later than July 1, 2010, the county shall complete a
32 criminal background check pursuant to subdivision (a) for a
33 provider who is providing in-home supportive services prior to
34 October 1, 2009, and who is not listed on a public authority or
35 nonprofit consortium registry, as a condition of the provider's
36 continued enrollment in the IHSS program. Criminal background
37 checks shall be conducted at the provider's expense.

38 (c) (1) Upon notice from the Department of Justice that a
39 prospective or current provider has been convicted of a criminal
40 offense specified in Section 12305.81, the county shall deny or

1 terminate the applicant’s request to become a provider of
2 supportive services to any recipient of the In-Home Supportive
3 Services program.

4 (2) *Commencing 90 days after the effective date of the act that*
5 *adds Section 12305.87, and upon notice from the Department of*
6 *Justice that an applicant who is subject to the provisions of that*
7 *section has been convicted of, or incarcerated following conviction*
8 *for, an offense described in subdivision (b) of that section, the*
9 *county shall deny the applicant’s request to become a provider of*
10 *supportive services to any recipient of in-home supportive services,*
11 *subject to the individual waiver and exception processes described*
12 *in that section. An applicant who is denied on the basis of Section*
13 *12305.87 shall be informed by the county of the individual waiver*
14 *and exception processes described in that section.*

15 (1)

16 (3) If an applicant or provider is rejected as a result of
17 information contained in the criminal background report, the
18 applicant or provider shall receive a copy of his or her own criminal
19 history record from the Department of Justice, as provided in
20 Article 5 (commencing with Section 11120) of Chapter 1 of Title
21 1 of Part 4 of the Penal Code, to review the information for
22 accuracy and completeness. The applicant or provider shall be
23 advised that if, upon review of his or her own criminal history
24 record, he or she finds the information to be inaccurate or
25 incomplete, the applicant or provider shall have the right to submit
26 a formal challenge to the Department of Justice to contest the
27 criminal background report.

28 (2)

29 (4) The department shall develop a written appeal process for
30 the current and prospective providers who are determined ineligible
31 to receive payment for the provision of services under the In-Home
32 Supportive Services program.

33 (3)

34 (5) An applicant shall be informed of his or her right to a waiver
35 of the fee for obtaining a copy of a criminal history record, and of
36 how to submit a claim and proof of indigency, as required by
37 Section 11123 of the Penal Code.

38 (d) Nothing in this section shall be construed to prohibit the
39 Department of Justice from assessing a fee pursuant to Section

1 11105 or 11123 of the Penal Code to cover the cost of furnishing
2 summary criminal history information.

3 (e) A county authorized to secure a criminal background check
4 clearance pursuant to this section shall accept a clearance for an
5 individual described in subdivision (a) or (b) who has been deemed
6 eligible by another nonprofit consortium, public authority, or
7 county with criminal background check authority pursuant to either
8 Section 12301.6 or this section, to receive payment for providing
9 services pursuant to this article. Existence of a clearance shall be
10 determined by verification through the case management,
11 information, and payroll system, that another county, nonprofit
12 consortium, or public authority with criminal background check
13 authority pursuant to Section 12301.6 or this section has deemed
14 the current or prospective provider to be eligible to receive
15 payment for providing services pursuant to this article.

16 (e)

17 (f) The department shall seek federal financial participation, to
18 the extent possible, to cover any costs associated with this section.

19 SEC. 24. Section 12305.87 is added to the Welfare and
20 Institutions Code, to read:

21 12305.87. (a) (1) Commencing 90 days following the effective
22 date of the act that adds this section, a person specified in
23 paragraph (2) shall be subject to the criminal conviction exclusions
24 provided for in this section, in addition to the exclusions required
25 under Section 12305.81.

26 (2) This section shall apply to a person who satisfies either of
27 the following conditions:

28 (A) He or she is a new applicant to provide services under this
29 article.

30 (B) He or she is an applicant to provide services under this
31 article whose application has been denied on the basis of a
32 conviction and for whom an appeal of that denial is pending.

33 (b) Subject to subdivisions (c), (d), and (e), an applicant subject
34 to this section shall not be eligible to provide or receive payment
35 for providing supportive services for 10 years following a
36 conviction for, or incarceration following a conviction for, any of
37 the following:

38 (1) A violent or serious felony, as specified in subdivision (c)
39 of Section 667.5 of the Penal Code and subdivision (c) of Section
40 1192.7 of the Penal Code.

1 (2) A felony offense for which a person is required to register
 2 under subdivision (c) of Section 290 of the Penal Code. For
 3 purposes of this subparagraph, the 10-year time period specified
 4 in this section shall commence with the date of conviction for, or
 5 incarceration following a conviction for, the underlying offense,
 6 and not the date of registration.

7 (3) A felony offense described in paragraph (2) of subdivision
 8 (c) or paragraph (2) of subdivision (g) of Section 10980.

9 (c) Notwithstanding subdivision (b), an application shall not
 10 be denied under this section if the applicant has obtained a
 11 certificate of rehabilitation under Chapter 3.5 (commencing with
 12 Section 4852.01) of Title 6 of Part 3 of the Penal Code or the
 13 information or accusation against him or her has been dismissed
 14 pursuant to Section 1203.4 of the Penal Code.

15 (d) (1) Notwithstanding subdivision (b), a recipient of services
 16 under this article who wishes to employ a provider applicant who
 17 has been convicted of an offense specified in subdivision (b) may
 18 submit to the county an individual waiver of the exclusion provided
 19 for in this section. This paragraph shall not be construed to allow
 20 a recipient to submit an individual waiver with respect to a
 21 conviction or convictions for offenses specified in Section 12305.81.

22 (2) The county shall notify a recipient who wishes to hire a
 23 person who is applying to be a provider and who has been
 24 convicted of an offense subject to exclusion under this section of
 25 that applicant's relevant criminal offense convictions that are
 26 covered by subdivision (b). The notice shall include both of the
 27 following:

28 (A) A summary explanation of the exclusions created by
 29 subdivision (b), as well as the applicable waiver process described
 30 in this subdivision and the process for an applicant to seek a
 31 general exception, as described in subdivision (e). This summary
 32 explanation shall be developed by the department for use by all
 33 counties.

34 (B) An individual waiver form, which shall also be developed
 35 by the department and used by all counties. The waiver form shall
 36 include both of the following:

37 (i) A space for the county to include a reference to any Penal
 38 Code sections and corresponding offense names or descriptions
 39 that describe the relevant conviction or convictions that are

1 covered by subdivision (b) and that the provider applicant has in
2 his or her background.

3 (ii) A statement that the service recipient, or his or her
4 authorized representative, if applicable, is aware of the applicant's
5 conviction or convictions and agrees to waive application of this
6 section and employ the applicant as a provider of services under
7 this article.

8 (3) To ensure that the initial summary explanation referenced
9 in this subdivision is comprehensible for recipients and provider
10 applicants, the department shall consult with representatives of
11 county welfare departments and advocates for, or representatives
12 of, recipients and providers in developing the summary explanation
13 and offense descriptions.

14 (4) The individual waiver form shall be signed by the recipient,
15 or by the recipient's authorized representative, if applicable, and
16 returned to the county welfare department by mail or in person.
17 The county shall retain the waiver form and a copy of the provider
18 applicant's criminal offense record information search response
19 until the date that the convictions that are the subject of the waiver
20 request are no longer within the 10-year period specified in
21 subdivision (b).

22 (5) An individual waiver submitted pursuant to this subdivision
23 shall entitle a recipient to hire a provider applicant who otherwise
24 meets all applicable enrollment requirements for the In-Home
25 Supportive Services program. A provider hired pursuant to an
26 individual waiver may be employed only by the recipient who
27 requested that waiver, and the waiver shall only be valid with
28 respect to convictions that are specified in that waiver. A new
29 waiver shall be required if the provider is subsequently convicted
30 of an offense to which this section otherwise would apply. A
31 provider who wishes to be listed on a provider registry or to
32 provide supportive services to a recipient who has not requested
33 an individual waiver shall be required to apply for a general
34 exception, as provided for in subdivision (e).

35 (6) Nothing in this section shall preclude a provider who is
36 eligible to receive payment for services provided pursuant to an
37 individual waiver under this subdivision from being eligible to
38 receive payment for services provided to one or more additional
39 recipients who obtain waivers pursuant to this same subdivision.

1 (7) *The state and a county shall be immune from any liability*
2 *resulting from granting an individual waiver under this subdivision.*

3 (e) (1) *Notwithstanding subdivision (b), an applicant who has*
4 *been convicted of an offense identified in subdivision (b) may seek*
5 *from the department a general exception to the exclusion provided*
6 *for in this section.*

7 (2) *Upon receipt of a general exception request, the department*
8 *shall request a copy of the applicant's criminal offender record*
9 *information search response from the applicable county welfare*
10 *department. Notwithstanding any other provision of law, the county*
11 *shall provide a copy of the criminal offender record information*
12 *search response, as provided to the county by the Department of*
13 *Justice, to the department. The county shall provide this*
14 *information in a manner that protects the confidentiality and*
15 *privacy of the criminal offender record information search*
16 *response. The state or federal criminal history record information*
17 *search response shall not be modified or altered from its form or*
18 *content as provided by the Department of Justice.*

19 (3) *The department shall consider the following factors when*
20 *determining whether to grant a general exception under this*
21 *subdivision:*

22 (A) *The nature and seriousness of the conduct or crime under*
23 *consideration and its relationship to employment duties and*
24 *responsibilities.*

25 (B) *The person's activities since conviction, including, but not*
26 *limited to, employment or participation in therapy education, or*
27 *community service, that would indicate changed behavior.*

28 (C) *The number of convictions and the time that has elapsed*
29 *since the conviction or convictions.*

30 (D) *The extent to which the person has complied with any terms*
31 *of parole, probation, restitution, or any other sanction lawfully*
32 *imposed against the person.*

33 (E) *Any evidence of rehabilitation, including character*
34 *references, submitted by the person, or by others on the person's*
35 *behalf.*

36 (F) *Employment history and current or former employer*
37 *recommendations. Additional consideration shall be given to*
38 *employer recommendations provided by a person who has received*
39 *or has indicated a desire to receive supportive or personal care*

1 services from the applicant, including, but not limited to, those
2 services, specified in Section 12300.

3 (G) Circumstances surrounding the commission of the offense
4 that would demonstrate the unlikelihood of repetition.

5 (H) The granting by the Governor of a full and unconditional
6 pardon.

7 (f) If the department makes a determination to deny an
8 application to provide services pursuant to a request for a general
9 exception, the department shall notify the applicant of this
10 determination by either personal service or registered mail. The
11 notice shall include the following information:

12 (1) A statement of the department's reasons for the denial that
13 evaluates evidence of rehabilitation submitted by the applicant, if
14 any, and that specifically addresses any evidence submitted relating
15 to the factors in paragraph (3) of subdivision (e).

16 (2) A copy of the applicant's criminal offender record
17 information search response, even if the applicant already has
18 received a copy pursuant to Section 12301.6 or 12305.86. The
19 department shall provide this information in a manner that protects
20 the confidentiality and privacy of the criminal offender record
21 information search response.

22 (A) The state or federal criminal history record shall not be
23 modified or altered from its form or content as provided by the
24 Department of Justice.

25 (B) The department shall retain a copy of each individual's
26 criminal offender record information search response until the
27 date that the convictions that are the subject of the exception are
28 no longer within the 10-year period specified in subdivision (b),
29 and shall record the date the copy of the response was provided
30 to the individual and the department.

31 (C) The criminal offender record information search response
32 shall not be made available by the department to any individual
33 other than the provider applicant.

34 (g) (1) Upon written notification that the department has
35 determined that a request for exception shall be denied, the
36 applicant may request an administrative hearing by submitting a
37 written request to the department within 15 business days of receipt
38 of the written notification. Upon receipt of a written request, the
39 department shall hold an administrative hearing consistent with
40 the procedures specified in Section 100171 of the Health and Safety

1 Code, except where those procedures are inconsistent with this
2 section.

3 (2) A hearing under this subdivision shall be conducted by a
4 hearing officer or administrative law judge designated by the
5 director. A written decision shall be sent by certified mail to the
6 applicant.

7 (h) The department shall revise the provider enrollment form
8 developed pursuant to Section 12305.81 to include both of the
9 following:

10 (1) The text of subdivision (c) of Section 290 of the Penal Code,
11 subdivision (c) of Section 667.5 of the Penal Code, subdivision (c)
12 of Section 1192.7 of the Penal Code, and paragraph (2) of
13 subdivisions (c) and (g) of Section 10980.

14 (2) A statement that the provider understands that if he or she
15 has been convicted, or incarcerated following conviction for, any
16 of the crimes specified in the provisions identified in paragraph
17 (b) in the last 10 years, and has not received a certificate of
18 rehabilitation or had the information or accusation dismissed, as
19 provided in subdivision (c), he or she shall only be authorized to
20 receive payment for providing in-home supportive services under
21 an individual waiver or general exception as described in this
22 section, and upon meeting all other applicable criteria for
23 enrollment as a provider in the program.

24 (i) (1) Notwithstanding the rulemaking provisions of the
25 Administrative Procedure Act (Chapter 3.5 (commencing with
26 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
27 Code), the department may implement and administer this section
28 through all-county letters or similar instructions from the
29 department until regulations are adopted. The department shall
30 adopt emergency regulations implementing these provisions no
31 later than July 1, 2011. The department may readopt any
32 emergency regulation authorized by this section that is the same
33 as or substantially equivalent to an emergency regulation
34 previously adopted under this section.

35 (2) The initial adoption of emergency regulations pursuant to
36 this section and one readoption of emergency regulations shall be
37 deemed an emergency and necessary for the immediate
38 preservation of the public peace, health, safety, or general welfare.
39 Initial emergency regulations and the one readoption of emergency
40 regulations authorized by this section shall be exempt from review

1 by the Office of Administrative Law. The initial emergency
2 regulations and the one readoption of emergency regulations
3 authorized by this section shall be submitted to the Office of
4 Administrative Law for filing with the Secretary of State and each
5 shall remain in effect for no more than 180 days, by which time
6 final regulations may be adopted.

7 (j) In developing the individual waiver form and all-county
8 letters or information notices or similar instructions, the
9 department shall consult with stakeholders, including, but not
10 limited to, representatives of the county welfare departments, and
11 representatives of consumers and providers. The consultation shall
12 include at least one in-person meeting prior to the finalization of
13 the individual waiver form and all-county letters or information
14 notices or similar instructions.

15 SEC. 25. Section 12306.1 of the Welfare and Institutions Code
16 is amended to read:

17 12306.1. (a) When any increase in provider wages or benefits
18 is negotiated or agreed to by a public authority or nonprofit
19 consortium under Section 12301.6, then the county shall use
20 county-only funds to fund both the county share and the state share,
21 including employment taxes, of any increase in the cost of the
22 program, unless otherwise provided for in the annual Budget Act
23 or appropriated by statute. No increase in wages or benefits
24 negotiated or agreed to pursuant to this section shall take effect
25 unless and until, prior to its implementation, the department has
26 obtained the approval of the State Department of Health Care
27 Services for the increase pursuant to a determination that it is
28 consistent with federal law and to ensure federal financial
29 participation for the services under Title XIX of the federal Social
30 Security Act, and unless and until all of the following conditions
31 have been met:

32 (1) Each county has provided the department with
33 documentation of the approval of the county board of supervisors
34 of the proposed public authority or nonprofit consortium rate,
35 including wages and related expenditures. The documentation shall
36 be received by the department before the department and the State
37 Department of Health Care Services may approve the increase.

38 (2) Each county has met department guidelines and regulatory
39 requirements as a condition of receiving state participation in the
40 rate.

1 (b) Any rate approved pursuant to subdivision (a) shall take
2 effect commencing on the first day of the month subsequent to the
3 month in which final approval is received from the department.
4 The department may grant approval on a conditional basis, subject
5 to the availability of funding.

6 (c) The state shall pay 65 percent, and each county shall pay 35
7 percent, of the nonfederal share of wage and benefit increases
8 negotiated by a public authority or nonprofit consortium pursuant
9 to Section 12301.6 and associated employment taxes, only in
10 accordance with subdivisions (d) to (f), inclusive.

11 (d) (1) The state shall participate as provided in subdivision (c)
12 in wages up to seven dollars and fifty cents (\$7.50) per hour and
13 individual health benefits up to sixty cents (\$0.60) per hour for all
14 public authority or nonprofit consortium providers. This paragraph
15 shall be operative for the 2000–01 fiscal year and each year
16 thereafter unless otherwise provided in paragraphs (2), (3), (4),
17 and (5), and without regard to when the wage and benefit increase
18 becomes effective.

19 (2) The state shall participate as provided in subdivision (c) in
20 a total of wages and individual health benefits up to nine dollars
21 and ten cents (\$9.10) per hour, if wages have reached at least seven
22 dollars and fifty cents (\$7.50) per hour. Counties shall determine,
23 pursuant to the collective bargaining process provided for in
24 subdivision (c) of Section 12301.6, what portion of the nine dollars
25 and ten cents (\$9.10) per hour shall be used to fund wage increases
26 above seven dollars and fifty cents (\$7.50) per hour or individual
27 health benefit increases, or both. This paragraph shall be operative
28 for the 2001–02 fiscal year and each fiscal year thereafter, unless
29 otherwise provided in paragraphs (3), (4), and (5).

30 (3) The state shall participate as provided in subdivision (c) in
31 a total of wages and individual health benefits up to ten dollars
32 and ten cents (\$10.10) per hour, if wages have reached at least
33 seven dollars and fifty cents (\$7.50) per hour. Counties shall
34 determine, pursuant to the collective bargaining process provided
35 for in subdivision (c) of Section 12301.6, what portion of the ten
36 dollars and ten cents (\$10.10) per hour shall be used to fund wage
37 increases above seven dollars and fifty cents (\$7.50) per hour or
38 individual health benefit increases, or both. This paragraph shall
39 be operative commencing with the next state fiscal year for which
40 the May Revision forecast of General Fund revenue, excluding

1 transfers, exceeds by at least 5 percent, the most current estimate
2 of revenue, excluding transfers, for the year in which paragraph
3 (2) became operative.

4 (4) The state shall participate as provided in subdivision (c) in
5 a total of wages and individual health benefits up to eleven dollars
6 and ten cents (\$11.10) per hour, if wages have reached at least
7 seven dollars and fifty cents (\$7.50) per hour. Counties shall
8 determine, pursuant to the collective bargaining process provided
9 for in subdivision (c) of Section 12301.6, what portion of the eleven
10 dollars and ten cents (\$11.10) per hour shall be used to fund wage
11 increases or individual health benefits, or both. This paragraph
12 shall be operative commencing with the next state fiscal year for
13 which the May Revision forecast of General Fund revenue,
14 excluding transfers, exceeds by at least 5 percent, the most current
15 estimate of revenues, excluding transfers, for the year in which
16 paragraph (3) became operative.

17 (5) The state shall participate as provided in subdivision (c) in
18 a total cost of wages and individual health benefits up to twelve
19 dollars and ten cents (\$12.10) per hour, if wages have reached at
20 least seven dollars and fifty cents (\$7.50) per hour. Counties shall
21 determine, pursuant to the collective bargaining process provided
22 for in subdivision (c) of Section 12301.6, what portion of the
23 twelve dollars and ten cents (\$12.10) per hour shall be used to fund
24 wage increases above seven dollars and fifty cents (\$7.50) per hour
25 or individual health benefit increases, or both. This paragraph shall
26 be operative commencing with the next state fiscal year for which
27 the May Revision forecast of General Fund revenue, excluding
28 transfers, exceeds by at least 5 percent, the most current estimate
29 of revenues, excluding transfers, for the year in which paragraph
30 (4) became operative.

31 (6) Notwithstanding paragraphs (2) to (5), inclusive, the state
32 shall participate as provided in subdivision (c) in a total cost of
33 wages up to nine dollars and fifty cents (\$9.50) per hour and in
34 individual health benefits up to sixty cents (\$0.60) per hour. This
35 paragraph shall become operative on July 1, 2009.

36 (7) (A) *The Legislature finds and declares that injunctions issued*
37 *by the courts have prevented the state from implementing the*
38 *changes described in paragraph (6) during the pendency of*
39 *litigation. To avoid confusion for providers, recipients, and other*
40 *stakeholders, it is therefore the intent of the Legislature to*

1 temporarily suspend the reductions described in that paragraph
2 until July 1, 2012, to allow the litigation to reach a final result.

3 (B) Paragraph (6) shall not be implemented until July 1, 2012,
4 and as of that date shall only be implemented if a court of
5 competent jurisdiction has issued an order, that is not subject to
6 appeal or for which the time to appeal has expired, upholding its
7 validity.

8 (e) (1) On or before May 14 immediately prior to the fiscal
9 year for which state participation is provided under paragraphs (2)
10 to (5), inclusive, of subdivision (d), the Director of Finance shall
11 certify to the Governor, the appropriate committees of the
12 Legislature, and the department that the condition for each
13 subdivision to become operative has been met.

14 (2) For purposes of certifications under paragraph (1), the
15 General Fund revenue forecast, excluding transfers, that is used
16 for the relevant fiscal year shall be calculated in a manner that is
17 consistent with the definition of General Fund revenues, excluding
18 transfers, that was used by the Department of Finance in the
19 2000–01 Governor’s Budget revenue forecast as reflected on
20 Schedule 8 of the Governor’s Budget.

21 (f) Any increase in overall state participation in wage and benefit
22 increases under paragraphs (2) to (5), inclusive, of subdivision (d),
23 shall be limited to a wage and benefit increase of one dollar (\$1)
24 per hour with respect to any fiscal year. With respect to actual
25 changes in specific wages and health benefits negotiated through
26 the collective bargaining process, the state shall participate in the
27 costs, as approved in subdivision (c), up to the maximum levels
28 as provided under paragraphs (2) to (6), inclusive, of subdivision
29 (d).

30 SEC. 26. Section 12306.6 is added to the Welfare and
31 Institutions Code, to read:

32 12306.6. (a) (1) Notwithstanding any other provision of law,
33 beginning on the date for which the federal Centers for Medicare
34 and Medicaid Services authorizes commencement of the
35 implementation of this section, but no earlier than July 1, 2010,
36 and concurrent with the collection of the sales tax extended to
37 support services pursuant to Article 4 (commencing with Section
38 6150) of Chapter 2 of Part 1 of Division 2 of the Revenue and
39 Taxation Code, a provider of in-home supportive services shall
40 receive a supplementary payment under this article equal to a

1 *percentage, as set forth in paragraph (2), of the gross receipts, as*
2 *defined in subdivision (b) of Section 6150 of the Revenue and*
3 *Taxation Code, of the provider for the sale of in-home supportive*
4 *services, plus an amount described in paragraph (3) if applicable.*
5 *If the underlying payment for in-home supportive services that is*
6 *being supplemented is a Medi-Cal payment, then the supplementary*
7 *payment shall also be a Medi-Cal payment. Supplementary*
8 *payments shall be made only to those providers from whom the*
9 *tax imposed pursuant to Section 6151 of the Revenue and Taxation*
10 *Code has been collected.*

11 *(2) The percentage applicable to the supplementary payment*
12 *required by paragraph (1) shall equal the rate described in*
13 *subdivision (b) of Section 6151 of the Revenue and Taxation Code*
14 *and shall only be applied to services provided under this article,*
15 *including personal care option services reimbursable under the*
16 *Medi-Cal program.*

17 *(3) The supplementary payment of an individual provider whose*
18 *payroll withholding required for federal income tax purposes and*
19 *for purposes of taxation for the Social Security and Medicare*
20 *programs is increased due to the supplementary payment, in*
21 *comparison to the amounts for those purposes that would be*
22 *withheld without the supplementary payment, shall be increased*
23 *by an additional amount that is equal to the amount of this*
24 *additional federal withholding.*

25 *(b) (1) All revenues deposited in the Personal Care IHSS*
26 *Quality Assurance Revenue Fund established pursuant to Section*
27 *6168 of the Revenue and Taxation Code shall be used solely for*
28 *purposes of the In-Home Supportive Services program, including,*
29 *but not limited to, those services provided under the Medi-Cal*
30 *program. All supplementary payments required by this section*
31 *shall be paid from the Personal Care IHSS Quality Assurance*
32 *Revenue Fund.*

33 *(2) The Director of Finance shall determine the sum required*
34 *to be deposited in the Personal Care IHSS Quality Assurance*
35 *Revenue Fund to fund the initial supplementary payments from*
36 *the fund. As soon thereafter as reasonably possible, this sum shall*
37 *be transferred, in the form of a loan, from the General Fund to*
38 *the Personal Care IHSS Quality Assurance Revenue Fund. At the*
39 *time sufficient revenues have been deposited in the Personal Care*
40 *IHSS Quality Assurance Revenue Fund pursuant to Section 6168*

1 of the Revenue and Taxation Code to sustain the continued
2 operation of the fund for that portion of the supplementary payment
3 described in paragraph (2) of subdivision (a) plus an additional
4 amount equal to the General Fund loan made pursuant to this
5 paragraph, plus interest, the sum transferred from the General
6 Fund, including interest, shall be repaid to the General Fund.
7 Subsequent supplementary payments pursuant to this section shall
8 be made from revenue deposited in the Personal Care IHSS Quality
9 Assurance Revenue Fund pursuant to Section 6168 of the Revenue
10 and Taxation Code.

11 (3) The Department of Finance, on an ongoing basis, shall
12 determine the amount necessary to implement paragraph (3) of
13 subdivision (a), and subdivision (c) of Section 12302.2, and
14 immediately transfer this amount from the General Fund to the
15 Personal Care IHSS Quality Assurance Revenue Fund.

16 (c) (1) The Director of Health Care Services shall seek all
17 federal Medicaid approvals necessary to implement this section,
18 including using the revenues obtained pursuant to Article 4
19 (commencing with Section 6150) of Chapter 2 of Part 1 of Division
20 2 of the Revenue and Taxation Code as the nonfederal share for
21 supplementary payments. As part of that request for approval, the
22 director shall seek to make the supplementary payments effective
23 as of July 1, 2010.

24 (2) This section shall become operative only if the federal
25 Centers for Medicare and Medicaid Services grants Medicaid
26 approvals sought pursuant to paragraph (1).

27 (3) If Medicaid approval is granted pursuant to paragraph (2),
28 within 10 days of that approval the Director of Health Care
29 Services shall notify the State Board of Equalization and the
30 appropriate fiscal and policy committees of the Legislature of the
31 approval.

32 (d) If Article 4 (commencing with Section 6150) of Chapter 2
33 of Part 1 of Division 2 of the Revenue and Taxation Code becomes
34 inoperative pursuant to subdivision (b) of Section 6170 of the
35 Revenue and Taxation Code, supplementary payments shall cease
36 to be made pursuant to subdivision (a) when all moneys in the fund
37 have been expended.

38 (e) (1) Notwithstanding the rulemaking provisions of the
39 Administrative Procedure Act, Chapter 3.5 (commencing with
40 Section 11340) of Part 1 of Division 3 of Title 2 of the Government

1 Code, the department and the State Department of Health Care
2 Services may implement and administer this section through
3 all-county letters or similar instruction from the department and
4 the State Department of Health Care Services until regulations
5 are adopted. The department and the State Department of Health
6 Care Services shall adopt emergency regulations implementing
7 this section no later than 12 months following the initial effective
8 date of the supplementary payments. The department and the State
9 Department of Health Care Services may readopt any emergency
10 regulation authorized by this section that is the same as or
11 substantially equivalent to an emergency regulation previously
12 adopted under this section.

13 (2) The initial adoption of emergency regulations implementing
14 this section and the one readoption of emergency regulations
15 authorized by this subdivision shall be deemed an emergency and
16 necessary for the immediate preservation of the public peace,
17 health, safety, or general welfare. Initial emergency regulations
18 and the one readoption of emergency regulations authorized by
19 this section shall be exempt from review and approval by the Office
20 of Administrative Law. The initial emergency regulations and the
21 one readoption of emergency regulations authorized by this section
22 shall be submitted to the Office of Administrative Law for filing
23 with the Secretary of State and each shall remain in effect for no
24 more than 180 days, by which time final regulations may be
25 adopted.

26 (f) This section shall remain in effect only until the January 1
27 following the date supplementary payments cease to be made
28 pursuant to subdivision (d), and as of that date is repealed.

29 SEC. 27. Section 12309 of the Welfare and Institutions Code
30 is amended to read:

31 12309. (a) In order to assure that in-home supportive services
32 are delivered in all counties in a uniform manner, the department
33 shall develop a uniform needs assessment tool.

34 (b) (1) Each county shall, in administering this article, use the
35 uniform needs assessment tool developed pursuant to subdivision
36 (a) in collecting and evaluating information.

37 (2) For purposes of paragraph (1), “information” includes, but
38 is not limited to, all of the following:

39 (A) The recipient’s living environment.

40 (B) Alternative resources.

1 (C) The recipient’s functional abilities.

2 (c) (1) The uniform needs assessment tool developed pursuant
3 to subdivision (a) shall evaluate the recipient’s functioning in
4 activities of daily living and instrumental activities of daily living.

5 (2) The recipient’s functioning shall be quantified, using the
6 general hierarchical five-point scale for ranking each function, as
7 specified in subdivision (d).

8 (d) The recipient’s functioning ranks shall be as follows:

9 (1) Rank one. A recipient’s functioning shall be classified as
10 rank one if his or her functioning is independent, and he or she is
11 able to perform the function without human assistance, although
12 the recipient may have difficulty in performing the function, but
13 the completion of the function, with or without a device or mobility
14 aid, poses no substantial risk to his or her safety.

15 (2) Rank two. A recipient’s functioning shall be classified as
16 rank two if he or she is able to perform a function, but needs verbal
17 assistance, such as reminding, guidance, or encouragement.

18 (3) Rank three. A recipient’s functioning shall be classified as
19 rank three if he or she can perform the function with some human
20 assistance, including, but not limited to, direct physical assistance
21 from a provider.

22 (4) Rank four. A recipient’s functioning shall be classified as
23 rank four if he or she can perform a function, but only with
24 substantial human assistance.

25 (5) Rank five. A recipient’s functioning shall be classified as
26 rank five if he or she cannot perform the function, with or without
27 human assistance.

28 (e) (1) Notwithstanding any other law, and effective September
29 1, 2009, individuals shall be eligible for each domestic or related
30 service only if assessed at a rank four or five, as defined in
31 subdivision (d), in the activity of daily living relating to that
32 service. The activities of daily living that relate to domestic and
33 related services are defined in regulations and include housework,
34 laundry, shopping and errands, meal preparation, and meal cleanup.
35 The rank for each domestic and related service shall be determined
36 based on an assessment of need for supportive services by the
37 county, in accordance with this section and the hourly task
38 guidelines as defined by Section 12301.2. This paragraph does not
39 apply to individuals meeting one of the conditions specified in
40 paragraph (2).

1 (2) Paragraph (1) shall not apply to individuals authorized to
2 receive either protective supervision pursuant to subdivision (b)
3 of Section 12300 and Section 12301.21 or paramedical services
4 pursuant to Section 12300.1, or to individuals authorized to receive
5 over 120 hours of services per month.

6 (3) To the extent necessary to maintain federal financial
7 participation, the director may waive any or all of the provisions
8 of paragraph (2), after consultation with the State Department of
9 Health Care Services.

10 (f) A recipient shall be assigned a functional index score. The
11 functional index score for a recipient shall be a weighted average
12 based on the individual functional index rankings, as described in
13 subdivision (d), to provide a single measure of a recipient's relative
14 dependence on human assistance for performance of activities of
15 daily living that are used in the assessment of services provided
16 pursuant to this article.

17 (g) (1) Notwithstanding the rulemaking provisions of the
18 Administrative Procedure Act (Chapter 3.5 (commencing with
19 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
20 Code) the department may implement and administer this section
21 through all-county letters or similar instruction from the department
22 until regulations are adopted. The department shall adopt
23 emergency regulations implementing this section no later than July
24 1, 2010. The department may readopt any emergency regulation
25 authorized by this section that is the same as or substantially
26 equivalent to an emergency regulation previously adopted under
27 this section.

28 (2) The initial adoption of emergency regulations implementing
29 this section and one readoption of emergency regulations shall be
30 deemed an emergency and necessary for the immediate
31 preservation of the public peace, health, safety, or general welfare.
32 Initial emergency regulations and the one readoption of emergency
33 regulations authorized by this subdivision shall be exempt from
34 review and approval by the Office of Administrative Law. The
35 initial emergency regulations and the one readoption of emergency
36 regulations authorized by this subdivision shall be submitted to
37 the Office of Administrative Law for filing with the Secretary of
38 State and each shall remain in effect for no more than 180 days,
39 by which time final regulations may be adopted.

1 (h) Subdivisions (e), (f), and (g) shall become operative on
2 September 1, 2009.

3 (i) *(1) The Legislature finds and declares that injunctions issued*
4 *by the courts have prevented the state from implementing the*
5 *changes described in subdivisions (e), (f), and (g) during the*
6 *pendency of litigation. To avoid confusion for providers, recipients,*
7 *and other stakeholders, it is therefore the intent of the Legislature*
8 *to temporarily suspend the reductions described in those*
9 *subdivisions until July 1, 2012, to allow the litigation to reach a*
10 *final result.*

11 *(2) Notwithstanding subdivision (h) or any other provision of*
12 *law, subdivisions (e), (f), and (g) shall not be implemented until*
13 *July 1, 2012, and as by that date shall only be implemented if a*
14 *court of competent jurisdiction has issued an order, that is not*
15 *subject to appeal or for which the time to appeal has expired,*
16 *upholding their validity.*

17 SEC. 28. *Section 12309.2 of the Welfare and Institutions Code*
18 *is amended to read:*

19 12309.2. (a) Notwithstanding any other law, except as provided
20 in subdivision (b), and pursuant to subdivision (e) of Section 12309,
21 and effective September 1, 2009, eligibility for in-home supportive
22 services provided pursuant to Article 7 (commencing with Section
23 12300) of Chapter 3 shall also include functional index scores
24 calculated pursuant to subdivision (f) of Section 12309, as follows:

25 (1) Individuals with a functional index score of 2.0 and above
26 shall be eligible to receive all appropriate in-home supportive
27 services provided pursuant to this article.

28 (2) Individuals with a functional index score below 2.0 shall
29 not be eligible for any in-home supportive services provided
30 pursuant to this article.

31 (3) Paragraph (2) shall not apply to individuals authorized to
32 receive protective supervision pursuant to subdivision (b) of
33 Section 12300 and Section 12301.21 or paramedical services
34 pursuant to Section 12300.1, or to individuals authorized to receive
35 over 120 hours of services per month pursuant to Section 12301.2.

36 (4) To the extent necessary to maintain federal financial
37 participation, the director may waive any or all of the provisions
38 of paragraph (3), after consultation with the State Department of
39 Health Care Services.

1 (b) The department shall modify the notice of action forms to
2 inform individuals whose hours are reduced or for whom eligibility
3 is eliminated by the changes made to Section 12309 or this section
4 by the act adding this section of their functional rank and functional
5 index score. The form shall be modified no later than September
6 1, 2009.

7 (c) (1) Notwithstanding the rulemaking provisions of the
8 Administrative Procedure Act, Chapter 3.5 (commencing with
9 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
10 Code, the department may implement and administer this section
11 through all-county letters or similar instruction from the department
12 until regulations are adopted. The department shall adopt
13 emergency regulations implementing this section no later than July
14 1, 2010. The department may readopt any emergency regulation
15 authorized by this section that is the same as or substantially
16 equivalent to an emergency regulation previously adopted under
17 this section.

18 (2) The initial adoption of emergency regulations implementing
19 this section and the one readoption of emergency regulations
20 authorized by this subdivision shall be deemed an emergency and
21 necessary for the immediate preservation of the public peace,
22 health, safety, or general welfare. Initial emergency regulations
23 and the one readoption of emergency regulations authorized by
24 this section shall be exempt from review and approval by the Office
25 of Administrative Law. The initial emergency regulations and the
26 one readoption of emergency regulations authorized by this section
27 shall be submitted to the Office of Administrative Law for filing
28 with the Secretary of State and each shall remain in effect for no
29 more than 180 days, by which time final regulations may be
30 adopted.

31 (d) This section shall become operative on September 1, 2009.

32 (e) (1) *The Legislature finds and declares that injunctions issued*
33 *by the courts have prevented the state from implementing the*
34 *changes described in this section during the pendency of litigation.*
35 *To avoid confusion for providers, recipients, and other*
36 *stakeholders, it is therefore the intent of the Legislature to*
37 *temporarily suspend the reductions described in this section until*
38 *July 1, 2012, to allow the litigation to reach a final result.*

39 (2) *Notwithstanding subdivision (d) or any other provision of*
40 *law, this section shall not be implemented until July 1, 2012, and*

1 *as of that date shall only be implemented if a court of competent*
2 *jurisdiction has issued an order, that is not subject to appeal or*
3 *for which the time to appeal has expired, upholding its validity.*

4 SEC. 29. *Section 15525 of the Welfare and Institutions Code*
5 *is amended to read:*

6 15525. (a) The State Department of Social Services shall
7 establish a Work Incentive Nutritional Supplement (WINS)
8 program pursuant to this section.

9 (b) Under the WINS program established pursuant to subdivision
10 (a), each county shall provide a forty dollar (\$40) per month
11 additional food assistance benefit for each eligible food stamp
12 household, as defined in subdivision (d).

13 (c) The state shall pay to the counties 100 percent of the cost
14 of WINS benefits, using funds that qualify for the state's
15 maintenance of effort requirements under Section 609(a)(7)(B)(i)
16 of Title 42 of the United States Code.

17 (d) For purposes of this section, an "eligible food stamp
18 household" is a household that meets all of the following criteria:

19 (1) Receives benefits pursuant to Chapter 10 (commencing with
20 Section 18900) of Part 6.

21 (2) Has no household member receiving CalWORKs benefits
22 pursuant to Chapter 2 (commencing with Section 11200).

23 (3) Contains at least one child under 18 years of age, unless the
24 household contains a child who meets the requirements of Section
25 11253.

26 (4) Has at least one parent or caretaker relative determined to
27 be "work eligible" as defined in Section 261.2(n) of Title 45 of
28 the Code of Federal Regulations and Section 607 of Title 42 of
29 the United States Code.

30 (5) Meets the federal work participation hours requirement set
31 forth in Section 607 of Title 42 of the United States Code for
32 subsidized or unsubsidized employment, and provides
33 documentation that the household has met the federal work
34 requirements.

35 (e) (1) In accordance with federal law, federal food stamp
36 benefits (Chapter 10 (commencing with Section 18900) of Part
37 6), federal supplemental security income benefits, state
38 supplemental security program benefits, public social services, as
39 defined in Section 10051, and county aid benefits (Part 5
40 (commencing with Section 17000)), shall not be reduced as a

1 consequence of the receipt of the WINS benefit paid under this
2 chapter.

3 (2) Benefits paid under this chapter shall not count toward the
4 federal 60-month time limit on aid as set forth in Section
5 608(a)(7)(A) of Title 42 of the United States Code. Payment of
6 WINS benefits shall not commence before October 1, ~~2011~~ 2012,
7 and full implementation of the program shall be achieved on or
8 before April 1, ~~2012~~ 2013.

9 (f) (1) Notwithstanding the rulemaking provisions of the
10 Administrative Procedure Act (Chapter 3.5 (commencing with
11 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
12 Code and Section 10554), until emergency regulations are filed
13 with the Secretary of State pursuant to paragraph (2), the State
14 Department of Social Services may implement this section through
15 all-county letters or similar instructions from the director. The
16 director may provide for individual county phase-in of this section
17 to allow for the orderly implementation based upon standards
18 established by the director, including the operational needs and
19 requirements of the counties. Implementation of the automation
20 process changes shall include issuance of an all-county letter or
21 similar instructions to counties by March 1, ~~2011~~ 2012.

22 (2) The department may adopt regulations to implement this
23 chapter. The initial adoption, amendment, or repeal of a regulation
24 authorized by this section is deemed to address an emergency, for
25 purposes of Sections 11346.1 and 11349.6 of the Government
26 Code, and the department is hereby exempted for that purpose
27 from the requirements of subdivision (b) of Section 11346.1 of
28 the Government Code. After the initial adoption, amendment, or
29 repeal of an emergency regulation pursuant to this paragraph, the
30 department may request approval from the Office of Administrative
31 Law to readopt the regulation as an emergency regulation pursuant
32 to Section 11346.1 of the Government Code.

33 (g) (1) The department shall not fully implement this section
34 until the department convenes a workgroup of advocates, legislative
35 staff, county representatives, and other stakeholders to consider
36 the progress of the WINS automation effort in tandem with a
37 pre-assistance employment readiness system (PAERS) program
38 and any other program options that may provide offsetting benefits
39 to the caseload reduction credit in the CalWORKs program. The

1 department shall convene this workgroup on or before December
2 1, ~~2010~~ 2011.

3 (2) A PAERS program shall be considered in light of current
4 and potential federal Temporary Assistance for Needy Families
5 (TANF) statutes and regulations and how other states with
6 pre-assistance or other caseload offset options are responding to
7 federal changes.

8 (3) The consideration of program options shall include, but not
9 necessarily be limited to, the potential impacts on helping clients
10 to obtain self-sufficiency, increasing the federal work participation
11 rate, increasing the caseload reduction credit, requirements and
12 efficiency of county administration, and the well-being of
13 CalWORKs recipients.

14 (4) If the workgroup concludes that adopting a PAERS program
15 or other program option pursuant to this section would, on balance,
16 be favorable for California and its CalWORKs recipients, the
17 department, in consultation with the workgroup, shall prepare a
18 proposal by March 31, ~~2011~~ 2012, for consideration during the
19 regular legislative budget subcommittee process in ~~2011~~ 2012.

20 (5) To meet the requirements of this subdivision, the department
21 may use its TANF reauthorization workgroups.

22 *SEC. 30. Section 18906.55 is added to the Welfare and*
23 *Institutions Code, to read:*

24 *18906.55. (a) Notwithstanding Section 18906.5 or any other*
25 *law, as a result of the substantial fiscal pressures on counties*
26 *created by the unprecedented and unanticipated food stamp*
27 *caseload growth associated with the economic downturn beginning*
28 *in 2008, and in order to provide fiscal relief to counties as a result*
29 *of this growth, a county that meets the maintenance of effort*
30 *requirement pursuant to Section 15204.4 entirely through*
31 *expenditures for the administration of the Food Stamp program*
32 *in state fiscal years 2010–11 and 2011–12 shall receive the full*
33 *General Fund allocation for administration of the Food Stamp*
34 *program without paying the county's share of the nonfederal costs*
35 *for the amount above the maintenance of effort required by Section*
36 *15204.4.*

37 *(b) The full General Fund allocation for administration of the*
38 *Food Stamp program pursuant to subdivision (a) shall equal 35*
39 *percent of the total federal and nonfederal projected funding need*
40 *for administration of the Food Stamp program. The methodology*

1 *used for calculating those projections shall remain the same as it*
2 *was for the 2009–10 fiscal year for as long as this section remains*
3 *in effect.*

4 *(c) No relief to the county share of administrative costs*
5 *authorized by this section shall result in any increased cost to the*
6 *General Fund as determined in subdivision (b).*

7 *(d) Subdivision (a) shall not be interpreted to prevent a county*
8 *from expending funds in excess of the amount required to meet the*
9 *maintenance of effort required by Section 15204.4.*

10 *(e) This section shall become inoperative on July 1, 2012, and,*
11 *as of January 1, 2013, is repealed, unless a later enacted statute,*
12 *that becomes operative on or before January 1, 2013, deletes or*
13 *extends the dates on which it becomes inoperative and is repealed.*

14 *SEC. 31. Section 43 of Chapter 4 of the Fourth Extraordinary*
15 *Session of the Statutes of 2009, is amended to read:*

16 *Sec. 43. (a) (1) Notwithstanding the rulemaking provisions*
17 *of the Administrative Procedure Act (Chapter 3.5 (commencing*
18 *with Section 11340) of Part 1 of Division 3 of Title 2 of the*
19 *Government Code), the department may implement and administer*
20 *the amendments to Sections 11320.3; and 11454.5, and 10544 of*
21 *the Welfare and Institutions Code, and the repeal of Section 10830*
22 *of the Welfare and Institutions Code the addition of Section 10545*
23 *to the Welfare and Institutions Code, as contained in this act,*
24 *through all-county letters or similar instructions from the*
25 *department until regulations are adopted. The department shall*
26 *adopt emergency regulations implementing these provisions no*
27 *later than July 1, 2010. The department may readopt any emergency*
28 *regulation authorized by this section that is the same as or*
29 *substantially equivalent to an emergency regulation previously*
30 *adopted under this section.*

31 *(2) The initial adoption of emergency regulations pursuant to*
32 *this section and one readoption of emergency regulations shall be*
33 *deemed an emergency and necessary for the immediate*
34 *preservation of the public peace, health, safety, or general welfare.*
35 *Initial emergency regulations and the one readoption of emergency*
36 *regulations authorized by this section shall be exempt from review*
37 *by the Office of Administrative Law. The initial emergency*
38 *regulations and the one readoption of emergency regulations*
39 *authorized by this section shall be submitted to the Office of*
40 *Administrative Law for filing with the Secretary of State and each*

1 shall remain in effect for no more than 180 days, by which time
2 final regulations may be adopted.

3 (b) Notwithstanding the provisions of the Administrative
4 Procedure Act (Chapter 3.5 (commencing with Section 11340) of
5 Part 1 of Division 3 of Title 2 of the Government Code), the State
6 Department of Social Services may implement any other applicable
7 provisions of this act through all-county letters or similar
8 instructions from the department.

9 *SEC. 32. Sections 7, 8, 22, and 26 of this act shall not be*
10 *interpreted to alter the employer and employee relationship*
11 *between any provider of in-home supportive services and any*
12 *governmental agency, except in regard to the collection and*
13 *disbursement of funds required by this act.*

14 *SEC. 33. (a) Notwithstanding the rulemaking provisions of*
15 *the Administrative Procedure Act (Chapter 3.5 (commencing with*
16 *Section 11340) of Part 1 of Division 3 of Title 2 of the Government*
17 *Code), the department may implement and administer the*
18 *amendments to subdivision (b) of Section 11460 of the Welfare*
19 *and Institutions Code, as contained in this act, through all-county*
20 *letters or similar instructions from the department until regulations*
21 *are adopted. The department shall adopt emergency regulations*
22 *repealing these provisions no later than December 31, 2011. The*
23 *department may readopt any emergency regulation authorized by*
24 *this section that is the same as or substantially equivalent to an*
25 *emergency regulation previously adopted under this section.*

26 *(b) The initial adoption of emergency regulations pursuant to*
27 *this section and one readoption of emergency regulations shall be*
28 *deemed an emergency and necessary for the immediate*
29 *preservation of the public peace, health, safety, or general welfare.*
30 *Initial emergency regulations and the one readoption of emergency*
31 *regulations authorized by this section shall be exempt from review*
32 *by the Office of Administrative Law. The initial emergency*
33 *regulations and the one readoption of emergency regulations*
34 *authorized by this section shall be submitted to the Office of*
35 *Administrative Law for filing with the Secretary of State and each*
36 *shall remain in effect for no more than 180 days, by which time*
37 *final regulations may be adopted.*

38 *SEC. 34. No reimbursement is required by this act pursuant*
39 *to Section 6 of Article XIII B of the California Constitution for*
40 *certain costs that may be incurred by a local agency or school*

1 *district because, in that regard, this act creates a new crime or*
2 *infraction, eliminates a crime or infraction, or changes the penalty*
3 *for a crime or infraction, within the meaning of Section 17556 of*
4 *the Government Code, or changes the definition of a crime within*
5 *the meaning of Section 6 of Article XIII B of the California*
6 *Constitution.*

7 *However, if the Commission on State Mandates determines that*
8 *this act contains other costs mandated by the state, reimbursement*
9 *to local agencies and school districts for those costs shall be made*
10 *pursuant to Part 7 (commencing with Section 17500) of Division*
11 *4 of Title 2 of the Government Code.*

12 *SEC. 35. This act is an urgency statute necessary for the*
13 *immediate preservation of the public peace, health, or safety within*
14 *the meaning of Article IV of the Constitution and shall go into*
15 *immediate effect. The facts constituting the necessity are:*

16 *In order to make changes necessary for implementation of the*
17 *Budget Act of 2010, it is necessary that this act take effect*
18 *immediately.*

19 ~~SECTION 1. It is the intent of the Legislature to enact statutory~~
20 ~~changes relating to the Budget Act of 2010.~~