

Introduced by Senator BenoitFebruary 24, 2009

An act to amend Section 12301.6 of, and to add Section 12301.61 to, the Welfare and Institutions Code, relating to in-home supportive services.

LEGISLATIVE COUNSEL'S DIGEST

SB 246, as introduced, Benoit. In-home supportive services: registries: criminal background checks.

Existing law provides for the In-Home Supportive Services (IHSS) program, under which, either through employment by the recipient, by or through contract by the county, by the creation of a public authority, or pursuant to a contract with a nonprofit consortium, qualified aged, blind, and disabled persons receive services enabling them to remain in their own homes.

Existing law requires a nonprofit consortium or public authority to provide for various functions, including establishing a registry of in-home supportive service providers and investigating the qualifications and background of prospective registry applicants. Under existing law, the investigation may include criminal background checks requested by the nonprofit consortium or public authority and conducted by the Department of Justice.

This bill would, instead, require the investigation to include criminal background checks. This bill would require that, as part of the criminal background check, an in-home supportive services provider be fingerprinted and submit the fingerprint images and any other related information required by the Department of Justice to assist the department in obtaining information related to the existence and content of any records of any state or federal convictions and arrests. The bill

would provide that an in-home supportive services provider shall be responsible for covering the cost of providing fingerprint images and other information to the Department of Justice.

This bill would provide that, in order to be employed as an in-home supportive services provider in a county that has contracted with a nonprofit consortium or established a public authority, an applicant shall, as a condition of employment, be on the registry or be placed on that registry within 90 days of when the applicant first begins to provide in-home supportive services. The bill would provide that an in-home supportive services provider who is already providing services on January 1, 2010, and who is not on the registry on that date shall have until April 1, 2010, to be placed on the registry in order to continue to provide in-home supportive services.

Because the bill would require certain counties to perform additional responsibilities in administering the IHSS program, the bill would impose a state-mandated local program.

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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

1 SECTION 1. Section 12301.6 of the Welfare and Institutions
2 Code is amended to read:
3 12301.6. (a) Notwithstanding Sections 12302 and 12302.1, a
4 county board of supervisors may, at its option, elect to do either
5 of the following:
6 (1) Contract with a nonprofit consortium to provide for the
7 delivery of in-home supportive services.
8 (2) Establish, by ordinance, a public authority to provide for
9 the delivery of in-home supportive services.
10 (b) (1) To the extent that a county elects to establish a public
11 authority pursuant to paragraph (2) of subdivision (a), the enabling
12 ordinance shall specify the membership of the governing body of

1 the public authority, the qualifications for individual members, the
2 manner of appointment, selection, or removal of members, how
3 long they shall serve, and other matters as the board of supervisors
4 deems necessary for the operation of the public authority.

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

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

10 (B) A corporate public body, exercising public and essential
11 governmental functions and that has all powers necessary or
12 convenient to carry out the delivery of in-home supportive services,
13 including the power to contract for services pursuant to Sections
14 12302 and 12302.1 and that makes or provides for direct payment
15 to a provider chosen by the recipient for the purchase of services
16 pursuant to Sections 12302 and 12302.2. Employees of the public
17 authority shall not be employees of the county for any purpose.

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

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

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

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

1 (4) If the enabling ordinance does not designate the board of
2 supervisors as the governing body of the public authority, the
3 enabling ordinance shall require the membership of the governing
4 body to meet the requirements of subparagraph (B) of paragraph
5 (3).

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

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

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

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

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

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

37 (2) (A) (i) *(I)* The investigation of the qualifications and
38 background of ~~potential~~ personnel. The investigation ~~may~~, *shall*,
39 with respect to any prospective registry applicant ~~who is not~~
40 ~~employed before January 1, 2008~~, include criminal background

1 checks requested by the nonprofit consortium or public authority
2 and conducted by the Department of Justice pursuant to Section
3 15660, for those public authorities or nonprofit consortia using the
4 agencies ~~on January 1, 2008.~~

5 *(II) As part of the criminal background check, an in-home*
6 *supportive services provider shall be fingerprinted and submit the*
7 *fingerprint images and any other related information required by*
8 *the Department of Justice to assist the department in obtaining*
9 *information related to the existence and content of any records of*
10 *any state or federal convictions and arrests.*

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

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

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

33 (D) *(i)* No fee shall be charged to a provider, potential
34 personnel, or service recipient to cover any costs of administering
35 this paragraph associated with criminal background checks, or the
36 cost to the Department of Justice or any law enforcement agency
37 for processing the criminal background check. Nothing in this
38 paragraph shall be construed to prohibit the Department of Justice
39 from assessing a fee pursuant to Section 11105 or 11123 of the
40 Penal Code to cover the cost of furnishing summary criminal

1 history information. A public authority or nonprofit consortium
2 shall not seek reimbursement unless the conditions described in
3 subparagraph (F) are met.

4 *(ii) Notwithstanding clause (i), an in-home supportive services*
5 *provider shall be responsible for covering the cost of being*
6 *fingerprinted and any other costs related to the requirements in*
7 *subclause (II) of clause (i) of subparagraph (A).*

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

12 (F) (i) Upon verification that at least 50 percent of the public
13 authority or nonprofit consortium list of registry applicants have
14 received a criminal background check, the county may request
15 reimbursement for the nonfederal share of cost associated with the
16 criminal fingerprint record check in accordance to the fiscal
17 claiming methodology.

18 (ii) The public authority or nonprofit consortium shall provide
19 a report to the State Department of Social Services on the number
20 of prospective registry applicants that have been referred to the
21 Department of Justice for a criminal background check.

22 (iii) The Department of Justice shall provide verification to the
23 State Department of Social Services on the number of prospective
24 registry applicants that have completed a criminal background
25 check.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 SEC. 2. Section 12301.61 is added to the Welfare and
36 Institutions Code, to read:

37 12301.61. (a) In order to be employed as an in-home
38 supportive services provider in a county that has contracted with
39 a nonprofit consortium or established a public authority pursuant
40 to Section 12301.6, an applicant shall, as a condition of

1 employment, be on the registry established by the county pursuant
2 to paragraph (1) of subdivision (e) of Section 12301.6 or be placed
3 on that registry within 90 days of when the applicant first begins
4 to provide in-home supportive services.

5 (b) An in-home supportive services provider who is already
6 providing services on January 1, 2010, and who is not on the
7 registry on that date shall have until April 1, 2010, to be placed
8 on the registry in order to continue to provide in-home supportive
9 services.

10 SEC. 3. If the Commission on State Mandates determines that
11 this act contains costs mandated by the state, reimbursement to
12 local agencies and school districts for those costs shall be made
13 pursuant to Part 7 (commencing with Section 17500) of Division
14 4 of Title 2 of the Government Code.