

AMENDED IN SENATE SEPTEMBER 2, 2011

AMENDED IN SENATE JUNE 28, 2011

AMENDED IN SENATE MARCH 15, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 101

Introduced by ~~Committee on Budget (Blumenfield (Chair), Alejo, Allen, Brownley, Buchanan, Butler, Cedillo, Chesbro, Dickinson, Feuer, Gordon, Huffman, Mitchell, Monning, and Swanson)~~
Assembly Member John A. Pérez
(Principal coauthor: Senator Steinberg)

January 10, 2011

~~An act to add Sections 4792, 12301.07, and 14105.09 to the Welfare and Institutions Code, relating to health and human services, and making an appropriation therefor, to take effect immediately, bill related to the budget.~~ *An act to add Article 19.5 (commencing with Section 8430) to Chapter 2 of Part 6 of Division 1 of Title 1 of the Education Code, relating to child care.*

LEGISLATIVE COUNSEL'S DIGEST

AB 101, as amended, ~~Committee on Budget~~ *John A. Pérez. Health and human services. Child care: family child care providers: bargaining representative.*

(1) Existing law authorizes employees of public schools to form, join, and participate in the activities of an employee organization for the purpose of representation on matters of employer-employee relations, including terms and conditions of employment.

The Child Care and Development Services Act, administered by the State Department of Education, requires the Superintendent of Public

Instruction to administer child care and development programs that offer a full range of services for eligible children from infancy to 13 years of age.

This bill would authorize family child care providers, as defined, to choose whether to be represented by a single provider organization, as defined, that would be designated pursuant to a specified petition and election process overseen by the Public Employment Relations Board or a neutral 3rd party designated by the board.

The bill would require the State Department of Social Services and the State Department of Education, with assistance of specified state departments and agencies, and their contractors and subcontractors, to make specified information regarding individual family child care providers available to provider organizations and would require the provider organization requesting the information to bear the costs of collecting the information.

The bill would authorize a certified provider organization to perform various functions, including meeting with state regulatory agencies and engaging in various types of negotiation on matters within a specified scope of representation with the Department of Personnel Administration, in consultation with the Superintendent of Public Instruction and other state agencies that administer programs of publicly funded child care. The bill would prohibit provider organizations from calling strikes and from interfering with, intimidating, restraining, coercing, or discriminating against a family child care provider because the family child care provider joins or refuses to join a provider organization. The state, as defined, also would be subject to the latter prohibition.

(2) Existing law, the Budget Act of 2011, identifies AB 101 as a bill providing for appropriations related to the Budget Bill, to take effect immediately.

This bill would provide that, notwithstanding the Budget Act of 2011, this act is not a bill providing for appropriations related to the Budget Bill, thereby declaring that this act not take effect immediately.

~~(1) Existing law, the Lanterman Developmental Disabilities Services Act, authorizes the State Department of Developmental Services to contract with regional centers to provide services and supports to individuals with developmental disabilities.~~

~~This bill would, if a specified provision of the Budget Act of 2011 is operative, state the intent of the Legislature for the department to identify up to \$100 million in General Fund savings from the developmental~~

services system, as prescribed. This bill would authorize the department to utilize input from prescribed workgroups. This bill would require, as prescribed, the department to report to the Joint Legislative Budget Committee within 10 days of the specified reduction as directed within the Budget Act of 2011.

~~(2) Existing law provides for the In-Home Supportive Services (IHSS) program, under which, either through employment by the recipient, or by or through contract by the county, qualified aged, blind, and disabled persons receive services enabling them to remain in their own homes. Counties are responsible for the administration of the IHSS program. Under the Medi-Cal program, similar services are provided to eligible individuals, with these services known as personal care option services.~~

~~Existing law authorized an individual who was eligible for IHSS services in the 1992–93 fiscal year, and who had his or her services reduced pursuant to specified provisions, but who believed that he or she was at serious risk of out-of-home placement unless all or part of the reduced hours were restored, to apply for an IHSS Care Supplement, as prescribed.~~

~~Existing law established a similar reduction in authorized IHSS service hours, which becomes operative only if a specified medication machine pilot project does not achieve a designated amount of savings to the General Fund, as determined by the Department of Finance, and also authorizes an individual whose services have been reduced, and who believes that he or she is at serious risk of out-of-home placement, to submit an IHSS Care Supplement application, in accordance with specified provisions, in order to have all or part of the service hour reduction restored.~~

~~Existing law also requires the department to implement a 3.6% reduction in service hours to each IHSS recipient, until July 1, 2012.~~

~~This bill, effective January 1, 2012, would impose an additional 20% service hour reduction on IHSS recipients, which would be operative only if a designated provision of the Budget Act of 2011 becomes operative, and would establish an IHSS Care Supplement process for any individual who is notified of a reduction in service hours under the bill, but who believes he or she is at serious risk of out-of-home placement unless all or part of the reduction is restored.~~

~~(3) Existing law establishes the Medi-Cal program, administered by the State Department of Health Care Services, under which health care services are provided to qualified low-income persons. The Medi-Cal~~

program is, in part, governed and funded by federal Medicaid Program provisions:

~~This bill would, effective on or after January 1, 2012, if a specified provision of the Budget Act of 2011 is operative, apply specified payment reductions to managed care health plans that contract with the department and to other specified contracts.~~

~~(4) This bill would appropriate \$1,000 to the State Department of Health Care Services for administration.~~

~~(5) This bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.~~

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

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

1 SECTION 1. *The Legislature finds and declares all of the*
 2 *following:*

3 (a) *Quality, affordable child care is essential to prepare*
 4 *California’s children to succeed in school and in life and to allow*
 5 *families to work and contribute to the state’s economy with the*
 6 *assurance that their children are safe and well cared for.*

7 (b) *There is a need to improve the quality of child care and to*
 8 *reduce turnover in the industry that is charged with providing safe*
 9 *and quality care for children in California. Limited or no*
 10 *employment benefits and low wages can drive dedicated child care*
 11 *providers from the profession. The resulting turnover negatively*
 12 *impacts the quality of child care provided and prevents children*
 13 *from receiving the type of care they require in order to be prepared*
 14 *for, and adapt successfully to, school settings.*

15 (c) *Turnover among family child care providers is estimated at*
 16 *30 to 40 percent per year, five times higher than among teachers*
 17 *in the public school system. Experienced providers are leaving the*
 18 *profession simply because they cannot afford to provide for their*
 19 *own families. Losing a caregiver means children’s cognitive and*
 20 *social development is disrupted and parents are left scrambling*
 21 *to find other arrangements.*

22 (d) *The supply of quality child care in the market is inadequate*
 23 *to meet the demand in California. In 2010, the state lost nearly*
 24 *5,700 licensed providers, representing a 13 percent decline in the*
 25 *supply of licensed child care and an elimination of 11 percent or*

1 44,000 licensed slots in these homes. In 2009, there was only
2 licensed capacity to care for 27 percent of children with working
3 parents.

4 (e) Family child care is affordable and convenient; it is
5 particularly vital to parents of infants and the one in five California
6 workers who work nontraditional schedules.

7 (f) Family child care providers are a vital part of the child care
8 system. Their role gives them unique insight into how quality,
9 access, and stability could be improved for children and families.
10 But family child care providers lack any formal voice in
11 decisionmaking on issues that shape the child care system and the
12 way they carry out their profession.

13 (g) To promote higher quality and greater access and stability
14 in the child care system, it is necessary to enact legislation to grant
15 family child care providers the right to choose a representative to
16 negotiate collectively with the state over the operation of the child
17 care system. Permitting family child care providers a formal voice
18 will allow the state to get input from providers and to maximize
19 its return on its investment in child care and will allow providers
20 to advocate to improve the quality, access, and stability of care
21 available to California's children and families.

22 SEC. 2. Article 19.5 (commencing with Section 8430) is added
23 to Chapter 2 of Part 6 of Division 1 of Title 1 of the Education
24 Code, to read:

25

26 *Article 19.5. Quality Family Child Care*

27

28 8430. (a) The purpose of this article is to promote quality,
29 access, and stability in the child care system by authorizing an
30 appropriate unit of family child care providers to choose a provider
31 organization to act as their exclusive representative on all matters
32 specified in this article. It is also the purpose of this article to
33 promote full communication between family child care providers
34 and the state by permitting a provider organization certified as
35 the representative of family child care providers to meet and confer
36 with the state regarding the state's child care system.

37 (b) This article does not change family child care providers'
38 status as independent business owners or classify family child care
39 providers as public employees.

1 8430.5. *This article shall be known and may be cited as the*
2 *Quality Family Child Care Act.*

3 8431. *As used in this article:*

4 (a) *“Certified provider organization” means a provider*
5 *organization or provider organizations that jointly are certified*
6 *by the board as the exclusive representative of family child care*
7 *providers in an appropriate unit after a proceeding under Section*
8 *8434.*

9 (b) *“Child care subsidy program” means a program established*
10 *pursuant to this chapter and administered by the department or*
11 *the State Department of Social Services, or both, to subsidize*
12 *families in purchasing child care.*

13 (c) *“Family child care provider” or “provider” means either*
14 *of the following:*

15 (1) *A family day care home provider, as defined in Section*
16 *1596.78 of the Health and Safety Code, who is licensed pursuant*
17 *to the requirement in Section 1596.80 of the Health and Safety*
18 *Code.*

19 (2) *An individual who meets all of the following criteria:*

20 (A) *Provides child care in his or her own home or in the home*
21 *of the child receiving care.*

22 (B) *Is exempt from licensing requirements pursuant to Section*
23 *1596.792 of the Health and Safety Code.*

24 (C) *Participates in a child care subsidy program.*

25 (d) *“Provider organization” means an organization that has*
26 *all of the following characteristics:*

27 (1) *Includes family child care providers.*

28 (2) *Has as one of its main purposes the representation of family*
29 *child care providers in their relations with public and private*
30 *entities in California.*

31 (3) *Is not an entity that contracts with the state or a county to*
32 *administer or process payments for a child care subsidy program.*

33 (e) *“Public Employment Relations Board” or “board” means*
34 *the Public Employment Relations Board established pursuant to*
35 *Section 3541 of the Government Code. The powers and duties of*
36 *the board described in Sections 3514.5, 3520.5, and 3541.3 of the*
37 *Government Code, and the respective implementing regulations,*
38 *shall apply, as appropriate, to this article to the extent those*
39 *procedures are not inconsistent with the procedures specified in*
40 *this article. If any provision of this article is the same or*

1 *substantially the same as that contained in Chapter 10*
2 *(commencing with Section 3500), Chapter 10.3 (commencing with*
3 *Section 3512), or Chapter 10.7 (commencing with Section 3540)*
4 *of Division 4 of Title 1 of the Government Code, it shall be*
5 *interpreted and applied in accordance with the judicial*
6 *interpretations of the provision in those statutes.*

7 8431.5. *The state action antitrust exemption to the application*
8 *of federal and state antitrust laws is applicable to the activities of*
9 *family child care providers and their representatives authorized*
10 *under this article.*

11 8432. *Family child care providers have the right to form, join,*
12 *and participate in the activities of provider organizations of their*
13 *own choosing for the purpose of being represented in all matters*
14 *specified in this article. Family child care providers have the right*
15 *to refuse to join or participate in the activities of provider*
16 *organizations, except that a certified provider organization may*
17 *charge family child care providers who receive payment from a*
18 *child care subsidy program a fair share fee pursuant to Section*
19 *8436.*

20 8432.5. *Family child care providers are not public employees,*
21 *and this article does not create an employer-employee relationship*
22 *between family child care providers and the state or any public*
23 *or private nonprofit entity for any purpose, including, but not*
24 *limited to, eligibility for health or retirement benefits or vicarious*
25 *liability in tort. This article does not alter the status of a family*
26 *child care provider as a business owner, an employee of a family,*
27 *or a contractor.*

28 8433. *This article does not alter the rights of families to select,*
29 *direct, and terminate the services of family child care providers.*

30 8433.5. (a) *Within 10 days of receipt of a request from a*
31 *provider organization, the State Department of Social Services*
32 *shall make available to that provider organization information*
33 *regarding family child care providers described in paragraph (1)*
34 *of subdivision (c) of Section 8431, including each provider's name,*
35 *home address, mailing address, telephone number, electronic mail*
36 *(e-mail) address, and license number.*

37 (b) *Within 30 days of receipt of a request from a provider*
38 *organization, the department, with the assistance of the State*
39 *Department of Social Services and any state department or agency,*
40 *or its contractor or subcontractor, in possession of the relevant*

1 information, shall collect information regarding family child care
2 providers, including each provider's name, home address, mailing
3 address, telephone number, electronic mail (e-mail) address,
4 unique provider identification number, including license number,
5 if applicable, and whether or not the provider has participated in
6 a child care subsidy program in the previous six months and shall
7 make that information available to the provider organization. The
8 provider organization shall bear the reasonable costs of collecting
9 the information described in this subdivision if that information
10 has not been previously collected.

11 (c) A provider organization under this article shall be
12 considered a day care organization for purposes of subdivisions
13 (b) and (c) of Section 1596.86 of the Health and Safety Code. All
14 confidentiality requirements applicable to recipients of information
15 pursuant to Section 1596.86 of the Health and Safety Code apply
16 to provider organizations and shall apply also to protect the
17 personal information of family child care providers as defined in
18 paragraph (2) of subdivision (c) of Section 8431. Information
19 provided pursuant to this section shall be used only for the purpose
20 of organizing and representing family child care providers.

21 8434. (a) An appropriate unit of family child care providers,
22 as defined in subdivision (g), may designate, in accordance with
23 the provisions of this article, the provider organization, if any,
24 that shall be its exclusive representative. The board shall certify
25 a provider organization designated by an appropriate unit of family
26 child care providers as the exclusive representative of those
27 providers.

28 (b) Requests for elections, challenges, competing claims,
29 requests for intervention, petitions for elections for unit
30 modifications, and requests for decertification shall be filed with,
31 received, and acted upon by the board.

32 (c) At any point after the provider organization is certified as
33 an exclusive representative and without complying with the
34 requirement of a one-year waiting period, a certified provider
35 organization may file with the board a petition to expand an
36 existing unit of providers based on a showing of interest by 30
37 percent of the providers to be added to the existing unit.

38 (d) The board may designate a neutral third party to act on any
39 of the requests filed with the board under subdivision (b) or (c).

1 (e) *The provider organization that presents a petition requesting*
2 *certification shall pay the reasonable costs of verifying the number*
3 *of family child care providers that have designated a provider*
4 *organization to act as their exclusive representative.*

5 (f) *All provider organizations placed on the ballot shall share*
6 *equally the cost of an election.*

7 (g) *A unit of providers will be considered an appropriate unit*
8 *if it is a statewide unit and it includes either of the following:*

9 (1) *All family child care providers who are licensed pursuant*
10 *to the requirement in Section 1596.80 of the Health and Safety*
11 *Code.*

12 (2) *All or a reasonable subset of family child care providers*
13 *who participate in a child care subsidy program.*

14 (h) *There shall be no more than one bargaining unit at any time.*
15 *That unit shall be represented by no more than one certified*
16 *provider organization.*

17 (i) *A certified provider organization shall represent each*
18 *provider in the represented unit fairly, without discrimination and*
19 *without regard to whether the provider is a member of the provider*
20 *organization.*

21 8434.5. *The scope of representation shall include all of the*
22 *following:*

23 (a) *The administration of laws and regulations governing*
24 *licensing for providers.*

25 (b) *Joint labor-management committees.*

26 (c) *Contract grievance arbitration.*

27 (d) *Expanded access to professional development and training*
28 *opportunities for providers.*

29 (e) *Benefits for providers.*

30 (f) *Payment procedures for child care subsidy programs.*

31 (g) *Reimbursement rates for providers participating in a child*
32 *care subsidy program. At the Governor's option, the scope of*
33 *representation may exclude this issue from the scope of*
34 *representation until July 1, 2014.*

35 (h) *Expanded access to food and nutrition programs.*

36 (i) *The deduction of membership dues and fair share fees.*

37 (j) *Any changes to current practice other than those listed in*
38 *subdivisions (a) to (h), inclusive, that would do any of the*
39 *following:*

40 (1) *Improve recruitment and retention of qualified providers.*

1 (2) *Improve the quality of the programs.*

2 (3) *Encourage qualified providers to seek additional education*
 3 *and training.*

4 (4) *Promote the health and safety of providers and the children*
 5 *in their care.*

6 8435. (a) *The Governor, through the Department of Personnel*
 7 *Administration, in consultation with the Superintendent, other*
 8 *state agencies that administer programs of publicly funded child*
 9 *care, and their contractors, as needed, shall meet and confer in*
 10 *good faith regarding all matters within the scope of representation*
 11 *with representatives of a certified provider organization and,*
 12 *before arriving at a determination of policy or course of action,*
 13 *shall consider fully the presentations made by the certified provider*
 14 *organization on behalf of the providers it represents.*

15 (b) *As used in this section, “meet and confer in good faith”*
 16 *means that the Governor, through the Department of Personnel*
 17 *Administration, and representatives of the certified provider*
 18 *organization shall have the mutual obligation to meet and confer*
 19 *promptly upon request by either party and continue for a*
 20 *reasonable period of time in order to exchange freely information,*
 21 *opinions, and proposals. The duty to meet and confer in good faith*
 22 *also requires the parties to begin negotiations sufficiently in*
 23 *advance of the adoption of the state’s final budget for the ensuing*
 24 *fiscal year so that there is adequate time for agreement to be*
 25 *reached before the adoption of the final budget and for the*
 26 *resolution of an impasse.*

27 8435.5. (a) *If agreement is reached between the Governor,*
 28 *through the Department of Personnel Administration, and the*
 29 *certified provider organization, they jointly shall prepare a written*
 30 *memorandum of understanding. Any portions of the memorandum*
 31 *of understanding requiring appropriation by the Legislature or*
 32 *statutory or regulatory revisions shall be subject to legislative*
 33 *approval of those appropriations or statutory or regulatory*
 34 *revisions.*

35 (b) *A memorandum of understanding between the Governor,*
 36 *through the Department of Personnel Administration, and the*
 37 *certified provider organization is binding on all state departments*
 38 *and agencies that are involved in the administration of child care*
 39 *subsidy programs, and the relevant contractors or subcontractors*
 40 *of those departments and agencies.*

1 (c) An agreement pursuant to this section may provide for
2 binding arbitration of grievances concerning the interpretation,
3 application, or violation of the agreement.

4 (d) This article does not alter the requirements governing the
5 child care reimbursement system that are set forth in Section 8222.

6 8436. (a) A certified provider organization shall have the same
7 right to enter into an agreement with the state regarding deduction
8 of membership dues and fair share fees from subsidy payments
9 made to providers, including payments made through state
10 agencies, departments, contractors, or subcontractors, as
11 recognized employee organizations have under Sections 3515.7
12 and 3515.8 of the Government Code. An agreement to deduct
13 membership dues or fair share fees shall apply only to those
14 providers who receive payment from a child care subsidy program.

15 (b) The amount of any fair share fee shall not exceed the amount
16 of the dues payable by the members of the certified provider
17 organization. The costs covered by the fair share fee may include
18 all of the following:

19 (1) The certified provider organization's costs for meeting and
20 conferring with the state.

21 (2) Contract administration.

22 (3) Securing for the represented providers improvements in
23 subsidy rates, benefits, payment systems, training opportunities,
24 and other matters related to the family child care system in addition
25 to those secured through meeting and conferring with the state.

26 (4) Other activities germane to the certified provider
27 organization's function as the exclusive representative of providers.

28 (c) If the deduction of membership dues or fair share fees for a
29 provider requires action by more than one agency, department,
30 contractor, or subcontractor, the certified provider organization
31 shall establish procedures to ensure both of the following:

32 (1) The amount of the dues or fees does not exceed the total
33 membership or fair share fee owed by that provider.

34 (2) The administrative procedures for deducting dues or fees
35 are reasonable.

36 (d) The state, its agencies and departments, and their
37 contractors and subcontractors shall not be liable in any action
38 by a provider seeking recovery of, or damage for, improper
39 calculation or use of fair share fees.

1 8436.5. (a) *It is unlawful for the state, including its agencies,*
2 *boards, commissions, departments, public benefit corporations,*
3 *political subdivisions, contractors, subcontractors, or employees,*
4 *to do to providers or provider organizations any of the things made*
5 *unlawful under Section 3519 of the Government Code.*

6 (b) *It shall be unlawful for a provider organization to do to the*
7 *state or to providers any of the things made unlawful under Section*
8 *3519.5 of the Government Code.*

9 (c) *For purposes of subdivisions (a) and (b), the references in*
10 *subdivision (e) of Section 3519 of, and subdivision (d) of Section*
11 *3519.5 of, the Government Code to “the mediation procedure set*
12 *forth in Section 3518” shall be deemed to refer to the impasse*
13 *procedures set forth in Section 8437.5.*

14 (d) *The initial determination as to whether charges of unfair*
15 *practices are justified and, if so, what remedy is necessary to*
16 *effectuate the purposes of this article shall be a matter within the*
17 *exclusive jurisdiction of the board.*

18 8437. A provider organization may not direct or call a strike.

19 8437.5. *If after a reasonable period of time the parties fail to*
20 *reach agreement, the parties may agree to submit unresolved issues*
21 *to the California State Mediation and Conciliation Service*
22 *established by the Department of Industrial Relations for*
23 *mediation, or either party may declare that an impasse has been*
24 *reached and request the board to appoint a mediator from the*
25 *California State Mediation and Conciliation Service. A*
26 *memorandum of understanding reached by means of mediation is*
27 *subject to appropriation by the Legislature and necessary statutory*
28 *and regulatory revisions.*

29 SEC. 3. *Notwithstanding Section 39.00 of the Budget Act of*
30 *2011, this act is not a bill providing for appropriations related to*
31 *the Budget Bill within the meaning of subdivision (e) of Section*
32 *12 of Article IV of the California Constitution and shall not take*
33 *effect immediately.*

34 SECTION 1. ~~Section 4792 is added to the Welfare and~~
35 ~~Institutions Code, to read:~~

36 ~~4792. (a) This section of law shall only be operative if~~
37 ~~subdivision (b) of Section 3.94 of the Budget Act of 2011 is~~
38 ~~operative. It is the intent of the Legislature for the department to~~
39 ~~identify up to one hundred million dollars (\$100,000,000) in~~
40 ~~General Fund savings from within the overall developmental~~

1 services system, including any savings or reductions within state
2 administrative support, operation of the developmental centers,
3 and operation of the regional centers, including administration and
4 the purchase of services where applicable if subdivision (b) of
5 Section 3.94 of the Budget Act of 2011 is operative. A variety of
6 strategies, including, but not limited to, savings attributable to
7 caseload adjustments, changes in expenditure trends, unexpended
8 contract funds, or other administrative savings or restructuring can
9 be applied to this reduction with the intent of keeping reductions
10 as far away as feasible from consumer's direct needs, services,
11 and supports, including health, safety, and quality of life.

12 (b) ~~The department may utilize input from workgroups~~
13 ~~comprised of consumers and family members, consumer-focused~~
14 ~~advocacy groups, service provider representatives, regional center~~
15 ~~representatives, developmental center representatives, other~~
16 ~~stakeholders, and staff of the Legislature, to develop General Fund~~
17 ~~savings proposals as necessary.~~

18 (c) ~~If subdivision (b) of Section 3.94 of the Budget Act of 2011~~
19 ~~is operative, and the department is directed to identify up to one~~
20 ~~hundred million dollars (\$100,000,000) in General Fund savings~~
21 ~~from within the developmental services system, any savings or~~
22 ~~reductions identified shall be reported to the Joint Legislative~~
23 ~~Budget Committee within 10 days of the reduction as directed~~
24 ~~within Section 3.94 of the Budget Act of 2011.~~

25 ~~SEC. 2. Section 12301.07 is added to the Welfare and~~
26 ~~Institutions Code, to read:~~

27 ~~12301.07. (a) (1) Notwithstanding any other provision of law,~~
28 ~~if Section 3.94 of the Budget Act of 2011 becomes operative, the~~
29 ~~department shall implement a 20 percent reduction in authorized~~
30 ~~hours of service to each in-home supportive services recipient as~~
31 ~~specified in this section, effective January 1, 2012, which shall be~~
32 ~~applied to the recipient's hours as authorized pursuant to his or~~
33 ~~her most recent assessment.~~

34 ~~(2) The reduction required by this section shall not preclude~~
35 ~~any reassessment to which a recipient would otherwise be entitled.~~
36 ~~However, hours authorized pursuant to a reassessment shall be~~
37 ~~subject to the reduction required by this section.~~

38 ~~(3) For those recipients who have a documented unmet need,~~
39 ~~excluding protective supervision, because of the limitations~~
40 ~~contained in Section 12303.4, this reduction shall be applied first~~

1 to the unmet need before being applied to the authorized hours. If
2 the recipient believes he or she will be at serious risk of
3 out-of-home placement as a consequence of the reduction, the
4 recipient may apply for a restoration of the reduction of authorized
5 service hours, pursuant to subdivision (f).

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

9 (5) The reduction in service hours made pursuant to paragraph
10 (2) shall not apply to in-home supportive services recipients who
11 also receive services under Section 9560, subdivision (t) of Section
12 14132, and Section 14132.99.

13 (b) The department shall work with the counties to develop a
14 process to allow for counties to preapprove IHSS Care Supplements
15 described in subdivision (f), to the extent that the process is
16 permissible under federal law. The preapproval process shall be
17 subject to the following conditions:

18 (1) The preapproval process shall rely on the criteria for
19 assessing IHSS Supplemental Care applications, developed
20 pursuant to subdivision (f).

21 (2) Preapproval shall be granted only to individuals who would
22 otherwise be granted a full restoration of their hours pursuant to
23 subdivision (f).

24 (3) With respect to existing recipients as of the effective date
25 of this section, all efforts shall be made to ensure that counties
26 complete the process on or before a specific date, as determined
27 by the department, in consultation with counties in order to allow
28 for the production, printing, and mailing of notices to be issued to
29 remaining recipients who are not granted preapproval and who
30 thereby are subject to the reduction pursuant to this section.

31 (4) The department shall work with counties to determine how
32 to apply a preapproval process with respect to new applicants to
33 the IHSS program who apply after the effective date of this section.

34 (e) The notice of action informing each recipient who is not
35 preapproved for an IHSS Care Supplement pursuant to subdivision
36 (b) shall be mailed at least 15 days prior to the reduction going
37 into effect. The notice of action shall be understandable to the
38 recipient and translated into all languages spoken by a substantial
39 number of the public served by the In-Home Supportive Services
40 program, in accordance with Section 7295.2 of the Government

1 Code. The notice shall not contain any recipient financial or
2 confidential identifying information other than the recipient's
3 name, address, and Case Management Information and Payroll
4 System (CMIPS) client identification number, and shall include,
5 but not be limited to, all of the following information:

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

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

12 (3) How all or part of the reduction may be restored, as set forth
13 in subdivision (f), if the recipient believes he or she will be at
14 serious risk of out-of-home placement as a consequence of the
15 reduction.

16 (d) The department shall inform providers of any reduction to
17 recipient hours through a statement on provider timesheets, after
18 consultation with counties.

19 (e) The IHSS Care Supplement application process described
20 in subdivision (f) shall be completed before a request for a state
21 hearing is submitted. If the IHSS Care Supplement application is
22 filed within 15 days of the notice of action required by subdivision
23 (e), or before the effective date of the reduction, the recipient shall
24 be eligible for aid paid pending. A revised notice of action shall
25 be issued by the county following evaluation of the IHSS Care
26 Supplement application.

27 (f) Any aged, blind, or disabled individual who is eligible for
28 services under this chapter who receives a notice of action
29 indicating that his or her services will be reduced under subdivision
30 (a) but who believes he or she is at serious risk of out-of-home
31 placement unless all or part of the reduction is restored may submit
32 an IHSS Care Supplement application. When a recipient submits
33 an IHSS Care Supplement application within 15 days of receiving
34 the reduction notice or prior to the implementation of the reduction,
35 the recipient's in-home supportive services shall continue at the
36 level authorized by the most recent assessment, prior to any
37 reduction, until the county finds that the recipient does or does not
38 require restoration of any hours through the IHSS Care Supplement.
39 If the recipient disagrees with the county's determination

1 concerning the need for the IHSS Care Supplement, the recipient
2 may request a hearing on that determination.

3 ~~(1) The department shall develop an assessment tool, in~~
4 ~~consultation with stakeholders, to be used by the counties to~~
5 ~~determine if a recipient is at serious risk of out-of-home placement~~
6 ~~as a consequence of the reduction of services pursuant to this~~
7 ~~section. The assessment tool shall be developed utilizing standard~~
8 ~~of care criteria for relevant out-of-home placements that serve~~
9 ~~individuals who are aged, blind, or who have disabilities and who~~
10 ~~would qualify for IHSS if living at home, including, but not limited~~
11 ~~to, criteria set forth in Chapter 7.0 of the Manual of Criteria for~~
12 ~~Medi-Cal Authorization published by the State Department of~~
13 ~~Health Care Services, as amended April 15, 2004, and the IHSS~~
14 ~~uniform assessment guidelines.~~

15 ~~(2) Counties shall give a high priority to prompt screening of~~
16 ~~persons specified in this section to determine their need for an~~
17 ~~IHSS Care Supplement.~~

18 ~~(g) (1) Notwithstanding the rulemaking provisions of the~~
19 ~~Administrative Procedure Act (Chapter 3.5 (commencing with~~
20 ~~Section 11340) of Part 1 of Division 3 of Title 2 of the Government~~
21 ~~Code), the department may implement and administer this section~~
22 ~~through all-county letters or similar instruction from the department~~
23 ~~until regulations are adopted. The department shall adopt~~
24 ~~emergency regulations implementing this section no later than~~
25 ~~March 1, 2013. The department may readopt any emergency~~
26 ~~regulation authorized by this section that is the same as or~~
27 ~~substantially equivalent to an emergency regulation previously~~
28 ~~adopted under this section.~~

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

1 more than 180 days, by which time final regulations may be
2 adopted.

3 (h) If the Director of Health Care Services determines that
4 federal approval is necessary to implement this section, this section
5 shall be implemented only after any state plan amendments
6 required pursuant to Section 14132.95 are approved.

7 SEC. 3. Section 14105.09 is added to the Welfare and
8 Institutions Code, to read:

9 14105.09. Notwithstanding any other provision of law, if
10 subdivision (b) of Section 3.94 of the Budget Act of 2011 is
11 operative, effective on or after January 1, 2012, the payment
12 reductions in Sections 14105.07, 14105.192, 14126.033, 14131.05,
13 and 14131.07 shall apply to managed care health plans that contract
14 with the department pursuant to Chapter 8.75 (commencing with
15 Section 14590) and to contracts with the Senior Care Action
16 Network and AIDS Healthcare Foundation, to the extent that the
17 services are provided through any of these contracts, payments
18 shall be reduced by the actuarial equivalent amount of the payment
19 reductions pursuant to contract amendments or change orders
20 effective on July 1, 2011, or thereafter.

21 SEC. 4. The sum of one thousand dollars (\$1,000) is hereby
22 appropriated from the General Fund to the State Department of
23 Health Care Services for administration.

24 SEC. 5. This act is a bill providing for appropriations related
25 to the Budget Bill within the meaning of subdivision (e) of Section
26 12 of Article IV of the California Constitution, has been identified
27 as related to the budget in the Budget Bill, and shall take effect
28 immediately.