

AMENDED IN ASSEMBLY JUNE 25, 2012

SENATE BILL

No. 1036

Introduced by Committee on Budget and Fiscal Review

February 6, 2012

An act ~~relating to the Budget Act of 2012~~; to amend Section 6253.2 of, to add Section 6531.5 to, to add Title 23 (commencing with Section 110000) to, and to add and repeal Section 110035.5 of, the Government Code, to amend Sections 10101.1, 12306, 12306.1 of, to add Sections 12300.5, 12300.6, 12300.7, 12302.6, 12306.15, 12330, 14186.35, and 14186.36 to, the Welfare and Institutions Code, relating to public social services, and making an appropriation therefor, to take effect immediately, bill related to the budget.

LEGISLATIVE COUNSEL'S DIGEST

SB 1036, as amended, Committee on Budget and Fiscal Review. ~~Budget Act of 2012~~. *Public social services: in-home supportive services.*

Existing law provides for the county-administered In-Home Supportive Services (IHSS) program, under which qualified aged, blind, and disabled persons are provided with services in order to permit them to remain in their own homes and avoid institutionalization. Existing law authorizes services to be provided under the IHSS program either through the employment of individual providers, a contract between the county and an entity for the provision of services, the creation by the county of a public authority, or a contract between the county and a nonprofit consortium.

This bill would establish the California In-Home Supportive Services Authority (Statewide Authority) and would deem the authority a joint powers authority and a public entity separate and apart from the parties that have appointing power to the authority, as specified, or the

employers of those individuals so appointed. This bill would require the authority to be the entity authorized to meet and confer in good faith regarding wages, benefits, and other terms and conditions of employment with representatives of recognized employee organizations for any individual provider who is employed by a recipient of supportive services.

Under existing law, any Statewide Authority created under the IHSS program is deemed to be the employer of in-home support services personnel within the meaning of the Meyers-Milias Brown Act, which governs local employer-employee relations. Existing law also provides that any nonprofit consortium contracting with a county is deemed the employer of in-home supportive services personnel for the purposes of collective bargaining over wages, hours, and other terms and conditions of employment. Existing law also establishes the Public Employment Relations Board (PERB) in state government as a means of resolving disputes and enforcing the statutory duties and rights of employers and employees under, among other provisions, the Educational Employment Relations Act, the Higher Education Employer-Employee Relations Act, the Ralph C. Dills Act, and the Meyers-Milias-Brown Act.

This bill would establish the In-Home Supportive Services Employer-Employee Relations Act for the purpose of resolving disputes regarding wages, benefits, and other terms and conditions of employment between the California In-Home Supportive Services Authority (Statewide Authority), as specified, and recognized employee organizations. Under the act, the Statewide Authority would be deemed to be the employer of record, for purposes of collective bargaining, of individual providers of in-home supportive services in each county, upon implementation by a county, in accordance with certain procedures. Pursuant to the act, employees would have the right to form, join, and participate in the activities of employee organizations for the purpose of representation on all matters within the scope of representation.

The bill would require separate bargaining units to be created, consistent with bargaining units that have been recognized by predecessor agencies, as defined. The bill would require the Statewide Authority to meet and confer in good faith with employee organizations on all matters within the scope of representation, as specified. The bill would further require the Statewide Authority to assume the predecessor agency's rights and obligations under any memorandum of understanding or agreement between the predecessor agency and the

recognized employee organization that is in effect on the county implementation date until it expires. The bill would provide that individual providers employed by a predecessor agency would retain employee status and would not be required by the Statewide Authority to requalify to receive payment for providing services.

The bill also would make the powers and duties of PERB applicable to its provisions, establish legal procedures for appeals regarding recognition or certification of an employee organization, authorize agency shop agreements and fee obligations, establish mediation and impasse procedures, and authorize the Statewide Authority to adopt reasonable rules and regulations relating to determining the status of organizations and associations. The bill also would authorize PERB and the Statewide Authority to adopt emergency regulations to implement the act, as specified.

The bill would establish the In-Home Supportive Services Fund within the State Treasury. Moneys in the fund would be made available, upon appropriation by the Legislature, to the Statewide Authority for the purposes of funding its functions.

This bill would require all counties, commencing July 1, 2012, to have a County IHSS Maintenance of Effort (MOE), and would require counties to pay the County IHSS MOE instead of paying the nonfederal share of IHSS costs, as specified.

The bill would require the Statewide Authority to assume prescribed responsibilities in a county or city and county upon notification by the Director of Health Care Services that the assignment of eligible Medi-Cal beneficiaries described in a specified provision of law has been completed in that county or city and county. The bill would require the county or city and county to take certain actions upon this notification. By increasing the duties of local officials, this bill would create a state-mandated local program.

This bill would authorize managed care health plans, as defined, to assume the authority, previously granted to counties, to contract for the provision of in-home supportive services with a qualified agency, as defined, subject to specified restrictions and requirements.

Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services, under which qualified low-income individuals receive health care services. The Medi-Cal program is, in part, governed and funded by federal Medicaid Program provisions. One of the methods by which these

services are provided is pursuant to contracts with various types of managed care plans.

This bill would provide that, not sooner than March 1, 2013, IHSS shall be a Medi-Cal benefit available through managed care health plans in specified counties. This bill would require that the managed care health plans, among other things, enter into a memoranda of understanding and contract with applicable entities, as specified, and would provide that IHSS recipients receiving services through managed care health plans shall retain specified rights and responsibilities. This bill would, until July 1, 2017, require the State Department of Health Care Services, the State Department of Social Services, and the California Department of Aging to establish a stakeholder workgroup, as prescribed, to develop a universal assessment process, including a universal assessment tool, to be used for home- and community-based services, as defined, including IHSS.

This bill would become inoperative under certain circumstances.

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.

This bill would appropriate \$1,000 from the General Fund to the State Department of Health Care Services for administration.

This bill would become operative only if AB 1468 or SB 1008 of the 2011–12 Regular Session is enacted and takes effect.

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

~~This bill would express the intent of the Legislature to enact statutory changes relating to the Budget Act of 2012.~~

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

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

1 SECTION 1. Section 6253.2 of the Government Code is
2 amended to read:

1 6253.2. (a) Notwithstanding any other provision of this chapter
2 to the contrary, information regarding persons paid by the state to
3 provide in-home supportive services pursuant to Article 7
4 (commencing with Section 12300) of Chapter 3 of Part 3 of
5 Division 9 of the Welfare and Institutions Code ~~or personal care~~
6 ~~services, or services provided~~ pursuant to Section 14132.95,
7 14132.952, or 14132.956 of the Welfare and Institutions Code,
8 shall not be subject to public disclosure pursuant to this chapter,
9 except as provided in subdivision (b).

10 (b) Copies of names, addresses, and telephone numbers of
11 persons described in subdivision (a) shall be made available, upon
12 request, to an exclusive bargaining agent and to any labor
13 organization seeking representation rights pursuant to ~~subdivision~~
14 ~~(e) of Section 12301.6 or Section 12302 of the Welfare and~~
15 ~~Institutions Code or Chapter 10 (commencing with Section 3500)~~
16 ~~of Division 4 of Title 1 the In-Home Supportive Services~~
17 ~~Employer-Employee Relations Act (Title 23 (commencing with~~
18 ~~Section 110000)).~~ This information shall not be used by the
19 receiving entity for any purpose other than the employee
20 organizing, representation, and assistance activities of the labor
21 organization.

22 (c) This section shall apply solely to individuals who provide
23 services under the In-Home Supportive Services Program (Article
24 7 (commencing with Section 12300) of Chapter 3 of Part 3 of
25 Division 9 of the Welfare and Institutions Code) ~~or, the Personal~~
26 ~~Care Services Program pursuant to Section 14132.95 of the Welfare~~
27 ~~and Institutions Code, the In-Home Supportive Services Plus~~
28 ~~Option pursuant to Section 14132.952 of the Welfare and~~
29 ~~Institutions Code, or the Community First Choice Option pursuant~~
30 ~~to Section 14132.956 of the Welfare and Institutions Code.~~

31 (d) Nothing in this section is intended to alter or shall be
32 interpreted to alter the rights of parties under the
33 ~~Meyers-Milius-Brown Act (Chapter 10 (commencing with Section~~
34 ~~3500) of Division 4) In-Home Supportive Services~~
35 ~~Employer-Employee Relations Act (Title 23 (commencing with~~
36 ~~Section 110000)) or any other labor relations law.~~

37 SEC. 2. Section 6531.5 is added to the Government Code, to
38 read:

39 6531.5. (a) There is hereby created the California In-Home
40 Supportive Services Authority, hereafter referred to as the

1 *Statewide Authority. Notwithstanding any other law, the Statewide*
2 *Authority shall be deemed a joint powers authority created*
3 *pursuant to this article and is a public entity separate and apart*
4 *from the parties that have appointing power to the Statewide*
5 *Authority or the employers of those individuals so appointed.*
6 *Notwithstanding the requirements of this article, an agreement*
7 *shall not be required to create the Statewide Authority.*

8 *(b) The Statewide Authority shall consist of the following five*
9 *members:*

10 *(1) Two members shall be county officials who are appointed*
11 *by, and who serve at the pleasure of, the Governor.*

12 *(2) Three members shall be the Director of Social Services, the*
13 *Director of Health Care Services, and the Director of Finance in*
14 *their ex officio capacities, or their duly appointed representatives.*

15 *(c) The members of the Statewide Authority shall serve without*
16 *compensation.*

17 *(d) The Statewide Authority shall not be subject to Sections*
18 *6501, 6505, and 53051.*

19 *(e) The Statewide Authority shall appoint an advisory committee*
20 *that shall be comprised of not more than 13 individuals. No less*
21 *than 50 percent of the membership of the advisory committee shall*
22 *be individuals who are current or past users of personal assistance*
23 *services paid for through public or private funds or recipients of*
24 *services in-home supportive.*

25 *(1) At least two members of the advisory committee shall be a*
26 *current or former provider of in-home supportive services.*

27 *(2) Individuals who represent organizations that advocate for*
28 *people with disabilities or seniors may be appointed to the advisory*
29 *committee.*

30 *(3) Individuals from each representative organization that are*
31 *designated representatives of IHSS providers shall be appointed*
32 *to the advisory committee.*

33 *(4) The Statewide Authority shall designate a department*
34 *employee to provide ongoing advice and support to the advisory*
35 *committee.*

36 *(f) Prior to the appointment of members to a committee*
37 *authorized by subdivision (e), the Statewide Authority shall solicit*
38 *recommendations for qualified members through a fair and open*
39 *process that includes the provision of reasonable written notice*

1 to, and reasonable response time by, members of the general public
2 and interested persons and organizations.

3 (g) The advisory committee established pursuant to subdivision
4 (e) shall provide ongoing advice and recommendations regarding
5 in-home supportive services to the Statewide Authority, the State
6 Department of Social Services, and the State Department of Health
7 Care Services.

8 SEC. 3. Title 23 (commencing with Section 110000) is added
9 to the Government Code, to read:

10
11 TITLE 23. IN-HOME SUPPORTIVE SERVICES
12 EMPLOYER-EMPLOYEE RELATIONS ACT

13
14 CHAPTER 1. GENERAL PROVISIONS

15
16 110000. This title shall be known and may be cited as the
17 In-Home Supportive Services Employer-Employee Relations Act.

18 110001. It is the purpose of this title to promote full
19 communication between the California In-Home Supportive
20 Services Authority (the Statewide Authority) and the recognized
21 employee organization representing independent providers by
22 providing a reasonable method of resolving disputes regarding
23 wages, benefits, and other terms and conditions of employment,
24 as defined in Section 110023, between the Statewide Authority for
25 in-home supportive services and recognized employee
26 organizations. It is also the purpose of this title to promote the
27 improvement of personnel management and employer-employee
28 relations within the Statewide Authority by providing a uniform
29 basis for recognizing the right of independent providers to join
30 organizations of their own choice and be represented by those
31 organizations for purposes of collective bargaining with the
32 Statewide Authority. This title is intended to strengthen methods
33 of administering employer-employee relations through the
34 establishment of uniform and orderly methods of communication
35 between the recognized employee organizations and the Statewide
36 Authority. Except as expressly provided herein, this title is not
37 intended to require changes in existing bargaining units or
38 memoranda of agreement or understanding.

39 110002. Except as otherwise provided by the Legislature,
40 employees shall have the right to form, join, and participate in the

1 activities of employee organizations of their own choosing for the
2 purpose of representation on all matters within the scope of
3 representation. Employees also shall have the right to refuse to
4 join or participate in the activities of employee organizations.

5 110003. As used in this title:

6 (a) “Board” means the Public Employment Relations Board
7 established pursuant to Section 3541.

8 (b) “Employee” or “individual provider” means any person
9 authorized to provide in-home supportive services pursuant to
10 Article 7 (commencing with Section 12300) of Chapter 3 of Part
11 3 of Division 9 of the Welfare and Institutions Code, and Sections
12 14132.95, 14132.952, and 14132.956 of the Welfare and
13 Institutions Code, pursuant to the individual provider mode, as
14 referenced in Section 12302.2 of the Welfare and Institutions Code.
15 As used in this title, “employee” or “individual provider” does
16 not include any person providing in-home supportive services
17 pursuant to the county-employed homemaker mode or the
18 contractor mode, as authorized in Section 12302 of the Welfare
19 and Institutions Code. Individual providers shall not be deemed
20 to be employees of the Statewide Authority for any other purpose,
21 except as expressly set forth in this title.

22 (c) “Employee organization” means an organization that
23 includes employees, as defined in subdivision (e), and that has as
24 one of its primary purposes representing those employees in their
25 relations with the Statewide Authority.

26 (d) “Employer” means, for the purposes of collective
27 bargaining, the Statewide Authority established pursuant to Section
28 6531. The in-home supportive services recipient shall be the
29 employer of an individual in-home supportive services provider
30 with the unconditional and exclusive right to hire, fire, and
31 supervise his or her provider.

32 (e) “In-home supportive services” means services provided
33 pursuant to Article 7 (commencing with Section 12300) of Chapter
34 3 of Part 3 of Division 9 of the Welfare and Institutions Code, and
35 Sections 14132.95, 14132.952, and 14132.956 of the Welfare and
36 Institutions Code.

37 (f) “In-home supportive services recipient” means the individual
38 who receives the in-home supportive services provided by the
39 individual provider. The in-home supportive services recipient is

1 *the employer for the purposes of hiring, firing, and supervising*
2 *his or her respective individual provider.*

3 (g) *“Mediation” means effort by an impartial third party to*
4 *assist in reconciling a dispute regarding wages, benefits, and other*
5 *terms and conditions of employment, as defined in Section 110023,*
6 *between representatives of the employer and the recognized*
7 *employee organization or recognized employee organizations*
8 *through interpretation, suggestion, and advice.*

9 (h) *“Meet and confer in good faith” means that the employer,*
10 *or those representatives as it may designate, and representatives*
11 *of recognized employee organizations, shall have the mutual*
12 *obligation personally to meet and confer promptly upon request*
13 *by either party and continue for a reasonable period of time in*
14 *order to exchange freely information, opinions, and proposals,*
15 *and to endeavor to reach agreement on matters within the scope*
16 *of representation prior to the adoption of the annual Budget Act.*

17 (i) *“Predecessor agency” means a county, a local public*
18 *authority, or a nonprofit consortium established pursuant to*
19 *Section 12301.6 of the Welfare and Institutions Code before the*
20 *effective date of this title.*

21 (j) *“Recognized employee organization” means an employee*
22 *organization that has been formally acknowledged as follows:*

23 (1) *Before the effective date of this title, by a county, a local*
24 *public authority, or a nonprofit consortium established pursuant*
25 *to Section 12301.6 of the Welfare and Institutions Code, as the*
26 *representative of its employees.*

27 (2) *On or after the effective date of this title, by the Statewide*
28 *Authority.*

29 (k) *“Statewide Authority” means the California In-Home*
30 *Supportive Services Authority established pursuant to Section*
31 *6531.*

32
33 *CHAPTER 2. TRANSITIONAL PROVISIONS*
34

35 *110004. It is the intent of the Legislature to stabilize the labor*
36 *and employment relations between counties, nonprofit consortiums,*
37 *and local public authorities and individual providers in order to*
38 *provide continuity of care and services to the maximum extent*
39 *possible, and consistent with the responsibilities of the Statewide*
40 *Authority under the act adding this title.*

1 110005. For the purposes of this title, the county
2 implementation date is defined in subdivision (a) of Section 12300.7
3 of the Welfare and Institutions Code.

4 110006. For purposes of collective bargaining, and as expressly
5 set forth in subdivision (d) of Section 110003, the Statewide
6 Authority is deemed to be the employer of record of individual
7 providers in each county as of the county implementation date.
8 In-home supportive services recipients shall retain the right to
9 hire, fire, and supervise the work of the individual providers
10 providing services to them.

11 110007. Individual providers employed by any predecessor
12 agency as of the county implementation date shall retain employee
13 status and shall not be required by the Statewide Authority to
14 requalify to receive payment for providing services pursuant to
15 Article 7 (commencing with Section 12300) of Chapter 3 of Part
16 3 of Division 9 of the Welfare and Institutions Code. In the same
17 manner as set forth in subdivision (e) of Section 12305.86 of the
18 Welfare and Institutions Code, the Statewide Authority shall accept
19 a clearance that was obtained or accepted by any predecessor
20 agency pursuant to Article 7 (commencing with Section 12300) of
21 Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions
22 Code. Existence of a clearance shall be determined by verification
23 through the case management, information, and payroll system of
24 the predecessor agency that the predecessor agency has deemed
25 the provider to be eligible to receive payment for providing services
26 pursuant to Article 7 (commencing with Section 12300) of Chapter
27 3 of Part 3 of Division 9 of the Welfare and Institutions Code.

28 110008. On the county implementation date, separate
29 bargaining units shall be created consistent with the bargaining
30 units that have been recognized by predecessor agencies. If, on
31 the county implementation date, individual providers are
32 represented by a recognized employee organization, the Statewide
33 Authority shall be deemed the successor employer of the
34 predecessor agency for the purposes of collective bargaining, and
35 shall be obligated to recognize and to meet and confer in good
36 faith with the recognized employee organization on all matters
37 within the scope of representation, as defined in Section 110023,
38 as to those individual providers. Bargaining units consisting of
39 employees in a single county shall be the only appropriate unit for
40 collective bargaining under this title. In those counties where no

1 *recognized employee organization exists as of the county*
2 *implementation date, a bargaining unit consisting of all employees*
3 *in that county shall be deemed an appropriate unit for collective*
4 *bargaining.*

5 *110010. Negotiations between the Statewide Authority and*
6 *recognized employee organizations shall be conducted only in the*
7 *following manner:*

8 *(a) As of January 1, 2013, all recognized employee*
9 *organizations affiliated with the same national parent union shall*
10 *negotiate as a coalition on behalf of all bargaining units they*
11 *represent. If recognized employee organizations are affiliated with*
12 *two or more different national parent unions, those recognized*
13 *employee organizations shall also negotiate as a coalition on*
14 *behalf of all bargaining units they represent.*

15 *(b) An employee organization obtaining recognition after*
16 *January 1, 2013, which is affiliated with the same national parent*
17 *union or unions as the coalitions described in subdivision (a),*
18 *shall become a part of the coalition affiliated with its same national*
19 *parent union or unions.*

20 *(c) An employee organization not affiliated with a national*
21 *parent union covered by subdivision (a), that obtains recognition*
22 *after January 1, 2013, and represents fewer than 100,000*
23 *employees subject to this title, shall negotiate as a member of a*
24 *coalition, separate from the coalitions described in subdivision*
25 *(a) and comprised of all those recognized employee organizations*
26 *on behalf of all units they collectively represent. If that employee*
27 *organization represents 100,000 or more employees subject to this*
28 *title, it shall have the right to negotiate as its own coalition on*
29 *behalf of all bargaining units it represents.*

30 *(d) Each coalition negotiating with the Statewide Authority may*
31 *enter into supplemental bargaining of unit-specific issues for*
32 *inclusion in, or as an addendum to, collective bargaining*
33 *agreements, subject to the parties' agreement regarding the issues*
34 *and procedures for supplemental bargaining. This section does*
35 *not prohibit coordination of bargaining between two or more*
36 *bargaining coalitions.*

37 *110011. (a) Except as otherwise expressly provided in this*
38 *title, the enactment of this title shall not be a cause for the employer*
39 *or any predecessor agency to modify or eliminate any existing*
40 *memorandum of agreement or understanding, or to modify existing*

1 wages, benefits, or other terms and conditions of employment.
2 Except to the extent set forth in this title, the enactment of this title
3 shall not prevent the modification of existing wages, benefits, or
4 terms and conditions of employment through the meet and confer
5 in good faith process or, in those situations in which the employees
6 are not represented by a recognized employee organization,
7 through appropriate procedures.

8 (b) On the county implementation date, subject to Section
9 12306.15 of the Welfare and Institutions Code, the Statewide
10 Authority shall assume the predecessor agency's rights and
11 obligations under any memorandum of understanding or agreement
12 between the predecessor agency and a recognized employee
13 organization that is in effect on the county implementation date
14 for the duration thereof. Absent mutual consent to reopen, the
15 terms of any transferred memorandum of understanding or
16 agreement shall continue until the memorandum of understanding
17 or agreement has expired. If a memorandum of understanding or
18 agreement between a recognized employee organization and a
19 predecessor agency has expired and has not been replaced by a
20 successor memorandum of understanding or agreement as of the
21 county implementation date, the Statewide Authority shall assume
22 the obligation to meet and confer in good faith with the recognized
23 employee organization.

24 (c) Notwithstanding any other provision of law, except to the
25 extent set forth in this chapter and as limited by Section 110023,
26 the terms and conditions of any memorandum of understanding
27 or agreement between a predecessor agency and a recognized
28 employee organization in effect on the county implementation date
29 shall not be reduced, except by mutual agreement between the
30 recognized employee organization and the Statewide Authority.

31 (d) Except as set forth in subdivision (d), nothing in this title
32 shall be construed to relieve any predecessor agency of its
33 obligation to meet and confer in good faith with a recognized
34 employee organization pursuant to the Meyers-Milias-Brown Act
35 (Chapter 10 (commencing with Section 3500) of Division 4 of Title
36 1) until the county implementation date. Nothing in this title shall
37 require the predecessor agency to meet and confer after the
38 Statewide Authority assumes the predecessor agency's rights and
39 obligations on the county implementation date.

1 (e) *With the exception of all economic terms covered by Section*
2 *12306.15 of the Welfare and Institutions Code and notwithstanding*
3 *any other provision of law, beginning July 1, 2012, and ending*
4 *on the county implementation date as set forth in subdivision (a)*
5 *of Section 12300.7 of the Welfare and Institutions Code, any*
6 *alterations or modifications to either current or expired*
7 *memoranda of understanding that were in effect on July 1, 2012,*
8 *and any newly negotiated memoranda of understanding or*
9 *agreements reached after July 1, 2012, shall be submitted for*
10 *review to the State Department of Social Services. This review*
11 *requirement shall be performed by the department until the*
12 *Statewide Authority becomes operational, after which date the*
13 *Statewide Authority shall continue to perform this review*
14 *requirement. If, upon review, but not later than 180 days after the*
15 *county commences transition pursuant to paragraph (1) of*
16 *subdivision (g) of Section 14132.275 of the Welfare and Institutions*
17 *Code, the department or Statewide Authority reasonably determines*
18 *that there are one or more newly negotiated or amended*
19 *noneconomic terms in the memorandum of understanding or*
20 *agreement to which it objects for a bona fide business-related*
21 *reason, the department or Statewide Authority shall provide written*
22 *notice to the signatory recognized employee organization of each*
23 *objection and the reason for it. Upon demand from the recognized*
24 *employee organization, the department, or the Statewide Authority,*
25 *the parties shall meet and confer regarding the objection and*
26 *endeavor to reach agreement prior to the county implementation*
27 *date. If an agreement is not reached by the county implementation*
28 *date, the objectionable language is deemed inoperable. All terms*
29 *to which no objection is made shall be deemed accepted by the*
30 *Statewide Authority. If the Statewide Authority fails to provide the*
31 *180 days' notice of objection, it shall be deemed waived.*

32 110012. *If the Statewide Authority and the recognized employee*
33 *organization negotiate changes to locally administered health*
34 *benefits for individual providers, the Statewide Authority shall*
35 *give 90 days' notice to the county of the agreed-upon changes.*
36

37 *CHAPTER 3. ADMINISTRATION*
38

39 110013. *The Legislature hereby finds and declares that*
40 *collective bargaining for individual providers under this title*

1 *constitutes a matter of statewide concern. Therefore, this title is*
2 *applicable to all counties, notwithstanding charter provisions to*
3 *the contrary as set forth in Section 110005.*

4 *110014. Where the language of this title is the same or*
5 *substantially the same as that contained in Chapter 10*
6 *(commencing with Section 3500) of Division 4 of Title 1, it shall*
7 *be interpreted and applied by the board in a manner consistent*
8 *with and in accordance with judicial interpretations of the same*
9 *language.*

10 *110015. Except as provided in this title, the powers and duties*
11 *of the board described in Sections 3541.3 and 3541.5 shall also*
12 *apply, as appropriate, to this title. Included among the appropriate*
13 *powers of the board are the powers to order elections, to conduct*
14 *any election the board orders, to order unit modifications*
15 *consistent with Section 110008, and to adopt rules.*

16 *110016. Notwithstanding any other law, if a decision by an*
17 *administrative law judge regarding the recognition, certification,*
18 *decertification, or unit modification, consistent with Section*
19 *110008, of an employee organization is appealed, the decision*
20 *shall be deemed the final order of the board if the board does not*
21 *issue a ruling that supersedes the decision no later than 180 days*
22 *after the appeal is filed.*

23 *110017. (a) Any charging party, respondent, or intervener*
24 *aggrieved by a final decision or order of the board in an unfair*
25 *practice case, except a decision of the board not to issue a*
26 *complaint in such a case, and any party to a final decision or order*
27 *of the board in a unit determination consistent with Section 110008,*
28 *or in a representation, recognition, or election matter that is not*
29 *brought as an unfair practice case, may petition for a writ of*
30 *extraordinary relief from that decision or order. A board order*
31 *directing an election shall not be stayed pending judicial review.*

32 *(b) A petition for a writ of extraordinary relief shall be filed in*
33 *the district court of appeal having jurisdiction over the county*
34 *where the events giving rise to the decision or order occurred. The*
35 *petition shall be filed within 30 days from the date of the issuance*
36 *of the board's final decision or order, or order denying*
37 *reconsideration, as applicable. Upon the filing of the petition, the*
38 *court shall cause notice to be served upon the board and thereafter*
39 *shall have jurisdiction of the proceeding. The board shall file in*
40 *the court the record of the proceeding, certified by the board,*

1 *within 10 days after the clerk’s notice unless that time is extended*
 2 *by the court for good cause shown. The court shall have*
 3 *jurisdiction to grant any temporary relief or restraining order it*
 4 *deems just and proper, and in like manner to make and enter a*
 5 *decree enforcing, modifying, and enforcing as modified, or setting*
 6 *aside in whole or in part the decision or order of the board. The*
 7 *findings of the board with respect to questions of fact, including*
 8 *ultimate facts, if supported by substantial evidence on the record*
 9 *considered as a whole, shall be conclusive. Title 1 (commencing*
 10 *with Section 1067) of Part 3 of the Code of Civil Procedure relating*
 11 *to writs shall, except where specifically superseded by this section,*
 12 *apply to proceedings pursuant to this section.*

13 *(c) If the time to petition for extraordinary relief from a board*
 14 *decision or order has expired, the board may seek enforcement of*
 15 *any final decision or order in a district court of appeal or superior*
 16 *court having jurisdiction over the county where the events giving*
 17 *rise to the decision or order occurred. The board shall respond*
 18 *within 10 days to any inquiry from a party to the action as to why*
 19 *the board has not sought court enforcement of the final decision*
 20 *or order. If the response does not indicate that there has been*
 21 *compliance with the board’s final decision or order, the board*
 22 *shall seek enforcement of the final decision or order upon the*
 23 *request of the party. The board shall file in the court the record*
 24 *of the proceeding, certified by the board, and appropriate evidence*
 25 *disclosing the failure to comply with the decision or order. If, after*
 26 *hearing, the court determines that the order was issued pursuant*
 27 *to the procedures established by the board and that the person or*
 28 *entity refuses to comply with the order, the court shall enforce the*
 29 *order by writ of mandamus or other proper process. The court*
 30 *may not review the merits of the order.*

31
 32
 33

CHAPTER 4. LABOR RELATIONS

34 *110018. No individual provider shall be subject to punitive*
 35 *action or denied promotion, or threatened with any such treatment,*
 36 *for the exercise of lawful action as an elected, appointed, or*
 37 *recognized representative of any employee bargaining unit.*

38 *110019. (a) Notwithstanding Section 110002, any other*
 39 *provision of this title, or any other law, rule, or regulation, an*
 40 *agency shop agreement may be negotiated between the employer*

1 *and a recognized public employee organization that has been*
2 *recognized as the exclusive or majority bargaining agent, in*
3 *accordance with this title. As used in this title, “agency shop”*
4 *means an arrangement that requires an employee, as a condition*
5 *of continued employment, either to join the recognized employee*
6 *organization or to pay the organization a service fee in an amount*
7 *not to exceed the standard initiation fee, periodic dues, and general*
8 *assessments of the organization, to be determined by the*
9 *organization in accordance with applicable law.*

10 *(b) In addition to the procedure prescribed in subdivision (a),*
11 *an agency shop arrangement between the Statewide Authority and*
12 *a recognized employee organization that has been recognized as*
13 *the exclusive or majority bargaining agent shall be placed in effect,*
14 *without a negotiated agreement, upon (1) a signed petition of 30*
15 *percent of the employees in the applicable bargaining unit*
16 *requesting an agency shop agreement and an election to implement*
17 *an agency fee arrangement, and (2) the approval of a majority of*
18 *employees who cast ballots and vote in a secret ballot election in*
19 *favor of the agency shop agreement. The petition may be filed only*
20 *after the recognized employee organization has requested the*
21 *employer to negotiate on an agency shop arrangement and,*
22 *beginning seven working days after the employer received this*
23 *request, the two parties have had 30 calendar days to attempt good*
24 *faith negotiations in an effort to reach agreement. An election that*
25 *shall not be held more frequently than once a year shall be*
26 *conducted by the State Mediation and Conciliation Service with*
27 *the Department of Industrial Relations in the event that the*
28 *employer and the recognized employee organization cannot agree*
29 *within 10 days from the filing of the petition to select jointly a*
30 *neutral person or entity to conduct the election. In the event of an*
31 *agency fee arrangement outside of an agreement that is in effect,*
32 *the recognized employee organization shall indemnify and hold*
33 *the employer harmless against any liability arising from a claim,*
34 *demand, or other action relating to the employer’s compliance*
35 *with the agency fee obligation.*

36 *(c) An individual provider who is a member of a bona fide*
37 *religion, body, or sect that has historically held conscientious*
38 *objections to joining or financially supporting public employee*
39 *organizations shall not be required to join or financially support*
40 *a public employee organization as a condition of employment. The*

1 *employee may be required, in lieu of periodic dues, initiation fees,*
2 *or agency shop fees, to pay sums equal to the dues, initiation fees,*
3 *or agency shop fees to a nonreligious, nonlabor charitable fund*
4 *exempt from taxation under Section 501(c)(3) of the Internal*
5 *Revenue Code, chosen by the employee from a list of at least three*
6 *of these funds, designated in a memorandum of understanding*
7 *between the employer and the recognized employee organization,*
8 *or if the memorandum of understanding fails to designate the funds,*
9 *then to a fund of that type chosen by the employee. Proof of the*
10 *payments shall be made on a monthly basis to the employer as a*
11 *condition of continued exemption from the requirement of financial*
12 *support to the public employee organization.*

13 *(d) An agency shop provision in a memorandum of*
14 *understanding that is in effect may be rescinded by a majority vote*
15 *of all the employees in the unit covered by the memorandum of*
16 *understanding, provided that: (1) a request for that type of vote is*
17 *supported by a petition containing the signatures of at least 30*
18 *percent of the employees in the unit, (2) the vote is by secret ballot,*
19 *and (3) the vote may be taken at any time during the term of the*
20 *memorandum of understanding, but in no event shall there be more*
21 *than one vote taken during that term.*

22 *(e) A recognized employee organization that has agreed to an*
23 *agency shop provision or is a party to an agency shop arrangement*
24 *shall keep an adequate itemized record of its financial transactions*
25 *and shall make available annually, to the employer with which the*
26 *agency shop provision was negotiated, and to the employees who*
27 *are members of the organization, within 60 days after the end of*
28 *its fiscal year, a detailed written financial report thereof in the*
29 *form of a balance sheet and an operating statement, certified as*
30 *to accuracy by its president and treasurer or corresponding*
31 *principal officer, or by a certified public accountant. An employee*
32 *organization required to file financial reports under the federal*
33 *Labor-Management Reporting and Disclosure Act of 1959 (29*
34 *U.S.C. Sec. 401 et seq.) covering employees governed by this title,*
35 *or required to file financial reports under Section 3546.5, may*
36 *satisfy the financial reporting requirement of this section by*
37 *providing the employer with a copy of the financial reports.*

38 *110020. (a) Nothing in this title shall affect the right of an*
39 *employee to authorize a dues or service fees deduction from his*

1 *or her salary or wages pursuant to Article 6 (commencing with*
2 *Section 1150) of Chapter 1 of Division 4 of Title 1.*

3 *(b) Either the Controller or the State Department of Social*
4 *Services shall deduct the payment of dues or service fees to a*
5 *recognized employee organization as required by an agency shop*
6 *arrangement between the recognized employee organization and*
7 *the Statewide Authority.*

8 *(c) Agency fee obligations, including, but not limited to, dues*
9 *or agency fee deductions on behalf of a recognized employee*
10 *organization, shall continue in effect as long as the employee*
11 *organization is the recognized bargaining representative,*
12 *notwithstanding the expiration of any agreement between the*
13 *employer and the recognized employee organization.*

14 *110021. If a predecessor agency is party to any memorandum*
15 *of understanding or agreement with any bargaining unit that*
16 *includes individual providers that contains an agency shop*
17 *provision as of the effective date of this title, the predecessor*
18 *agency and the employer shall be obligated to honor the terms of*
19 *the agency shop provision, including indemnification provisions,*
20 *if any, for the duration of the memorandum of understanding or*
21 *agreement, and until the adoption of a successor memorandum of*
22 *understanding or agreement. However, upon the request of a*
23 *recognized employee organization, an agency shop provision in*
24 *effect on the county implementation date may be reopened for the*
25 *sole purpose of renegotiating the terms of that provision in*
26 *accordance with this title. The implementation of this title shall*
27 *not be a cause for a new agency shop election.*

28 *110022. Recognized employee organizations shall have the*
29 *right to represent their members in their employment relations*
30 *with the employer. Employee organizations may establish*
31 *reasonable restrictions regarding who may join and may make*
32 *reasonable provisions for the dismissal of individuals from*
33 *membership. Nothing in this section shall prohibit an employee*
34 *from appearing on his or her own behalf in his or her employment*
35 *relations with the employer.*

36 *110023. The scope of representation shall include all matters*
37 *relating to wages, benefits, and other terms and conditions of*
38 *employment. The scope of representation shall exclude the*
39 *following:*

1 (a) Functions performed by, or on behalf of, a county, which
2 shall include all of the following:

3 (1) Determining an applicant's eligibility for IHSS benefits.

4 (2) Assessing, approving, and authorizing an IHSS recipient's
5 initial and continuing need for services.

6 (3) Enrolling providers and conducting provider orientation.

7 (4) Conducting criminal background checks on all potential
8 providers.

9 (5) Providing assistance to IHSS recipients in finding eligible
10 providers through the establishment of a provider registry, as well
11 as providing orientation to recipients.

12 (6) Pursuing overpayment recovery recollection.

13 (7) Performing quality assurance activities.

14 (8) Performing any other function or responsibility required
15 pursuant to statute or regulation to be performed by the county.

16 (b) The right to hire, fire, and supervise the individual provider,
17 which is reserved to the in-home supportive services recipient.

18 110024. (a) Except in cases of emergency as provided in this
19 section, the Statewide Authority shall give reasonable written
20 notice to each recognized employee organization affected by any
21 rule, practice, or policy directly relating to matters within the
22 scope of representation proposed to be adopted by the employer
23 and shall give each recognized employee organization the
24 opportunity to meet with the employer.

25 (b) In cases of emergency when the Statewide Authority
26 determines that any rule, policy, or procedure must be adopted
27 immediately without prior notice or meeting with a recognized
28 employee organization, the employer shall provide notice and an
29 opportunity to meet at the earliest practicable time following the
30 adoption of the rule, policy, or procedure.

31 110025. (a) Consistent with Section 12300.5 of the Welfare
32 and Institutions Code, the Statewide Authority shall meet and
33 confer in good faith regarding matters within the scope of
34 representation with representatives of recognized employee
35 organizations and shall consider fully those presentations as are
36 made by the employee organization on behalf of its members prior
37 to arriving at a determination of policy or course of action.

38 (b) The process should include adequate time for the resolution
39 of impasses pursuant to any impasse resolution procedure set forth
40 in this title.

1 110026. *The Statewide Authority and employee organizations*
2 *shall not interfere with, intimidate, restrain, coerce, or discriminate*
3 *against employees because of the exercise of their rights under*
4 *Section 110002.*

5 110027. (a) *The Statewide Authority shall grant exclusive*
6 *recognition to employee organizations designated or selected*
7 *pursuant to rules established by the board for employees of the*
8 *Statewide Authority or an appropriate unit thereof, subject to the*
9 *right of an employee to represent himself or herself. The board*
10 *shall establish reasonable procedures for petitions and holding*
11 *elections and determining appropriate units consistent with Section*
12 *110008. In a representation election, a majority of the votes cast*
13 *by the employees in the appropriate bargaining unit shall be*
14 *required.*

15 (b) *A bargaining unit in existence as of the effective date of this*
16 *title shall remain in existence unless changed pursuant to*
17 *subdivision (a).*

18 110028. *If an agreement is reached by the representatives of*
19 *the Statewide Authority and a recognized employee organization*
20 *or recognized employee organizations, they shall jointly prepare*
21 *a written memorandum of the understanding, which shall not be*
22 *binding, and present it to the Legislature for determination by*
23 *majority vote.*

24 110029. (a) *If, after a reasonable period of time,*
25 *representatives of the employer and the recognized employee*
26 *organization fail to reach agreement, the dispute shall be referred*
27 *to mediation before a mediator mutually agreeable to the parties.*
28 *If the parties are unable to agree upon the mediator, either party*
29 *may request the board to appoint a mediator in accordance with*
30 *rules adopted by the board.*

31 (b) *The costs of mediation shall be divided one-half to the*
32 *employer and one-half to the recognized employee organization*
33 *or recognized employee organizations.*

34 110030. (a) *If the parties are unable to effect settlement of the*
35 *controversy within 30 days after the appointment of a mediator,*
36 *the parties shall submit their differences to a factfinding panel.*
37 *Within five days after receipt of the written request, each party*
38 *shall select a person to serve as its member of the factfinding panel.*
39 *The board shall, within five days after the selection of panel*

1 *members by the parties, select a chairperson of the factfinding*
2 *panel.*

3 *(b) Within five days after the board selects a chairperson of the*
4 *factfinding panel, the parties may mutually agree upon a person*
5 *to serve as chairperson in lieu of the person selected by the board.*

6 *(c) The panel shall, within 10 days after its appointment, meet*
7 *with the parties or their representatives, either jointly or*
8 *separately, and may make inquiries and investigations, hold*
9 *hearings, and take any other steps it deems appropriate. For the*
10 *purpose of the hearings, investigations, and inquiries, the panel*
11 *shall have the power to issue subpoenas requiring the attendance*
12 *and testimony of witnesses and the production of evidence. Any*
13 *state agency, as defined in Section 11000, or any political*
14 *subdivision of the state, shall furnish the panel, upon its request,*
15 *with all records, papers, and information in their possession*
16 *relating to any matter under investigation by or in issue before*
17 *the panel.*

18 *(d) In arriving at their findings and recommendations, the*
19 *factfinders shall consider, weigh, and be guided by all the following*
20 *criteria:*

21 *(1) State and federal laws that are applicable to the employer.*

22 *(2) Local rules, regulations, or ordinances.*

23 *(3) Stipulations of the parties.*

24 *(4) The interests and welfare of the public and the financial*
25 *ability of the employer.*

26 *(5) Comparison of the wages, benefits, and terms and conditions*
27 *of employment of the employees involved in the factfinding*
28 *proceeding with the wages, benefits, and terms and conditions of*
29 *employment of other employees performing similar services in*
30 *comparable counties.*

31 *(6) The consumer price index for goods and services, commonly*
32 *known as the cost of living.*

33 *(7) The overall compensation presently received by the*
34 *employees, including direct wage compensation, vacations,*
35 *holidays, and other excused time, insurance and pensions, medical*
36 *and hospitalization benefits, the continuity and stability of*
37 *employment, and all other benefits received.*

38 *(8) Any other facts, not confined to those specified in paragraphs*
39 *(1) to (7), inclusive, which are normally or traditionally taken into*
40 *consideration in making the findings and recommendations.*

1 110031. (a) *If the dispute is not settled within 30 days after*
2 *the appointment of the factfinding panel, or, upon agreement by*
3 *both parties within a longer period, the panel shall make findings*
4 *of fact and recommend terms of settlement, which shall be advisory*
5 *only. The factfinders shall submit, in writing, any findings of fact*
6 *and recommended terms of settlement to the parties before they*
7 *are made available to the public. The employer shall make these*
8 *findings and recommendations publicly available within 10 days*
9 *after their receipt.*

10 (b) *The costs for the services of the panel chairperson, whether*
11 *selected by the board or agreed upon by the parties, shall be*
12 *equally divided between the parties, and shall include per diem*
13 *fees, if any, and actual and necessary travel and subsistence*
14 *expenses. The per diem fees shall not exceed the per diem fees*
15 *stated on the chairperson's résumé on file with the board. The*
16 *chairperson's bill showing the amount payable by the parties shall*
17 *accompany his or her final report to the parties and the board.*
18 *The chairperson may submit interim bills to the parties in the*
19 *course of the proceedings, and copies of the interim bills shall also*
20 *be sent to the board. The parties shall make payment directly to*
21 *the chairperson.*

22 (c) *Any other mutually incurred costs shall be borne equally by*
23 *the public agency and the employee organization. Any separately*
24 *incurred costs for the panel member selected by each party shall*
25 *be borne by that party.*

26 (d) *Nothing in this chapter shall be construed to prohibit the*
27 *mediator appointed pursuant to Section 110029, upon mutual*
28 *agreement of the parties, from continuing mediation efforts on the*
29 *basis of the findings of fact and recommended terms of settlement*
30 *made pursuant to Section 110031.*

31 110032. *After the applicable mediation procedure has been*
32 *exhausted, factfinding has been completed and made public, and*
33 *no resolution has been reached by the parties, the Statewide*
34 *Authority may declare an impasse and implement its last, best,*
35 *and final offer. The unilateral implementation of the Statewide*
36 *Authority's last, best, and final offer shall not deprive a recognized*
37 *employee organization of the right each year to meet and confer*
38 *on matters within the scope of representation, whether or not those*
39 *matters are included in the unilateral implementation, prior to the*
40 *adoption of the annual budget , or as otherwise required by law.*

1 110033. *The Statewide Authority shall allow a reasonable*
2 *number of representatives of recognized employee organizations*
3 *reasonable time off without loss of compensation or other benefits*
4 *when formally meeting and conferring with representatives of the*
5 *employer on matters within the scope of representation.*

6 110034. *The Statewide Authority shall not do any of the*
7 *following:*

8 (a) *Impose or threaten to impose reprisals on employees, to*
9 *discriminate or threaten to discriminate against employees, or*
10 *otherwise to interfere with, restrain, or coerce employees because*
11 *of their exercise of rights guaranteed by this title.*

12 (b) *Deny to employee organizations the rights guaranteed to*
13 *them by this title.*

14 (c) *Refuse or fail to meet and negotiate in good faith with a*
15 *recognized employee organization. For purposes of this*
16 *subdivision, knowingly providing a recognized employee*
17 *organization with inaccurate information regarding the financial*
18 *resources of the employer, whether or not in response to a request*
19 *for information, constitutes a refusal or failure to meet and*
20 *negotiate in good faith.*

21 (d) *Dominate or interfere with the formation or administration*
22 *of any employee organization, contribute financial or other support*
23 *to any employee organization, or in any way encourage employees*
24 *to join any organization in preference to another.*

25 (e) *Refuse to participate in good faith in any applicable impasse*
26 *procedure.*

27 110035. (a) *The Statewide Authority may adopt reasonable*
28 *rules and regulations for all of the following:*

29 (1) *Registering employee organizations.*

30 (2) *Determining the status of organizations and associations*
31 *as employee organizations or bona fide associations.*

32 (3) *Identifying the officers and representatives who officially*
33 *represent employee organizations and bona fide associations.*

34 (4) *Any other matters that are necessary to carry out the*
35 *purposes of this title.*

36 (b) *The board shall establish procedures whereby recognition*
37 *of employee organizations formally recognized as majority*
38 *representatives pursuant to a vote of the employees may be revoked*
39 *by a majority vote of the employees only after a period of not less*
40 *than 12 months following the date of recognition.*

1 (c) *The employer shall not unreasonably withhold recognition*
2 *of employee organizations.*

3 (d) *Employees and employee organizations may challenge a*
4 *rule or regulation of the employer as a violation of this title. This*
5 *subdivision shall not be construed to restrict or expand the board's*
6 *jurisdiction or authority as set forth in subdivisions (a) to (c),*
7 *inclusive, of Section 3541.3.*

8 110035.5. (a) *The board and the Statewide Authority may*
9 *adopt emergency regulations to implement this title. The initial*
10 *adoption, amendment, or repeal of the regulations authorized by*
11 *this section is deemed to address an emergency, for purposes of*
12 *Sections 11346.1 and 11349.6, and the board and the Statewide*
13 *Authority are hereby exempted for that purpose from the*
14 *requirements of subdivision (b) of Section 11346.1. After the initial*
15 *adoption, amendment, or repeal of an emergency regulation*
16 *pursuant to this section, the board and the Statewide Authority*
17 *shall not request approval from the Office of Administrative Law*
18 *to readopt the regulation as an emergency regulation pursuant to*
19 *Section 11346.1.*

20 (b) *The adoption, amendment, or repeal of a regulation*
21 *authorized by this section is hereby exempted from subdivision (d)*
22 *of Section 11346.1 and Section 11349.6, and the board or*
23 *Statewide Authority shall transmit the regulations directly to the*
24 *Secretary of State for filing. The regulations shall become effective*
25 *immediately upon filing with the Secretary of State.*

26 (c) *This section shall remain in effect only until January 1, 2014,*
27 *and as of that date is repealed, unless a later enacted statute, that*
28 *is enacted before January 1, 2014, deletes or extends that date.*

29 110036. *The provisions of this title are severable. If any*
30 *provision of this title or its application is held invalid, that*
31 *invalidity shall not affect other provisions or applications that can*
32 *be given effect without the invalid provision or application.*

33 SEC. 4. *Section 10101.1 of the Welfare and Institutions Code*
34 *is amended to read:*

35 10101.1. (a) *For the 1991–92 fiscal year and each fiscal year*
36 *thereafter, the state's share of the costs of the county services block*
37 *grant and the in-home supportive services administration*
38 *requirements shall be 70 percent of the actual nonfederal*
39 *expenditures or the amount appropriated by the Legislature for*
40 *that purpose, whichever is less.*

1 (b) Federal funds received under Title 20 of the federal Social
2 Security Act (42 U.S.C. Sec. 1397 et seq.) and appropriated by the
3 Legislature for the county services block grant and the in-home
4 supportive services administration shall be considered part of the
5 state share of cost and not part of the federal expenditures for this
6 purpose.

7 (c) *For the period during which Section 12306.15 is operative,*
8 *each county's share of the nonfederal costs of the county services*
9 *block grant and the in-home supportive services administration*
10 *requirements as specified in subdivision (a) shall remain, but the*
11 *County IHSS Maintenance of Effort pursuant to Section 12306.15*
12 *shall be in lieu of that share.*

13 SEC. 5. *Section 12300.5 is added to the Welfare and Institutions*
14 *Code, to read:*

15 *12300.5. (a) The California In-Home Supportive Services*
16 *Authority, hereafter referred to as the Statewide Authority,*
17 *established pursuant to Section 6531.5 of the Government Code,*
18 *shall be the entity authorized to meet and confer in good faith*
19 *regarding wages, benefits, and other terms and conditions of*
20 *employment in accordance with Title 23 (commencing with Section*
21 *110000) of the Government Code, with representatives of*
22 *recognized employee organizations for any individual provider*
23 *who is employed by a recipient of in-home supportive services*
24 *described in Section 12300.*

25 (b) *The Statewide Authority and the Department of Human*
26 *Resources and other state departments may enter into a*
27 *memorandum of understanding or other agreement to have the*
28 *Department of Human Resources meet and confer on behalf of the*
29 *Statewide Authority for the purposes described in subdivision (a)*
30 *or to provide the Statewide Authority with other services, including,*
31 *but not limited to, administrative and legal services.*

32 (c) *Neither the state nor the Statewide Authority shall be deemed*
33 *to be the employer of any individual provider who is employed by*
34 *a recipient of in-home supportive services as described in Section*
35 *12300 for purposes of liability due to the negligence or intentional*
36 *torts of the individual provider.*

37 SEC. 6. *Section 12300.6 is added to the Welfare and Institutions*
38 *Code, to read:*

39 *12300.6. There is hereby created the In-Home Supportive*
40 *Services Fund in the State Treasury. Moneys in the fund shall be*

1 *made available, upon appropriation by the Legislature, to the*
2 *California In-Home Supportive Services Authority, for the purposes*
3 *of funding the functions of the Statewide Authority.*

4 *SEC. 7. Section 12300.7 is added to the Welfare and Institutions*
5 *Code, to read:*

6 *12300.7. (a) No sooner than March 1, 2013, the California*
7 *In-Home Supportive Services Authority shall assume the*
8 *responsibilities set forth in Title 23 (commencing with Section*
9 *110000) of the Government Code in a county or city and county*
10 *upon notification by the Director of Health Care Services that the*
11 *enrollment of eligible Medi-Cal beneficiaries described in Sections*
12 *14132.275, 14182.16, and 14182.17 have been completed in that*
13 *county or city and county.*

14 *(b) A county or city and county, subject to subdivision (a) and*
15 *upon notification from the Director of Health Care Services, shall*
16 *do any one of the following:*

17 *(1) Continue to have its public authority perform the functions*
18 *set forth in the county ordinance existing at the time of the*
19 *notification pursuant to subdivision (a) and established pursuant*
20 *to Section 12301.6, excluding subdivision (c) of that section.*

21 *(2) Continue to have the entity perform the functions in the*
22 *existing contract at the time of the notification pursuant to*
23 *subdivision (a) established pursuant to Section 12301.6, excluding*
24 *subdivision (c) of that section.*

25 *(3) Assume the functions performed by an entity or public*
26 *authority pursuant to Section 12301.6, excluding subdivision (c)*
27 *and paragraph (2) of subdivision (i) of that section.*

28 *(c) If a county or city and county assumes the functions*
29 *described in paragraph (3) of subdivision (b), it may do any of the*
30 *following:*

31 *(1) Contract for the performance of any or all of the functions*
32 *assumed.*

33 *(2) Contract with an entity pursuant to Section 12301.6 for the*
34 *performance of any or all functions assumed.*

35 *(3) Establish a public authority pursuant to Section 12301.6*
36 *for the performance of any functions assumed.*

37 *SEC. 8. Section 12302.6 is added to the Welfare and Institutions*
38 *Code, to read:*

39 *12302.6. (a) A managed care health plan may enter into*
40 *contracts pursuant to paragraph (14) of subdivision (a) of Section*

1 14186.35 solely in the manner prescribed in this section and in
2 accordance with Section 12302.1.

3 (b) For purposes of this section:

4 (1) “Agency” means a city, county, city and county agency,
5 local health district, nonprofit entity, or a proprietary agency that
6 has or seeks a contract to provide in-home supportive services
7 pursuant to Section 12302 or this article.

8 (2) “Contract provider” means any person employed by an
9 agency for the provision of services listed in this subdivision.

10 (3) “County” means a political unit, unless otherwise indicated.

11 (4) “Department” means the State Department of Social
12 Services.

13 (5) “Individual provider” means any person authorized to
14 provide in-home supportive services under this article and Sections
15 14132.95, 14132.952, and 14132.956, pursuant to the individual
16 provider mode referenced in Section 12302.2. As used in this
17 paragraph, “individual provider” shall not include any person
18 providing in-home supportive services pursuant to a
19 county-employed homemaker mode or any person employed by an
20 agency.

21 (6) “Individual provider rate” means the combined total rate
22 for wages and benefits for individual providers, as approved by
23 the Statewide Authority or its delegate.

24 (7) “Managed care health plan” shall have the same meaning
25 as set forth in Section 14186.1.

26 (8) “Qualified agency” means an agency that has been certified
27 by the department.

28 (9) “Responsible party” means an officer or director of the
29 applicant, a shareholder with a beneficial interest in the applicant
30 exceeding 10 percent, or the person who will be primarily
31 responsible for any contract with the managed care health plan.

32 (10) “Statewide Authority” means the California In-Home
33 Supportive Services Authority established pursuant to Section 6531
34 of the Government Code.

35 (c) Managed care health plans shall assume the authority
36 granted to counties pursuant to Section 12302 to contract for the
37 provision of in-home supportive services with an agency.

38 (1) (A) Managed care health plans shall assume the authority
39 as described in subdivision (a) only upon their integration into

1 *Medi-Cal managed care pursuant to Article 5.7 (commencing with*
2 *Section 14186) of Chapter 7.*

3 *(B) If, at the time a managed care health plan assumes*
4 *contracting authority pursuant to this subdivision with respect to*
5 *a particular geographic area, there is an existing contract between*
6 *the county and an agency for the provision of in-home supportive*
7 *services, the managed care health plan shall enter into a contract*
8 *with the county to continue providing the services, and the county*
9 *shall maintain its existing contract with the agency for the*
10 *provision of in-home supportive services until such time as that*
11 *contract is due to expire. Counties that have these existing*
12 *contracts with agencies at the time a managed care health plan*
13 *assumes contracting authority pursuant to this subdivision shall*
14 *automatically be certified as qualified agencies.*

15 *(2) An agency that is a county, or has an existing contract with*
16 *a county, as of the date that the managed care health plan in the*
17 *corresponding geographic area assumes contracting authority*
18 *with respect to agencies, shall be deemed to be certified as a*
19 *qualified agency with respect to the geographic area in which the*
20 *agency has a contract to provide in-home supportive services with*
21 *respect to the type of in-home supportive services provided*
22 *pursuant to that contract. Where a county has an existing contract*
23 *with an agency, the certification provided for in this subdivision*
24 *shall remain in effect until the triennial deadline established by*
25 *paragraph (3) of subdivision (d) that occurs no less than one year*
26 *after the expiration of the contract in effect at the time that the*
27 *managed care health plan assumes contracting authority with*
28 *respect to agencies. However, if an agency that is party to such a*
29 *contract seeks to expand the geographic area in which it is certified*
30 *to provide services or seeks to expand the types of services for*
31 *which it is certified, it must submit an application in accordance*
32 *with Section 12342.3.*

33 *(d) An agency contracting with a managed care health plan for*
34 *the provision of in-home supportive services shall be certified as*
35 *a qualified agency by the department in consultation with the State*
36 *Department of Health Care Services.*

37 *(1) The certification of an agency as a qualified agency shall*
38 *be with respect to a specific geographic area and an identified*
39 *category of services.*

1 (2) *An agency seeking certification as a qualified agency shall*
2 *submit to the department a verified application showing that it*
3 *satisfies the conditions and providing the information specified.*
4 *The department shall develop the form and establish the conditions*
5 *to be met. The verified application shall include the three most*
6 *recent audited financial statements or other independently verified*
7 *documentation showing that the applicant maintains liquid assets*
8 *sufficient to cover 180 days of in-home supportive services’*
9 *operating expenses, evidence of liability and workers’*
10 *compensation insurance, and evidence that the applicant has not*
11 *been the subject of bankruptcy proceedings in the last five years.*

12 (3) *The department shall establish an annual deadline for*
13 *submitting applications for certification pursuant to this*
14 *subdivision. The department shall also establish a triennial*
15 *deadline for submitting renewals of certification pursuant to this*
16 *subdivision. The department shall process and approve or deny*
17 *applications within 120 days of receipt of a completed application.*

18 (4) *In determining whether an agency may be certified as a*
19 *qualified agency, the department, in consultation with the State*
20 *Department of Health Care Services, shall consider documents*
21 *and evidence to ensure that, among other things identified by the*
22 *department, the agency:*

23 (A) *Guarantees the continuity and reliability of services to*
24 *recipients.*

25 (B) *Guarantees the supervision of contract providers.*

26 (C) *Guarantees that each contract provider has been screened*
27 *in accordance with Sections 12305.81 and 12305.87.*

28 (D) *Guarantees that each contract provider is capable of and*
29 *is providing the service authorized.*

30 (E) *Complies with applicable rules and regulations regarding*
31 *civil rights and those rights’ relations with contract providers.*

32 (F) *Is capable of providing high-quality and reliable in-home*
33 *supportive services.*

34 (G) *Is capable of complying with this section, any rules or*
35 *regulations promulgated under this section, and any applicable*
36 *federal rules and regulations.*

37 (H) *Has not demonstrated a pattern and practice of violations*
38 *of state or federal laws and regulations based on any available*
39 *information.*

1 (5) An application for certification under this subdivision may
2 be denied by the department if the department determines that the
3 applying agency or a responsible party has violated a law or
4 regulation that is substantially related to the qualifications or
5 duties of the applying agency or is substantially related to the
6 functions of the business for which certification was, or is to be,
7 issued, or on the ground that an applying agency knowingly made
8 a false statement of fact required to be revealed in an application
9 for certification.

10 (6) The department shall develop a written appeal process for
11 any agency dissatisfied with the decision of the department
12 regarding certification.

13 (e) (1) A qualified agency shall submit verified cost reports to
14 the department documenting that the qualified agency is in
15 compliance with subdivision (i). The cost reports shall be verified
16 by the responsible party and by a representative of a certified
17 public accounting firm.

18 (2) The verified cost reports required by paragraph (1) shall
19 be submitted within 90 calendar days after the end of each year
20 and within 60 calendar days after any change in compensation
21 negotiated by the Statewide Authority for individual providers has
22 gone into effect.

23 (f) A managed care health plan that has entered into a contract
24 in the manner prescribed in this section shall notify the department
25 within 30 days if the contract between the managed care health
26 plan and the qualified agency is suspended or terminated for any
27 reason.

28 (g) Except as provided in subdivision (h), a recipient of in-home
29 supportive services may only be referred to a qualified agency by
30 the county, managed care health plan, or care coordination teams.
31 Qualified agencies shall establish procedures to ensure contract
32 limitations on caseload are being met and there is coordination
33 of information between managed care health plans, qualified
34 agencies, counties, and the department. When a recipient has been
35 referred to the managed care health plan, the qualified agency
36 may provide services in the following circumstances:

37 (1) It has been determined that the recipient is unable to function
38 as the employer of the provider due to dementia, cognitive
39 impairment, or other similar issues.

1 (2) *The recipient has been identified to need services under this*
2 *mode by the care coordination team created pursuant to paragraph*
3 *(3) of subdivision (b) of Section 14186.*

4 (3) *The recipient is unable to retain a provider due to*
5 *geographic isolation and distance, authorized hours, or other*
6 *reasons.*

7 (h) *When a recipient who is severely impaired, as described in*
8 *Section 12303.4, is referred to a qualified agency by a managed*
9 *care health plan, the county, or the care coordination team, the*
10 *qualified agency may provide emergency backup services, as*
11 *needed, when a provider is unavailable due to vacation, illness,*
12 *or other extraordinary circumstances, or the recipient is in the*
13 *process of hiring or replacing a provider. Qualified agencies shall*
14 *establish procedures to ensure contract limitations on caseload*
15 *are being met and there is coordination of information between*
16 *managed care health plans, qualified agencies, counties, and the*
17 *department. Service hours provided under the emergency backup*
18 *criteria shall be deducted from the in-home supportive services*
19 *recipient's current authorized hours of services and on an*
20 *hour-to-hour basis coordinated with the county and the department*
21 *to ensure hours are accurately captured and not duplicated per*
22 *in-home supportive services program requirements.*

23 (i) *Wages and benefits for contract providers for their provision*
24 *of in-home supportive services shall not be less than the individual*
25 *provider rate negotiated by the Statewide Authority for the county*
26 *where services are provided.*

27 (j) *Any contract entered into between a managed care health*
28 *plan and a qualified agency shall provide for a minimum amount*
29 *of service utilization and shall be approved by the department. In*
30 *no case, however, shall in-home supportive services recipients*
31 *referred for services exceed 5 percent of the caseload in the county*
32 *where services are provided.*

33 (k) *The department shall establish reasonable fees to be paid*
34 *by agencies and qualified agencies for administering the provisions*
35 *of this section, including, but not limited to, fees associated with*
36 *processing applications for certification and renewals of*
37 *certification, and fees associated with monitoring and enforcing*
38 *compliance, including any fees reflecting the costs associated with*
39 *investigating complaints, to the extent permissible by law. These*

1 *fees shall be sufficient to cover the department's reasonable costs*
2 *incurred in administering the provisions of this section.*

3 *(l) Notwithstanding the rulemaking provisions of the*
4 *Administrative Procedure Act (Chapter 3.5 (commencing with*
5 *Section 11340) of Part 1 of Division 3 of Title 2 of the Government*
6 *Code), the department may implement, interpret, or make specific*
7 *this section by means of all-county letters, or similar instructions,*
8 *without taking regulatory action. Prior to issuing any letter or*
9 *similar instrument authorized pursuant to this section, the*
10 *department shall notify and consult with stakeholders, including*
11 *beneficiaries, providers, and advocates.*

12 *SEC. 9. Section 12306 of the Welfare and Institutions Code is*
13 *amended to read:*

14 12306. (a) The state and counties shall share the annual cost
15 of providing services under this article as specified in this section.

16 (b) Except as provided in subdivisions (c) and (d), the state shall
17 pay to each county, from the General Fund and any federal funds
18 received under Title XX of the federal Social Security Act available
19 for that purpose, 65 percent of the cost of providing services under
20 this article, and each county shall pay 35 percent of the cost of
21 providing those services.

22 (c) For services eligible for federal funding pursuant to Title
23 XIX of the federal Social Security Act under the Medi-Cal program
24 and, except as provided in subdivisions (b) and (d) the state shall
25 pay to each county, from the General Fund and any funds available
26 for that purpose 65 percent of the nonfederal cost of providing
27 services under this article, and each county shall pay 35 percent
28 of the nonfederal cost of providing those services.

29 (d) (1) For the period of July 1, 1992, to June 30, 1994,
30 inclusive, the state's share of the cost of providing services under
31 this article shall be limited to the amount appropriated for that
32 purpose in the annual Budget Act.

33 (2) The department shall restore the funding reductions required
34 by subdivision (c) of Section 12301, fully or in part, as soon as
35 administratively practicable, if the amount appropriated from the
36 General Fund for the 1992–93 fiscal year under this article is
37 projected to exceed the sum of the General Fund expenditures
38 under Section 14132.95 and the actual General Fund expenditures
39 under this article for the 1992–93 fiscal year. The entire amount
40 of the excess shall be applied to the restoration. Services shall not

1 be restored under this paragraph until the Department of Finance
2 has determined that the restoration of services would result in no
3 additional costs to the state or to the counties relative to the
4 combined state appropriation and county matching funds for
5 in-home supportive services under this article in the 1992–93 fiscal
6 year.

7 *(e) For the period during which Section 12306.15 is operative,*
8 *each county’s share of the costs of providing services pursuant to*
9 *this article specified in subdivisions (b) and (c) shall remain, but*
10 *the County IHSS Maintenance of Effort pursuant to Section*
11 *12306.15 shall be in lieu of that share.*

12 *SEC. 10. Section 12306.1 of the Welfare and Institutions Code*
13 *is amended to read:*

14 12306.1. (a) When any increase in provider wages or benefits
15 is negotiated or agreed to by a public authority or nonprofit
16 consortium under Section 12301.6, then the county shall use
17 county-only funds to fund both the county share and the state share,
18 including employment taxes, of any increase in the cost of the
19 program, unless otherwise provided for in the annual Budget Act
20 or appropriated by statute. No increase in wages or benefits
21 negotiated or agreed to pursuant to this section shall take effect
22 unless and until, prior to its implementation, the department has
23 obtained the approval of the State Department of Health Care
24 Services for the increase pursuant to a determination that it is
25 consistent with federal law and to ensure federal financial
26 participation for the services under Title XIX of the federal Social
27 Security Act, and unless and until all of the following conditions
28 have been met:

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

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

38 (b) Any rate approved pursuant to subdivision (a) shall take
39 effect commencing on the first day of the month subsequent to the
40 month in which final approval is received from the department.

1 The department may grant approval on a conditional basis, subject
2 to the availability of funding.

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

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

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

27 (3) The state shall participate as provided in subdivision (c) in
28 a total of wages and individual health benefits up to ten dollars
29 and ten cents (\$10.10) per hour, if wages have reached at least
30 seven dollars and fifty cents (\$7.50) per hour. Counties shall
31 determine, pursuant to the collective bargaining process provided
32 for in subdivision (c) of Section 12301.6, what portion of the ten
33 dollars and ten cents (\$10.10) per hour shall be used to fund wage
34 increases above seven dollars and fifty cents (\$7.50) per hour or
35 individual health benefit increases, or both. This paragraph shall
36 be operative commencing with the next state fiscal year for which
37 the May Revision forecast of General Fund revenue, excluding
38 transfers, exceeds by at least 5 percent, the most current estimate
39 of revenue, excluding transfers, for the year in which paragraph
40 (2) became operative.

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

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

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

33 (7) (A) The Legislature finds and declares that injunctions
34 issued by the courts have prevented the state from implementing
35 the changes described in paragraph (6) during the pendency of
36 litigation. To avoid confusion for providers, recipients, and other
37 stakeholders, it is therefore the intent of the Legislature to
38 temporarily suspend the reductions described in that paragraph
39 until July 1, 2012, to allow the litigation to reach a final result.

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

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

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

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

28 (g) *For the period during which Section 12306.15 is operative,*
29 *each county’s share of the costs of negotiated wage and benefit*
30 *increases specified in subdivision (c) shall remain, but the County*
31 *IHSS Maintenance of Effort pursuant to Section 12306.15 shall*
32 *be in lieu of that share.*

33 *SEC. 11. Section 12306.15 is added to the Welfare and*
34 *Institutions Code, to read:*

35 *12306.15. (a) Commencing July 1, 2012, all counties shall*
36 *have a County IHSS Maintenance of Effort (MOE). In lieu of*
37 *paying the nonfederal share of IHSS costs as specified in Sections*
38 *10101.1, 12306, and 12306.1, counties shall pay the County IHSS*
39 *MOE.*

1 (b) (1) *The County IHSS MOE base year shall be the 2011–12*
2 *state fiscal year. The County IHSS MOE base shall be defined as*
3 *the amount actually expended by each county on IHSS services*
4 *and administration in the County IHSS MOE base year, as reported*
5 *by each county to the Department of Social Services, except that*
6 *for administration, the County IHSS MOE base shall include no*
7 *more or no less than the full match for the county’s allocation from*
8 *the state.*

9 (2) *Administration expenditures shall include both county*
10 *administration and public authority administration. The County*
11 *IHSS MOE base shall be unique to each individual county.*

12 (3) *For a county that made 14 months of health benefit payments*
13 *for IHSS providers in the 2011–12 fiscal year, the Department of*
14 *Finance shall adjust that county’s County IHSS MOE base*
15 *calculation.*

16 (4) *The County IHSS MOE base for each county shall be no*
17 *less than each county’s 2011–12 expenditures for the Personal*
18 *Care Services Program and IHSS used in the caseload growth*
19 *calculation pursuant to Section 17605.*

20 (c) (1) *On July 1, 2014, the County IHSS MOE base shall be*
21 *adjusted by an inflation factor of 3.5 percent.*

22 (2) *Beginning on July 1, 2015, and annually thereafter, the*
23 *County IHSS MOE from the previous year shall be adjusted by an*
24 *inflation factor of 3.5 percent.*

25 (3) (A) *Notwithstanding paragraphs (1) and (2), in fiscal years*
26 *when the combined total of 1991 realignment revenues received*
27 *pursuant to Sections 11001.5, 6051.2, and 6201.2 of the Revenue*
28 *and Taxation Code, for the prior fiscal year is less than the*
29 *combined total received for the next prior fiscal year, the inflation*
30 *factor shall be zero.*

31 (B) *The Department of Finance shall provide notification to the*
32 *appropriate legislative fiscal committees and the California State*
33 *Association of Counties by May 14 of each year whether the*
34 *inflation factor will apply for the following fiscal year, based on*
35 *the calculation in subparagraph (A).*

36 (d) *In addition to the adjustment in subdivision (c), the County*
37 *IHSS MOE shall be adjusted for the annualized cost of locally*
38 *negotiated, mediated, or imposed increases in provider wages or*
39 *health benefits.*

1 (1) (A) If the State Department of Social Services approves the
2 rates and other economic terms for a locally negotiated, mediated,
3 or imposed increase in the provider wages, health benefits, or
4 other economic terms pursuant to Section 12306.1 and paragraph
5 (3), the state shall pay 65 percent, and each county shall pay 35
6 percent, of the nonfederal share of the cost increase.

7 (B) The county share of these expenditures shall be included in
8 the County IHSS MOE, in addition to the amount established under
9 subdivisions (b) and (c). For any increase in provider wages or
10 health benefits that becomes effective on a date other than July 1,
11 the Department of Finance shall adjust the county's County IHSS
12 MOE to reflect the annualized cost of the county's share of the
13 nonfederal cost of the wage or health benefit increase.

14 (2) (A) If the State Department of Social Services does not
15 approve the rates and other economic terms for a locally
16 negotiated, mediated, or imposed increase in the provider wages,
17 health benefits, or other economic terms pursuant to Section
18 12306.1 or paragraph (3), the county shall pay the entire
19 nonfederal share of the cost increase.

20 (B) The county share of these expenditures shall be included in
21 the County IHSS MOE, in addition to the amount established under
22 subdivisions (b) and (c). For any increase in provider wages or
23 health benefits that becomes effective on a date other than July 1,
24 the Department of Finance shall adjust the county's County IHSS
25 MOE to reflect the annualized cost of the county's share of the
26 nonfederal cost of the wage or health benefit increase.

27 (3) In addition to the rate approval requirements in Section
28 12306.1, it shall be presumed by the State Department of Social
29 Services that negotiated rates and other economic terms within
30 the following limits are approved:

31 (A) A net increase in the combined total of wages and health
32 benefits of up to 10 percent above the current combined total of
33 wages and health benefits paid in that county.

34 (B) A cumulative total of up to 20 percent in the sum of the
35 combined total of changes in wages or health benefits, or both,
36 until the Statewide Authority assumes the responsibilities set forth
37 in Section 110011 of the Government Code for a given county as
38 provided in Section 12300.7.

39 (e) The County IHSS MOE shall only be adjusted pursuant to
40 subdivisions (c) and (d).

1 (f) *If the demonstration project and the responsibilities of the*
2 *Statewide Authority become inoperative pursuant to Section 15 of*
3 *the act adding this section on a date other than July 1, this section*
4 *shall become inoperative on the first day of the following state*
5 *fiscal year.*

6 SEC. 12. *Section 12330 is added to the Welfare and Institutions*
7 *Code, to read:*

8 12330. (a) *No later than January 1, 2014, the State Department*
9 *of Social Services, in consultation with the department, and in*
10 *collaboration with stakeholders including, but not limited to, IHSS*
11 *recipients and recognized employee representatives, shall develop*
12 *a training curriculum for IHSS providers that shall address issues*
13 *of consistency, accountability, and increased quality of care for*
14 *IHSS recipients.*

15 (b) *Participation in the training developed pursuant to*
16 *subdivision (a) shall be voluntary.*

17 (c) *Nothing in this section shall require that training be funded*
18 *by the state.*

19 (d) *This section shall not be construed to preclude a managed*
20 *care health plan, as part of the care coordination team, from*
21 *developing recipient-specific voluntary training curriculum for an*
22 *IHSS provider who has been integrated into a beneficiary's care*
23 *coordination team.*

24 (e) *The IHSS recipient shall continue to have the right to train*
25 *his or her individual provider.*

26 SEC. 13. *Section 14186.35 is added to the Welfare and*
27 *Institutions Code, to read:*

28 14186.35. (a) *Not sooner than March 1, 2013, in-home*
29 *supportive services (IHSS) shall be a Medi-Cal benefit available*
30 *through managed care health plans in a county where this article*
31 *is effective. Managed care health plans shall cover IHSS in*
32 *accordance with the standards and requirements set forth in Article*
33 *7 (commencing with Section 12300) of Chapter 3. Specifically,*
34 *managed care health plans shall do all of the following:*

35 (1) *Ensure access to, provision of, and payment for IHSS for*
36 *individuals who meet the eligibility criteria for IHSS.*

37 (2) *Retain recipients' right to be the employer, to select, engage,*
38 *direct, supervise, schedule, and terminate IHSS providers in*
39 *accordance with Section 12301.6.*

1 (3) Assume all financial liability for payment of IHSS services
2 for recipients receiving said services pursuant to managed care.

3 (4) Create a care coordination team, as needed and subject to
4 the consumer's consent, that shall include county IHSS social
5 workers, consumers and their representatives, managed care health
6 plans, and may include IHSS providers and others as applicable,
7 for individual care plan development. For individuals identified
8 to participate in care coordination, managed care health plans
9 shall include the consumer or his or her authorized representative,
10 or both, health plan, county IHSS staff if the consumer is an IHSS
11 recipient, Community-Based Adult Services (CBAS) and
12 Multipurpose Senior Services Program (MSSP) case managers if
13 the consumer is a CBAS or MSSP client, and may include others
14 as identified by the consumer.

15 (5) Maintain the paramedical role and function of providers as
16 authorized pursuant to Sections 12300 and 12301.

17 (6) Ensure compliance with all requirements set forth in Section
18 14132.956 and any resulting state plan amendments.

19 (7) Adhere to quality assurance provisions and individual data
20 and other standards and requirements as specified by the State
21 Department of Social Services including state and federal quality
22 assurance requirements.

23 (8) Share confidential beneficiary data with the contractors
24 specified in this section to improve care coordination, promote
25 shared understanding of the consumer's needs, and ensure
26 appropriate access to IHSS and other long-term services and
27 supports.

28 (9) (A) Enter into a memorandum of understanding with a
29 county agency and the county's public authority or nonprofit
30 consortium pursuant to Section 12301.6 to continue to perform
31 their respective functions and responsibilities pursuant to the
32 existing ordinance or contract until the Director of Health Care
33 Services provides notification pursuant to subdivision (a) of Section
34 12300.7 for that county.

35 (B) Following the notification pursuant to subdivision (a) of
36 Section 12300.7, enter into a memorandum of understanding with
37 the county agencies to perform the following activities:

38 (i) Assess, approve, and authorize each recipient's initial and
39 continuing need for services pursuant to Article 7 (commencing
40 with Section 12300) of Chapter 3. County agency assessments

1 shall be shared with the care coordination teams established under
2 paragraph (4), when applicable, and the county agency thereafter
3 may receive and consider additional input from the care
4 coordination team.

5 (ii) Plans may contract with counties for additional assessments
6 for purposes of paragraph (6) of subdivision (b) of Section 14186.

7 (iii) Enroll providers, conduct provider orientation, and retain
8 enrollment documentation pursuant to Sections 12301.24 and
9 12305.81.

10 (iv) Conduct criminal background checks on all potential
11 providers and exclude providers consistent with the provisions set
12 forth in Sections 12305.81, 12305.86, and 12305.87.

13 (v) Provide assistance to IHSS recipients in finding eligible
14 providers through the establishment of a provider registry as well
15 as provide training for providers and recipients as set forth in
16 Section 12301.6.

17 (vi) Refer all providers to the California In-Home Supportive
18 Services Authority or nonprofit consortium for the purposes of
19 wages and benefits.

20 (vii) Pursue overpayment recovery pursuant to Section
21 12305.83.

22 (viii) Perform quality assurance activities including routine
23 case reviews, home visits, and detecting and reporting suspected
24 fraud pursuant to Section 12305.71.

25 (ix) Share confidential data necessary to implement the
26 provisions of this section.

27 (x) Appoint an advisory committee of not more than 11 people,
28 and no less than 50 percent of the membership of the advisory
29 committee shall be individuals who are current or past users of
30 personal assistance paid for through public or private funds or
31 recipients of IHSS services.

32 (xi) Continue to perform other functions necessary for the
33 administration of the IHSS program pursuant to Article 7
34 (commencing with Section 12300) of Chapter 3 and regulations
35 promulgated by the State Department of Social Services pursuant
36 to that article.

37 A county may contract with a nonprofit consortium, or may
38 establish a public authority pursuant to Section 12301.6 for the
39 performance of any or all of the activities set forth in a contract
40 with a managed care health plan pursuant to this section.

- 1 (10) Enter into a contract with the State Department of Social
2 Services to perform the following activities:
- 3 (A) Pay wages to IHSS providers in accordance with the wages
4 negotiated pursuant to Title 23 (commencing with Section 110000)
5 of the Government Code.
- 6 (B) Perform obligations on behalf of the IHSS recipient as the
7 employer of his or her provider, including unemployment
8 compensation, disability benefits, applicable federal and state
9 taxes, and federal old age survivor's and disability insurance
10 through the state's payroll system for IHSS in accordance with
11 Sections 12302.2 and 12317.
- 12 (C) Provide technical assistance and support for all
13 payroll-related activities involving the state's payroll system for
14 IHSS, including, but not limited to, the monthly restaurant
15 allowance as set forth in Section 12303.7, the monthly cash
16 payment in advance as set forth in Section 12304, and the direct
17 deposit program as set forth in Section 12304.4.
- 18 (D) Share recipient and provider data with managed care health
19 plans for members who are receiving IHSS to support care
20 coordination.
- 21 (E) Provide an option for managed care health plans to
22 participate in quality monitoring activities conducted by the State
23 Department of Social Services pursuant to subdivision (f) of Section
24 12305.7 for recipients who are plan members.
- 25 (11) In concert with the department, timely reimburse the State
26 Department of Social Services for payroll and other obligations
27 of the beneficiary as the employer, including unemployment
28 compensation, disability benefits, applicable federal and state
29 taxes, and federal old age survivors and disability insurance
30 benefits through the state's payroll system.
- 31 (12) In a county where services are provided in the homemaker
32 mode, enter into a contract with the county to implement the
33 provision of services pursuant to the homemaker mode as set forth
34 in Section 12302.
- 35 (13) Retain the IHSS individual provider mode as a choice
36 available to beneficiaries in all participating managed care health
37 plans in each county.
- 38 (14) In a county where services are provided pursuant to a
39 contract, enter into a contract with a city, county, or city and

1 county agency, a local health district, a voluntary nonprofit agency,
2 or a proprietary agency as set forth in Sections 12302 and 12302.1.

3 (15) Assume the financial risk associated with the cost of payroll
4 and associated activities set forth in paragraph (10).

5 (b) IHSS recipients receiving services through managed care
6 health plans shall retain all of the following:

7 (1) The responsibilities as the employer of the IHSS provider
8 for the purposes of hiring, firing, and supervising their provider
9 of choice as set forth in Section 12301.6.

10 (2) The ability to appeal any action relating to his or her
11 application for or receipt of services pursuant to Article 7
12 (commencing with Section 12300) of Chapter 3.

13 (3) The right to employ a provider applicant who has been
14 convicted of an offense specified in Section 12305.87 by submitting
15 a waiver of the exclusion.

16 (4) The ability to request a reassessment pursuant to Section
17 12301.1.

18 (c) The department and the State Department of Social Services,
19 along with the counties, managed care health plans, consumers,
20 advocates, and other stakeholders, shall develop a referral process
21 and informational materials for the appeals process that is
22 applicable to home- and community-based services plan benefits
23 authorized by a managed care health plan. The process established
24 by this paragraph shall ensure ease of access for consumers.

25 (d) For services provided through managed care health plans,
26 the IHSS provider shall continue to adhere to the requirements set
27 forth in subdivisions (a) and (b) of Section 12301.24, subdivision
28 (a) of Section 12301.25, subdivision (a) of Section 12305.81, and
29 subdivision (a) of Section 12306.5.

30 (e) In accordance with Section 14186.2, as the provision of
31 IHSS transitions to managed care health plans in a phased-in
32 approach, the State Department of Social Services shall do all of
33 the following:

34 (1) Retain program administration functions, in coordination
35 with the department, including policy development, provider
36 appeals and general exceptions, and quality assurance and
37 program integrity for the IHSS program in accordance with Article
38 7 (commencing with Section 12300) of Chapter 3.

1 (2) Perform the obligations on behalf of the recipient as
2 employer relating to workers' compensation as set forth in Section
3 12302.2.

4 (3) Retain responsibilities related to the hearing process for
5 IHSS recipient appeals as set forth in Chapter 7 (commencing with
6 Section 10950) of Part 2.

7 (4) Continue to have access to and provide confidential recipient
8 data necessary for the administration of the program.

9 SEC. 14. Section 14186.36 is added to the Welfare and
10 Institutions Code, to read:

11 14186.36. (a) It is the intent of the Legislature that a universal
12 assessment process for LTSS be developed and tested. The initial
13 uses of this tool may inform future decisions about whether to
14 amend existing law regarding the assessment processes that
15 currently apply to LTSS programs, including IHSS.

16 (b) (1) In addition to the activities set forth in paragraph (9)
17 of subdivision (a) of Section 14186.35, county agencies shall
18 continue IHSS assessment and authorization processes, including
19 making final determinations of IHSS hours pursuant to Article 7
20 (commencing with Section 12300) of Chapter 3 and regulations
21 promulgated by the State Department of Social Services.

22 (2) No sooner than January 1, 2015, for the counties and
23 beneficiary categories specified in subdivision (e), counties shall
24 also utilize the universal assessment tool, as described in
25 subdivision (c), if one is available and upon completion of the
26 stakeholder process, system design and testing, and county training
27 described in subdivisions (c) and (e), for the provision of IHSS
28 services. This paragraph shall only apply to beneficiaries who
29 consent to the use of the universal assessment process. The
30 managed care health plans shall be required to cover IHSS services
31 based on the results of the universal assessment process specified
32 in this section.

33 (c) (1) No later than June 1, 2013, the department, the State
34 Department of Social Services, and the California Department of
35 Aging shall establish a stakeholder workgroup to develop the
36 universal assessment process, including a universal assessment
37 tool, for home- and community-based services, as defined in
38 subdivision (a) of Section 14186.1. The stakeholder workgroup
39 shall include, but not be limited to, consumers of IHSS and other
40 home- and community-based services and their authorized

1 *representatives, managed care health plans, counties, IHSS, MSSP,*
2 *and CBAS providers, and legislative staff. The universal assessment*
3 *process shall be used for all home- and community-based services,*
4 *including IHSS. In developing the process, the workgroup shall*
5 *build upon the IHSS uniform assessment process and hourly task*
6 *guidelines, the MSSP assessment process, and other appropriate*
7 *home- and community-based assessment tools.*

8 (2) (A) *In developing the universal assessment process, the*
9 *departments described in paragraph (1) shall develop a universal*
10 *assessment tool that will inform the universal assessment process*
11 *and facilitate the development of plans of care based on the*
12 *individual needs of the consumer. The workgroup shall consider*
13 *issues including, but not limited to, the following:*

14 (i) *The roles and responsibilities of the health plans, counties,*
15 *and home- and community-based services providers administering*
16 *the assessment.*

17 (ii) *The criteria for reassessment.*

18 (iii) *How the results of new assessments would be used for the*
19 *oversight and quality monitoring of home- and community-based*
20 *services providers.*

21 (iv) *How the appeals process would be affected by the*
22 *assessment.*

23 (v) *The ability to automate and exchange data and information*
24 *between home- and community-based services providers.*

25 (vi) *How the universal assessment process would incorporate*
26 *person-centered principles and protections.*

27 (vii) *How the universal assessment process would meet the*
28 *legislative intent of this article and the goals of the demonstration*
29 *project pursuant to Section 14132.275.*

30 (viii) *The qualifications for, and how to provide guidance to,*
31 *the individuals conducting the assessments.*

32 (B) *The workgroup shall also consider how this assessment may*
33 *be used to assess the need for nursing facility care and divert*
34 *individuals from nursing facility care to home- and*
35 *community-based services.*

36 (d) *No later than March 1, 2014, the department, the State*
37 *Department of Social Services, and the California Department of*
38 *Aging shall report to the Legislature on the stakeholder*
39 *workgroup's progress in developing the universal assessment*
40 *process, and shall identify the counties and beneficiary categories*

1 *for which the universal assessment process may be implemented*
2 *pursuant to subdivision (e).*

3 *(e) (1) No sooner than January 1, 2015, upon completion of the*
4 *design and development of a new universal assessment tool,*
5 *managed care health plans, counties, and other home- and*
6 *community-based services providers may test the use of the tool*
7 *for a specific and limited number of beneficiaries who receive or*
8 *are potentially eligible to receive home- and community-based*
9 *services pursuant to this article in no fewer than two, and no more*
10 *than four, of the counties where the provisions of this article are*
11 *implemented, if the following conditions have been met:*

12 *(A) The department has obtained any federal approvals through*
13 *necessary federal waivers or amendments, or state plan*
14 *amendments, whichever is later.*

15 *(B) The system used to calculate the results of the tool has been*
16 *tested.*

17 *(C) Any entity responsible for using the tool has been trained*
18 *in its usage.*

19 *(2) To the extent the universal assessment tool or universal*
20 *assessment process results in changes to the authorization process*
21 *and provision of IHSS services, those changes shall be automated*
22 *in the Case Management Information and Payroll System.*

23 *(3) The department shall develop materials to inform consumers*
24 *of the option to participate in the universal assessment tool testing*
25 *phase pursuant to this paragraph.*

26 *(f) The department, the State Department of Social Services,*
27 *and the California Department of Aging shall implement a*
28 *rapid-cycle quality improvement system to monitor the*
29 *implementation of the universal assessment process, identify*
30 *significant changes in assessment results, and make modifications*
31 *to the universal assessment process to more closely meet the*
32 *legislative intent of this article and the goals of the demonstration*
33 *project pursuant to Section 14132.275.*

34 *(g) Until existing law relating to the IHSS assessment process*
35 *pursuant to Article 7 (commencing with Section 12300) of Chapter*
36 *3 is amended, beneficiaries shall have the option to request an*
37 *additional assessment using the previous assessment process for*
38 *those home- and community-based services and to receive services*
39 *according to the results of the additional assessment.*

1 (h) No later than nine months after the implementation of the
2 universal assessment process, the department, the State Department
3 of Social Services, and the California Department of Aging, in
4 consultation with stakeholders, shall report to the Legislature on
5 the results of the initial use of the universal assessment process,
6 and may identify proposed additional beneficiary categories or
7 counties for expanded use of this process and any necessary
8 changes to provide statutory authority for the continued use of the
9 universal assessment process. These departments shall report
10 annually thereafter to the Legislature on the status and results of
11 the universal assessment process.

12 (i) The provisions of this section shall remain operative only
13 until July 1, 2017.

14 SEC. 15. (a) In the event the department has not received, by
15 February 1, 2013, federal approval, or notification indicating
16 pending approval, of a mutual ratesetting process, shared federal
17 savings, and a six-month enrollment period in the demonstration
18 project pursuant to Section 14132.275, effective March 1, 2013,
19 this act shall become inoperative, the amendments made to the
20 sections amended by this act shall be inoperative, and the sections
21 added by this act shall be inoperative. The director shall execute
22 a declaration attesting to these facts and post it on the department's
23 Internet Web site.

24 (b) For purposes of this section, "shared federal savings" means
25 a methodology that meets the conditions of paragraphs (1) and
26 (2), or paragraph (3).

27 (1) The state and the federal Centers for Medicare and Medicaid
28 Services share in the combined savings for Medicare and Medi-Cal,
29 as estimated in the Budget Act of 2012 for the 2012–13, 2013–14,
30 2014–15, and 2015–16 fiscal years.

31 (2) Federal approval for the provisions of Section 14132.275
32 regarding the requirement that, upon enrollment in a
33 demonstration site, specified beneficiaries shall remain enrolled
34 on a mandatory basis for six months from the date of initial
35 enrollment.

36 (3) An alternate methodology that, in the determination of the
37 Director of Finance, in consultation with the Director of Health
38 Care Services and the Joint Legislative Budget Committee, will
39 result in the same level of ongoing savings, as estimated in the

1 *Budget Act of 2012 for the 2012–13, 2013–14, 2014–15, and*
2 *2015–16 fiscal years.*

3 *SEC. 16. In the event that the conditions set forth in Section*
4 *10 of Assembly Bill 1468 or Senate Bill 1008 of the 2011-2012*
5 *Regular Session of the Legislature are not met as described and*
6 *the provisions of law set forth in Section 10 of those bills become*
7 *inoperative, Sections 6531.5 and Title 23 (commencing with Section*
8 *110000) of the Government Code and Sections 12300.5, 12300.6,*
9 *12300.7, and 12302.6 of the Welfare and Institutions Code as*
10 *added by this act shall become inoperative as of March 1, 2013.*

11 *SEC. 17. In the event the director decides to entirely forego*
12 *the provision of services as specified in Section 14186.4, Section*
13 *6531 of the Government Code and Sections 12300.5, 12300.6 and*
14 *12300.7 of the Welfare and Institutions Code as added by this act*
15 *shall cease to be implemented except as follows:*

16 *(a) For an agreement that has been negotiated and approved*
17 *by the Statewide Authority, the Statewide Authority shall continue*
18 *to retain its authority pursuant to Section 6531.5 and Title 23*
19 *(commencing with Section 110000) of the Government Code and*
20 *Sections 12300.5, 12300.6, 12300.7, and 12302.6 of the Welfare*
21 *and Institutions Code as added by this act, and remain the*
22 *employer of record for all individual providers covered by the*
23 *agreement until the agreement expires or is subject to*
24 *renegotiation, whereby the authority of the Statewide Authority*
25 *shall terminate and the county shall be the employer of record in*
26 *accordance with Section 12302.25 of the Welfare and Institutions*
27 *Code and may establish an employer of record pursuant to Section*
28 *12301.6 of the Welfare and Institutions Code.*

29 *(b) For an agreement that has been assumed by the Statewide*
30 *Authority that was negotiated and approved by a predecessor*
31 *agency, the Statewide Authority shall cease being the employer of*
32 *record and the county shall be reestablished as the employer of*
33 *record for purposes of bargaining and in accordance with Section*
34 *12302.25 of the Welfare and Institutions Code, and may establish*
35 *an employer of record pursuant to Section 12301.6 of the Welfare*
36 *and Institutions Code.*

37 *SEC. 18. If the Commission on State Mandates determines that*
38 *this act contains costs mandated by the state, reimbursement to*
39 *local agencies and school districts for those costs shall be made*

1 *pursuant to Part 7 (commencing with Section 17500) of Division*
2 *4 of Title 2 of the Government Code.*

3 *SEC. 19. The sum of one thousand dollars (\$1,000) is hereby*
4 *appropriated from the General Fund to the State Department of*
5 *Health Care Services for administration.*

6 *SEC. 20. This act shall become operative only if Assembly Bill*
7 *1468 or Senate Bill 1008 of the 2011–12 Regular Session of the*
8 *Legislature is enacted and takes effect.*

9 *SEC. 21. This act is a bill providing for appropriations related*
10 *to the Budget Bill within the meaning of subdivision (e) of Section*
11 *12 of Article IV of the California Constitution, has been identified*
12 *as related to the budget in the Budget Bill, and shall take effect*
13 *immediately.*

14 ~~SECTION 1. It is the intent of the Legislature to enact statutory~~
15 ~~changes relating to the Budget Act of 2012.~~