

Assembly Bill No. 1612

Passed the Assembly October 8, 2010

Chief Clerk of the Assembly

Passed the Senate October 7, 2010

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2010, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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, Committee on Budget. 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, 2012.

(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 local 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.

Appropriation: yes.

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

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

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

(a) To the individual to whom the information pertains.

(b) With the prior written voluntary consent of the individual to whom the record pertains, but only if that consent has been obtained not more than 30 days before the disclosure, or in the time limit agreed to by the individual in the written consent.

(c) To the duly appointed guardian or conservator of the individual or a person representing the individual if it can be proven with reasonable certainty through the possession of agency forms, documents or correspondence that this person is the authorized representative of the individual to whom the information pertains.

(d) To those officers, employees, attorneys, agents, or volunteers of the agency that has custody of the information if the disclosure is relevant and necessary in the ordinary course of the performance of their official duties and is related to the purpose for which the information was acquired.

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

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

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

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

(i) Pursuant to a determination by the agency that maintains information that compelling circumstances exist that affect the health or safety of an individual, if upon the disclosure notification is transmitted to the individual to whom the information pertains

at his or her last known address. Disclosure shall not be made if it is in conflict with other state or federal laws.

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

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

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

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

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

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

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

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

(r) To a child or a grandchild of an adopted person and disclosure is limited to medically necessary information pertaining to the adopted person's natural parents. However, the information, or the process for obtaining the information, shall not include or reveal the identity of the natural parents. The State Department of Social Services shall adopt regulations governing the release of information pursuant to this subdivision by July 1, 1985. The regulations shall require licensed adoption agencies to provide the

same services provided by the department as established by this subdivision.

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

(t) (1) To the University of California, a nonprofit educational institution, or, in the case of education-related data, another nonprofit entity, conducting scientific research, provided the request for information is approved by the Committee for the Protection of Human Subjects (CPHS) for the California Health and Human Services Agency (CHHSA) or an institutional review board, as authorized in paragraphs (4) and (5). The approval required under this subdivision shall include a review and determination that all the following criteria have been satisfied:

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

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

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

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

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

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

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

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

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

(3) Reasonable costs to the agency associated with the agency's process of protecting personal information under the conditions of CPHS approval may be billed to the researcher, including, but not limited to, the agency's costs for conducting a portion of the data processing for the researcher, removing personal information, encrypting or otherwise securing personal information, or assigning subject codes.

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

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

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

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

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

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

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

(1) A current address.

(2) A written request for contact with any sibling whose existence is known to the person making the request.

(3) A written waiver of the person's rights with respect to the disclosure of the person's name and address to the sibling, if the person is an adoptee.

(b) Upon inquiry and proof that a person is the sibling of an adoptee who has filed a waiver pursuant to this section, the department or agency may advise the sibling that a waiver has been filed by the adoptee. The department or agency may charge a reasonable fee, not to exceed fifty dollars (\$50), for providing the service required by this section.

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

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

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

(f) Notwithstanding the age requirement described in subdivision (a), an adoptee or sibling who is under 18 years of age may file a written waiver of confidentiality for the release of his or her name, address, and telephone number pursuant to this section provided that, if an adoptee, the adoptive parent consents, and, if a sibling,

the sibling's legal parent or guardian consents. If the sibling is under the jurisdiction of the dependency court and has no legal parent or guardian able or available to provide consent, the dependency court may provide that consent.

(g) Notwithstanding subdivisions (a) and (e), an adoptee or sibling who seeks contact with the other for whom no waiver is on file may petition the court to appoint a confidential intermediary. If the sibling being sought is the adoptee, the intermediary shall be the department or licensed adoption agency that provided adoption services as described in Section 8521 or 8533. If the sibling being sought was formerly under the jurisdiction of the juvenile court, but is not an adoptee, the intermediary shall be the department, the county child welfare agency that provided services to the dependent child, or the licensed adoption agency that provided adoption services to the sibling seeking contact, as appropriate. If the court finds that the licensed adoption agency that conducted the adoptee's adoption is unable, due to economic hardship, to serve as the intermediary, then the agency shall provide all records related to the adoptee or the sibling to the court and the court shall appoint an alternate confidential intermediary. The court shall grant the petition unless it finds that it would be detrimental to the adoptee or sibling with whom contact is sought. The intermediary shall have access to all records of the adoptee or the sibling and shall make all reasonable efforts to locate and attempt to obtain the consent of the adoptee, sibling, or adoptive or birth parent, as required to make the disclosure authorized by this section. The confidential intermediary shall notify any located adoptee, sibling, or adoptive or birth parent that consent is optional, not required by law, and does not affect the status of the adoption. If that individual denies the request for consent, the confidential intermediary shall not make any further attempts to obtain consent. The confidential intermediary shall use information found in the records of the adoptee or the sibling for authorized purposes only, and may not disclose that information without authorization. If contact is sought with an adoptee or sibling who is under 18 years of age, the confidential intermediary shall contact and obtain the consent of that child's legal parent before contacting the child. If the sibling is under 18 years of age, under the jurisdiction of the dependency court, and has no legal parent or guardian able or available to provide consent, the intermediary shall obtain that

consent from the dependency court. If the adoptee is seeking information regarding a sibling who is known to be a dependent child of the juvenile court, the procedures set forth in subdivision (b) of Section 388 of the Welfare and Institutions Code shall be utilized. If the adoptee is foreign born and was the subject of an intercountry adoption as defined in Section 8527, the adoption agency may fulfill the reasonable efforts requirement by utilizing all information in the agency's case file, and any information received upon request from the foreign adoption agency that conducted the adoption, if any, to locate and attempt to obtain the consent of the adoptee, sibling, or adoptive or birth parent. If that information is neither in the agency's case file, nor received from the foreign adoption agency, or if the attempts to locate are unsuccessful, then the agency shall be relieved of any further obligation to search for the adoptee or the sibling.

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

(i) Implementation of the amendments made to this section by Chapter 386 of the Statutes of 2006 shall be delayed until July 1, 2011. It is the intent of the Legislature that implementation of some or all of the changes made to Section 9205 of the Family Code by Chapter 386 of the Statutes of 2006 shall continue, to the extent possible.

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

17555. (a) Any 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 shall be subject to all of the following requirements:

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

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

(A) Measure 3: Collections on Current Support.

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

(3) Notwithstanding Section 10231.5 of the Government Code, the department shall submit an interim report to the fiscal committees of the Legislature by January 1 of any year for which a budget appropriation for this purpose is made, to track and

evaluate the impact of the augmentation on revenue collections and cost-effectiveness, with an additional oral report to be provided during the spring subcommittee review process.

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

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

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

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

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

(a) (1) Before issuing a license or special permit to any person or persons to operate or manage a community care facility, the State Department of Social Services shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic

violation or arrested for any crime specified in Section 290 of the Penal Code, for violating Section 245 or 273.5, of the Penal Code, subdivision (b) of Section 273a of the Penal Code, or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated.

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

(3) Except during the 2003–04 to the 2011–12 fiscal years, inclusive, 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 or special permit to operate a facility providing nonmedical board, room, and care for six or less children or for obtaining a criminal record of the applicant pursuant to this section.

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

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

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

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

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

(E) An applicant and any other person specified in subdivision (b) shall submit fingerprint images and related information to the Department of Justice for the purpose of searching the criminal

records of the Federal Bureau of Investigation, in addition to the criminal records search required by this subdivision. If an applicant and all other persons described in subdivision (b) meet all of the conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal offender record information search response for the applicant or any of the persons described in subdivision (b), the department may issue a license if the applicant and each person described in subdivision (b) has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction, as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure, the department determines that the licensee or any other person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to Section 1550. The department may also suspend the license pending an administrative hearing pursuant to Section 1550.5.

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

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

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

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

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

(C) Any person who provides client assistance in dressing, grooming, bathing, or personal hygiene. Any nurse assistant or home health aide meeting the requirements of Section 1338.5 or 1736.6, respectively, who is not employed, retained, or contracted by the licensee, and who has been certified or recertified on or after July 1, 1998, shall be deemed to meet the criminal record clearance requirements of this section. A certified nurse assistant and certified home health aide who will be providing client assistance and who falls under this exemption shall provide one copy of his or her current certification, prior to providing care, to the community care facility. The facility shall maintain the copy of the certification on file as long as care is being provided by the certified nurse assistant or certified home health aide at the facility. Nothing in this paragraph restricts the right of the department to exclude a certified nurse assistant or certified home health aide from a licensed community care facility pursuant to Section 1558.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Members are not left alone with clients.

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

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

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

(A) Adult friends and family of the licensed or certified foster parent, who come into the home to visit for a length of time no longer than defined by the department in regulations, provided

that the adult friends and family of the licensee are not left alone with the foster children. However, the licensee, acting as a reasonable and prudent parent, as defined in paragraph (2) of subdivision (a) of Section 362.04 of the Welfare and Institutions Code, may allow his or her adult friends and family to provide short-term care to the foster child and act as an appropriate occasional short-term babysitter for the child.

(B) Parents of a foster child's friend when the foster child is visiting the friend's home and the friend, licensed or certified foster parent, or both are also present. However, the licensee, acting as a reasonable and prudent parent, may allow the parent of the foster child's friend to act as an appropriate short-term babysitter for the child without the friend being present.

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

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

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

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

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

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

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

(5) (A) In addition to the exemptions specified in paragraph (2), the following persons in adult residential and social rehabilitation facilities, unless contraindicated by the client's individualized program plan (IPP) or needs and services plan, are exempt from the requirements applicable under paragraph (1): a

spouse, significant other, relative, or close friend of a client, or an attendant or a facilitator for a client with a developmental disability if the attendant or facilitator is not employed, retained, or contracted by the licensee. This exemption applies only if the person is visiting the client or providing direct care and supervision to that client.

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

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

(c) (1) Subsequent to initial licensure, a person specified in subdivision (b) who is not exempted from fingerprinting shall obtain either a criminal record clearance or an exemption from disqualification pursuant to subdivision (g) from the State Department of Social Services prior to employment, residence, or initial presence in the facility. A person specified in subdivision (b) who is not exempt from fingerprinting shall be fingerprinted and shall sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, or comply with paragraph (1) of subdivision (h). These fingerprint images and related information shall be sent by electronic transmission in a manner approved by the State Department of Social Services and the Department of Justice for the purpose of obtaining a permanent set of fingerprints, and shall be submitted to the Department of Justice by the licensee. A licensee's failure to prohibit the employment, residence, or initial presence of a person specified in subdivision (b) who is not exempt from fingerprinting and who has not received either a criminal record clearance or an exemption from disqualification pursuant to subdivision (g) or to comply with paragraph (1) of subdivision (h), as required in this section, shall result in the citation of a deficiency and the immediate assessment of civil penalties in the amount of one hundred dollars (\$100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the

civil penalties shall be in the amount of one hundred dollars (\$100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1550. The department may assess civil penalties for continued violations as permitted by Section 1548. The fingerprint images and related information shall then be submitted to the Department of Justice for processing. Upon request of the licensee, who shall enclose a self-addressed stamped postcard for this purpose, the Department of Justice shall verify receipt of the fingerprints.

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

(3) Except for persons specified in subdivision (b) who are exempt from fingerprinting, the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted. If it is determined by the State Department of Social

Services, on the basis of the fingerprint images and related information submitted to the Department of Justice, that subsequent to obtaining a criminal record clearance or exemption from disqualification pursuant to subdivision (g), the person has been convicted of, or is awaiting trial for, a sex offense against a minor, or has been convicted for an offense specified in Section 243.4, 273a, 273d, 273g, or 368 of the Penal Code, or a felony, the State Department of Social Services shall notify the licensee to act immediately to terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility. The State Department of Social Services may subsequently grant an exemption from disqualification pursuant to subdivision (g). If the conviction or arrest was for another crime, except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (A) terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility; or (B) seek an exemption from disqualification pursuant to subdivision (g). The State Department of Social Services shall determine if the person shall be allowed to remain in the facility until a decision on the exemption from disqualification is rendered. A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by this paragraph shall result in a citation of deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars (\$100) per violation per day and shall be grounds for disciplining the licensee pursuant to Section 1550.

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

(5) Concurrently with notifying the licensee pursuant to paragraph (3), the department shall notify the affected individual of his or her right to seek an exemption from disqualification pursuant to subdivision (g). The individual may seek an exemption

from disqualification only if the licensee terminates the person's employment or removes the person from the facility after receiving notice from the department pursuant to paragraph (3).

(d) (1) Before issuing a license or certificate of approval to any person or persons to operate a foster family home or certified family home as described in Section 1506, the State Department of Social Services or other approving authority shall secure California and Federal Bureau of Investigation criminal history information to determine whether the applicant or any person specified in subdivision (b) who is not exempt from fingerprinting has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in subdivision (c) of Section 290 of the Penal Code, for violating Section 245 or 273.5, subdivision (b) of Section 273a or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated. The State Department of Social Services or other approving authority shall not issue a license or certificate of approval to any foster family home or certified family home applicant who has not obtained both a California and Federal Bureau of Investigation criminal record clearance or exemption from disqualification pursuant to subdivision (g).

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

(3) 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, special permit, or certificate of approval described in this subdivision. The record, if any, shall be taken into consideration when evaluating a prospective applicant.

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

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

(B) If the State Department of Social Services finds that the applicant, or any person specified in subdivision (b) who is not exempt from fingerprinting is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services

or other approving authority may cease processing the application until the conclusion of the trial.

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

(D) To the same extent required for federal funding, an applicant for a foster family home license or for certification as a family home, and any other person specified in subdivision (b) who is not exempt from fingerprinting, shall submit a set of fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, in addition to the criminal records search required by subdivision (a).

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

(6) (A) Subsequent to initial licensure or certification, a person specified in subdivision (b) who is not exempt from fingerprinting shall obtain both a California and Federal Bureau of Investigation criminal record clearance, or an exemption from disqualification pursuant to subdivision (g), prior to employment, residence, or initial presence in the foster family or certified family home. A foster family home licensee or foster family agency shall submit fingerprint images and related information of persons specified in subdivision (b) who are not exempt from fingerprinting to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, or to comply with paragraph (1) of subdivision (h). A foster family home licensee's or a foster family agency's failure to either prohibit the employment, residence, or initial presence of a person specified in subdivision (b) who is not exempt from fingerprinting and who has not received either a criminal record clearance or an exemption from disqualification pursuant to subdivision (g), or comply with paragraph (1) of subdivision (h), as required in this section, shall

result in a citation of a deficiency, and the immediate civil penalties of one hundred dollars (\$100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars (\$100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1550. A violation of the regulation adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars (\$100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars (\$100) per violation for a maximum of 30 days, and shall be grounds for disciplining the foster family home licensee or the foster family agency pursuant to Section 1550. The State Department of Social Services may assess penalties for continued violations, as permitted by Section 1548. The fingerprint images shall then be submitted to the Department of Justice for processing.

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

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

(8) If the State Department of Social Services finds after licensure or the granting of the certificate of approval that the licensee, certified foster parent, or any other person specified in subdivision (b) who is not exempt from fingerprinting, has been

convicted of a crime other than a minor traffic violation, the license or certificate of approval may be revoked by the department or the foster family agency, whichever is applicable, unless the director grants an exemption from disqualification pursuant to subdivision (g). A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by paragraph (3) of subdivision (c) shall be grounds for disciplining the licensee pursuant to Section 1550.

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

(f) (1) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that the State Department of Social Services is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, when the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified by the Department of Justice, or documents admissible in a criminal action pursuant to Section 969b of the Penal Code, shall be prima facie evidence of the

conviction, notwithstanding any other law prohibiting the admission of these documents in a civil or administrative action.

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

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

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

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

individual has been convicted of an offense described in paragraph (1) of subdivision (c) of Section 667.5 of the Penal Code.

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

(C) Under no circumstances shall an exemption be granted pursuant to this subdivision to any foster care provider applicant if that applicant, or any other person specified in subdivision (b) in those homes, has a felony conviction for either of the following offenses:

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

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

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

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

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

(h) (1) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal record clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another facility licensed by a state licensing district office. The request shall be in writing to the State Department of

Social Services, and shall include a copy of the person's driver's license or valid identification card issued by the Department of Motor Vehicles, or a valid photo identification issued by another state or the United States government if the person is not a California resident. Upon request of the licensee, who shall enclose a self-addressed envelope for this purpose, the State Department of Social Services shall verify whether the individual has a clearance that can be transferred.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(j) If a licensee or facility is required by law to deny employment or to terminate employment of any employee based on written notification from the state department that the employee has a prior

criminal conviction or is determined unsuitable for employment under Section 1558, the licensee or facility shall not incur civil liability or unemployment insurance liability as a result of that denial or termination.

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

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

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

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

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

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

(3) Except during the 2003–04 through 2011–12 fiscal years, inclusive, neither the Department of Justice nor the department may charge a fee for the fingerprinting of an applicant who will serve six or fewer children or any family day care applicant for a license, or for obtaining a criminal record of an applicant pursuant to this section.

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

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

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

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

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

(E) An applicant and any other person specified in subdivision (b) shall submit fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, in addition to the search required by subdivision (a). If an applicant meets all other conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal history information for the applicant and persons listed in subdivision (b), the department may issue a license if the applicant and each person described by subdivision (b) has signed and submitted a statement that he or she has never been

convicted of a crime in the United States, other than a traffic infraction as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure, the department determines that the licensee or person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to Section 1596.885. The department may also suspend the license pending an administrative hearing pursuant to Section 1596.886.

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

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

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

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

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

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

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

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

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

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

(E) If the applicant is a firm, partnership, association, or corporation, the chief executive officer, other person serving in

like capacity, or a person designated by the chief executive officer as responsible for the operation of the facility, as designated by the applicant agency.

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

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

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

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

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

(c) (1) (A) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a child day

care facility be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal conviction. The licensee shall submit fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, or to comply with paragraph (1) of subdivision (h), prior to the person's employment, residence, or initial presence in the child day care facility.

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

(C) Documentation of the individual's clearance or exemption shall be maintained by the licensee, and shall be available for inspection. When live-scan technology is operational, as defined in Section 1522.04, the Department of Justice shall notify the department, as required by that section, and notify the licensee by mail within 14 days of electronic transmission of the fingerprints

to the Department of Justice, if the person has no criminal record. Any violation of the regulations adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars (\$100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars (\$100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1596.885 or Section 1596.886. The department may assess civil penalties for continued violations, as permitted by Sections 1596.99 and 1597.62.

(2) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the department, on the basis of fingerprints submitted to the Department of Justice, that the person has been convicted of a sex offense against a minor, an offense specified in Section 243.4, 273a, 273d, 273g, or 368 of the Penal Code, or a felony, the State Department of Social Services shall notify the licensee to act immediately to terminate the person's employment, remove the person from the child day care facility, or bar the person from entering the child day care facility. The department may subsequently grant an exemption pursuant to subdivision (f). If the conviction was for another crime except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (1) terminate the person's employment, remove the person from the child day care facility, or bar the person from entering the child day care facility; or (2) seek an exemption pursuant to subdivision (f). The department shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered. A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by this paragraph shall result in a citation of deficiency and an immediate assessment of civil penalties by the department against the licensee, in the amount of one hundred dollars (\$100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall

be in the amount of one hundred dollars (\$100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1596.885 or 1596.886.

(3) The department may issue an exemption on its own motion pursuant to subdivision (f) if the person's criminal history indicates that the person is of good character based on the age, seriousness, and frequency of the conviction or convictions. The department, in consultation with interested parties, shall develop regulations to establish the criteria to grant an exemption pursuant to this paragraph.

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

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

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

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

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

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

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

(2) The department may not prohibit a person from being employed or having contact with clients in a facility on the basis

of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1596.8897.

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

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

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

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

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

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

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

(4) With respect to notifications issued by the Department of Justice pursuant to Section 11105.2 of the Penal Code concerning an individual whose criminal record clearance was originally processed by the department or a county office with

department-delegated licensing authority, all of the following shall apply:

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

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

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

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

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

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

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

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

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

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

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

(A) The mother's marital status.

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

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

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

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

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

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

(b) Notwithstanding any provision of law to the contrary, information collected pursuant to subparagraph (A) of paragraph (2) of subdivision (a) shall not under any circumstances be disclosed or available to anyone, except for both of the following:

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

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

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

Article 4. Inclusion of Support Services in Sales Tax

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

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

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

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

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

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

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

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

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

(h) “Seller” includes the State Department of Social Services in its capacity as the state agency that oversees the In-Home Supportive Services program, or a county in which county staff serve as homemakers pursuant to Section 12302 of the Welfare

and Institutions Code in those instances where the department is not the seller, or a county that contracts with a nongovernmental contractor to arrange for the retail sale of support services to eligible recipients pursuant to Section 12301.6 or 12302 of the Welfare and Institutions Code, or any other nongovernmental person that arranges for the retail sale of support services, wherever located.

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

- (1) Domestic services and services related to domestic services.
- (2) Heavy cleaning.
- (3) Personal care services, as defined in subdivision (c).
- (4) Accompaniment when needed during necessary travel to health-related appointments or to alternative resource sites.

(5) Yard hazard abatement.

(6) Protective supervision.

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

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

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

(b) The rate extended by subdivision (a) is the rate, as may be amended from time to time, imposed by Article 1 (commencing with Section 6051) plus the rate imposed by Section 35 of Article

XIII of the California Constitution for the privilege of selling tangible personal property at retail in this state.

(c) Notwithstanding the implementation date of this article as provided for in subdivision (a), no tax shall be collected pursuant to this article prior to the receipt of approval by the federal Centers for Medicare and Medicaid Services of the implementation of Section 12306.6 of the Welfare and Institutions Code.

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

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

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

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

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

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

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

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

6168. Notwithstanding Section 7101, all revenues, less refunds, derived from the taxes extended by this article shall be deposited in the State Treasury to the credit of the Personal Care IHSS Quality Assurance Revenue Fund, which is hereby created. Notwithstanding Section 13340 of the Government Code, the money in the fund is continuously appropriated, without regard to fiscal years, to the State Department of Social Services for disbursement in the manner, and for the purposes, set forth in Section 12306.6 of the Welfare and Institutions Code. All interest or other increment resulting from investment or deposit of moneys in the fund shall be deposited in the fund, notwithstanding Section 16305.7 of the Government Code.

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

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

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

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

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

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

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

10533. Commencing July 1, 2011, the department shall establish a CalWORKs county peer review process, which shall be implemented on a statewide basis no later than July 1, 2012. The peer review process shall include individual CalWORKs data reviews of counties, based on existing data. Counties shall receive programmatic technical assistance from teams made up of state and peer-county administrators to assist with implementing best practices to improve their performance and make progress toward meeting established state performance goals, as specified in Chapter 1.5 (commencing with Section 10540) and Section 15204.6.

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

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

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

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

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

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

(b) (1) Notwithstanding Section 15204.2 or any other law, the State Department of Social Services, in accordance with Section 2101 of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), shall reimburse a county for 80 percent of the amounts that exceed the base year costs that are paid to the county under subdivision (a) and are expended by that county for the benefit of needy families, as defined in subdivision (c), for either of the following purposes:

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

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

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

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

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

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

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

(3) A family in which a minor child is temporarily absent for a period of time, not to exceed 12 months, due to child abuse and neglect, and the parent or parents of the child are engaged in family reunification services.

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

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

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

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

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

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

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

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

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

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

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

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

10545.2. (a) This chapter shall become inoperative upon the expiration of federal authority for the Emergency Contingency Fund, as provided in the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), or subsequent federal legislation that extends the Emergency Contingency Fund, and on that date is repealed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) “Care and supervision” includes food, clothing, shelter, daily supervision, school supplies, a child’s personal incidentals, liability insurance with respect to a child, reasonable travel to the child’s home for visitation, and reasonable travel for the child to remain in the school in which he or she is enrolled at the time of placement. Reimbursement for the costs of educational travel, as provided for in this subdivision, shall be made pursuant to procedures determined by the department, in consultation with representatives of county welfare and probation directors, and additional stakeholders, as appropriate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (A) A new program.
- (B) A new provider.
- (C) A program change, such as a rate classification level increase.

(D) A program capacity increase.

(E) A program reinstatement.

(2) Notwithstanding paragraph (1), the department may grant exceptions as appropriate on a case-by-case basis, based upon a written request and supporting documentation provided by county placing agencies, including county welfare or probation directors.

(b) Immediately prior to the inoperative date of this section, the department shall provide feedback regarding the implementation of this section to the Legislature.

(c) This section shall become inoperative one year after the effective date of the act that adds this section, and on January 1, 2012, is repealed, unless a later enacted statute, that becomes operative before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed

SEC. 19. Section 11462.045 is added to the Welfare and Institutions Code, to read:

11462.045. (a) The State Department of Social Services shall establish a working group to develop recommended revisions to the current system of setting reimbursement rates for group home providers.

(b) In developing recommended revisions to the group home ratesetting system, the working group shall consider the larger context for how the system can better incorporate a spectrum of placements and services that promote positive outcomes for children and families and shall address all of the following:

(1) The provision of mental health and other critical services for children and youth.

(2) The provision of services in family-like settings.

(3) The provision of services that support families and relatives.

(4) Outcome-based evaluation or other quality improvement concepts.

(c) The working group shall include legislative policy and budget staff, stakeholders that are representative of foster youth, providers, children's advocates, and county welfare and probation directors and staff.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) (1) Any public authority created pursuant to this section shall be deemed to be the employer of in-home supportive services

personnel referred to recipients under paragraph (3) of subdivision (e) within the meaning of Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code. Recipients shall retain the right to hire, fire, and supervise the work of any in-home supportive services personnel providing services to them.

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

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

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

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

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

(2) (A) (i) The investigation of the qualifications and background of potential personnel. Upon the effective date of the amendments to this section made during the 2009–10 Fourth Extraordinary Session of the Legislature, the investigation with respect to any provider in the registry or prospective registry applicant shall include criminal background checks requested by the nonprofit consortium or public authority and conducted by the Department of Justice pursuant to Section 15660, for those public authorities or nonprofit consortia using the agencies on the effective date of the amendments to this section made during the 2009–10 Fourth Extraordinary Session of the Legislature. Criminal

background checks shall be performed no later than July 1, 2010, for any provider who is already on the registry on the effective date of amendments to this section made during the 2009–10 Fourth Extraordinary Session of the Legislature, for whom a criminal background check pursuant to this section has not previously been provided, as a condition of the provider’s continued enrollment in the IHSS program. Criminal background checks shall be conducted at the provider’s expense.

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

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

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

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

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

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

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

(F) A nonprofit consortium or a public authority authorized to secure a criminal background check clearance pursuant to this section shall accept a clearance for an applicant described in clause (i) of subparagraph (A) who has been deemed eligible by another nonprofit consortium, public authority, or county with criminal background check authority pursuant to either Section 12305.86 or this section, to receive payment for providing services pursuant to this article. Existence of a clearance shall be determined by verification through the case management, information, and payrolling system, that another county, nonprofit consortium, or public authority with criminal background check authority pursuant to Section 12305.86 or this section has deemed the current or prospective provider to be eligible to receive payment for providing services pursuant to this article.

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

(4) Providing for training for providers and recipients.

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

(B) (i) Upon request of a recipient of in-home supportive services pursuant to this chapter, or a recipient of personal care services under the Medi-Cal program pursuant to Section 14132.95, a public authority or nonprofit consortium may provide a criminal background check on a nonregistry applicant or provider from the

Department of Justice, in accordance with clause (i) of subparagraph (A) of paragraph (2) of subdivision (e). If the person who is the subject of the criminal background check is not hired or is terminated because of the information contained in the criminal background report, the provisions of subparagraph (B) of paragraph (2) of subdivision (e) shall apply.

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

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

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

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

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

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

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

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

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

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

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

(k) Notwithstanding any other provision of law, the county, in exercising its option to establish a public authority, shall not be subject to competitive bidding requirements. However, contracts entered into by either the county, a public authority, or a nonprofit

consortium pursuant to this section shall be subject to competitive bidding as otherwise required by law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12302.2. (a) (1) If the state or a county makes or provides for direct payment to a provider chosen by a recipient or to the recipient for the purchase of in-home supportive services, the department shall perform or assure the performance of all rights, duties and obligations of the recipient relating to those services as required for purposes of unemployment compensation, unemployment compensation disability benefits, workers' compensation, federal and state income tax, and federal old-age survivors and disability insurance benefits. Those rights, duties, and obligations include, but are not limited to, registration and obtaining employer account numbers, providing information, notices, and reports, making applications and returns, and withholding in trust from the payments made to or on behalf of a recipient amounts to be withheld from the wages of the provider by the recipient as an employer, including the sales tax extended to support services by Article 4 (commencing with Section 6150) of Chapter 2 of Part 1 of Division 2 of the Revenue and Taxation Code, and transmitting those amounts along with amounts required for all contributions, premiums, and taxes payable by the recipient as the employer to the appropriate person or state or federal agency. The department may assure the performance of any or all of these rights, duties, and obligations by contract with any person, or any public or private agency.

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

(3) Contributions, premiums, and taxes paid or transmitted on the recipient's behalf for unemployment compensation, workers' compensation, and the employer's share of federal old-age survivors and disability insurance benefits shall be payable in addition to the maximum monthly amount established pursuant to Section 12303.5 or subdivision (a) of Section 12304 or other amount payable to or on behalf of a recipient. Contributions, premiums, or taxes resulting from liability incurred by the recipient as employer for unemployment compensation, workers'

compensation, and federal old-age, survivors and disability insurance benefits with respect to any period commencing on or after January 1, 1978, and ending on or before the effective date of this section shall also be payable in addition to the maximum monthly amount established pursuant to Section 12303.5 or subdivision (a) of Section 12304 or other amount payable to or on behalf of the recipient. Nothing in this section shall be construed to permit any interference with the recipient's right to select the provider of services or to authorize a charge for administrative costs against any amount payable to or on behalf of a recipient.

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

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

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

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

(b) No later than July 1, 2010, the county shall complete a criminal background check pursuant to subdivision (a) for a provider who is providing in-home supportive services prior to October 1, 2009, and who is not listed on a public authority or nonprofit consortium registry, as a condition of the provider's

continued enrollment in the IHSS program. Criminal background checks shall be conducted at the provider's expense.

(c) (1) Upon notice from the Department of Justice that a prospective or current provider has been convicted of a criminal offense specified in Section 12305.81, the county shall deny or terminate the applicant's request to become a provider of supportive services to any recipient of the In-Home Supportive Services program.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) A space for the county to include a reference to any Penal Code sections and corresponding offense names or descriptions that describe the relevant conviction or convictions that are covered by subdivision (b) and that the provider applicant has in his or her background.

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

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

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

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

(6) Nothing in this section shall preclude a provider who is eligible to receive payment for services provided pursuant to an individual waiver under this subdivision from being eligible to

receive payment for services provided to one or more additional recipients who obtain waivers pursuant to this same subdivision.

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

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

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

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

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

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

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

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

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

(F) Employment history and current or former employer recommendations. Additional consideration shall be given to employer recommendations provided by a person who has received

or has indicated a desire to receive supportive or personal care services from the applicant, including, but not limited to, those services, specified in Section 12300.

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

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

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

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

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

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

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

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

(g) (1) Upon written notification that the department has determined that a request for exception shall be denied, the applicant may request an administrative hearing by submitting a written request to the department within 15 business days of receipt of the written notification. Upon receipt of a written request, the department shall hold an administrative hearing consistent with

the procedures specified in Section 100171 of the Health and Safety Code, except where those procedures are inconsistent with this section.

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

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

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

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

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

(2) The initial adoption of emergency regulations pursuant to this section and one readoption of emergency regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare. Initial emergency regulations and the one readoption of emergency

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

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

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

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

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

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

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

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

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

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

(3) The state shall participate as provided in subdivision (c) in a total of wages and individual health benefits up to ten dollars and ten cents (\$10.10) per hour, if wages have reached at least seven dollars and fifty cents (\$7.50) per hour. Counties shall determine, pursuant to the collective bargaining process provided for in subdivision (c) of Section 12301.6, what portion of the ten dollars and ten cents (\$10.10) per hour shall be used to fund wage increases above seven dollars and fifty cents (\$7.50) per hour or

individual health benefit increases, or both. This paragraph shall be operative commencing with the next state fiscal year for which the May Revision forecast of General Fund revenue, excluding transfers, exceeds by at least 5 percent, the most current estimate of revenue, excluding transfers, for the year in which paragraph (2) became operative.

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

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

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

(7) (A) The Legislature finds and declares that injunctions issued by the courts have prevented the state from implementing the

changes described in paragraph (6) during the pendency of litigation. To avoid confusion for providers, recipients, and other stakeholders, it is therefore the intent of the Legislature to temporarily suspend the reductions described in that paragraph until July 1, 2012, to allow the litigation to reach a final result.

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

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

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

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

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

12306.6. (a) (1) Notwithstanding any other provision of law, beginning on the date for which the federal Centers for Medicare and Medicaid Services authorizes commencement of the implementation of this section, but no earlier than July 1, 2010, and concurrent with the collection of the sales tax extended to support services pursuant to Article 4 (commencing with Section

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

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

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

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

(2) The Director of Finance shall determine the sum required to be deposited in the Personal Care IHSS Quality Assurance Revenue Fund to fund the initial supplementary payments from the fund. As soon thereafter as reasonably possible, this sum shall be transferred, in the form of a loan, from the General Fund to the

Personal Care IHSS Quality Assurance Revenue Fund. At the time sufficient revenues have been deposited in the Personal Care IHSS Quality Assurance Revenue Fund pursuant to Section 6168 of the Revenue and Taxation Code to sustain the continued operation of the fund for that portion of the supplementary payment described in paragraph (2) of subdivision (a) plus an additional amount equal to the General Fund loan made pursuant to this paragraph, plus interest, the sum transferred from the General Fund, including interest, shall be repaid to the General Fund. Subsequent supplementary payments pursuant to this section shall be made from revenue deposited in the Personal Care IHSS Quality Assurance Revenue Fund pursuant to Section 6168 of the Revenue and Taxation Code.

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

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

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

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

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

(e) (1) Notwithstanding the rulemaking provisions of the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department and the State Department of Health Care Services may implement and administer this section through all-county letters or similar instruction from the department and the State Department of Health Care Services until regulations are adopted. The department and the State Department of Health Care Services shall adopt emergency regulations implementing this section no later than 12 months following the initial effective date of the supplementary payments. The department and the State Department of Health Care Services may readopt any emergency regulation authorized by this section that is the same as or substantially equivalent to an emergency regulation previously adopted under this section.

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

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

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

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

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

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

- (A) The recipient’s living environment.
- (B) Alternative resources.
- (C) The recipient’s functional abilities.

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

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

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

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

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

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

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

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

(e) (1) Notwithstanding any other law, and effective September 1, 2009, individuals shall be eligible for each domestic or related service only if assessed at a rank four or five, as defined in subdivision (d), in the activity of daily living relating to that service. The activities of daily living that relate to domestic and related services are defined in regulations and include housework, laundry, shopping and errands, meal preparation, and meal cleanup. The rank for each domestic and related service shall be determined based on an assessment of need for supportive services by the

county, in accordance with this section and the hourly task guidelines as defined by Section 12301.2. This paragraph does not apply to individuals meeting one of the conditions specified in paragraph (2).

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

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

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

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

(2) The initial adoption of emergency regulations implementing this section and one readoption of emergency regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare. Initial emergency regulations and the one readoption of emergency regulations authorized by this subdivision shall be exempt from review and approval by the Office of Administrative Law. The initial emergency regulations and the one readoption of emergency regulations authorized by this subdivision shall be submitted to

the Office of Administrative Law for filing with the Secretary of State and each shall remain in effect for no more than 180 days, by which time final regulations may be adopted.

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

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

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

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

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

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

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

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

(4) To the extent necessary to maintain federal financial participation, the director may waive any or all of the provisions

of paragraph (3), after consultation with the State Department of Health Care Services.

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

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

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

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

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

(2) Notwithstanding subdivision (d) or any other provision of law, this section shall not be implemented until July 1, 2012, and as of that date shall only be implemented if a court of competent jurisdiction has issued an order, that is not subject to appeal or for which the time to appeal has expired, upholding its validity.

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

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

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

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

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

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

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

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

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

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

(e) (1) In accordance with federal law, federal food stamp benefits (Chapter 10 (commencing with Section 18900) of Part 6), federal supplemental security income benefits, state supplemental security program benefits, public social services, as

defined in Section 10051, and county aid benefits (Part 5 (commencing with Section 17000)), shall not be reduced as a consequence of the receipt of the WINS benefit paid under this chapter.

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

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

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

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

to the caseload reduction credit in the CalWORKs program. The department shall convene this workgroup on or before December 1, 2011.

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

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

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

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

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

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

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

for administration of the Food Stamp program. The methodology used for calculating those projections shall remain the same as it was for the 2009–10 fiscal year for as long as this section remains in effect.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Approved _____, 2010

Governor