

Senate Bill No. 1036

CHAPTER 45

An act 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, and to amend Sections 10101.1, 12306, and 12306.1 of, and 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.

[Approved by Governor June 27, 2012. Filed with
Secretary of State June 27, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1036, Committee on Budget and Fiscal Review. 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 public 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.

Appropriation: yes.

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

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

6253.2. (a) Notwithstanding any other provision of this chapter to the contrary, information regarding persons paid by the state to provide in-home

supportive services pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code, or services provided pursuant to Section 14132.95, 14132.952, or 14132.956 of the Welfare and Institutions Code, shall not be subject to public disclosure pursuant to this chapter, except as provided in subdivision (b).

(b) Copies of names, addresses, and telephone numbers of persons described in subdivision (a) shall be made available, upon request, to an exclusive bargaining agent and to any labor organization seeking representation rights pursuant to Section 12301.6 or 12302 of the Welfare and Institutions Code or the In-Home Supportive Services Employer-Employee Relations Act (Title 23 (commencing with Section 110000)). This information shall not be used by the receiving entity for any purpose other than the employee organizing, representation, and assistance activities of the labor organization.

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

(d) Nothing in this section is intended to alter or shall be interpreted to alter the rights of parties under the In-Home Supportive Services Employer-Employee Relations Act (Title 23 (commencing with Section 110000)) or any other labor relations law.

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

6531.5. (a) There is hereby created the California In-Home Supportive Services Authority, hereafter referred to as the Statewide Authority. Notwithstanding any other law, the Statewide Authority shall be deemed a joint powers authority created pursuant to this article and is a public entity separate and apart from the parties that have appointing power to the Statewide Authority or the employers of those individuals so appointed. Notwithstanding the requirements of this article, an agreement shall not be required to create the Statewide Authority.

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

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

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

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

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

(e) The Statewide Authority shall appoint an advisory committee that shall be comprised of not more than 13 individuals. No less than 50 percent

of the membership of the advisory committee shall be individuals who are current or past users of personal assistance services paid for through public or private funds or recipients of services in-home supportive.

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

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

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

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

(f) Prior to the appointment of members to a committee authorized by subdivision (e), the Statewide Authority shall solicit recommendations for qualified members through a fair and open process that includes the provision of reasonable written notice to, and reasonable response time by, members of the general public and interested persons and organizations.

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

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

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

CHAPTER 1. GENERAL PROVISIONS

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

110001. It is the purpose of this title to promote full communication between the California In-Home Supportive Services Authority (the Statewide Authority) and the recognized employee organization representing independent providers by providing a reasonable method of resolving disputes regarding wages, benefits, and other terms and conditions of employment, as defined in Section 110023, between the Statewide Authority for in-home supportive services and recognized employee organizations. It is also the purpose of this title to promote the improvement of personnel management and employer-employee relations within the Statewide Authority by providing a uniform basis for recognizing the right of independent providers to join organizations of their own choice and be represented by those organizations for purposes of collective bargaining with the Statewide Authority. This title is intended to strengthen methods of administering employer-employee relations through the establishment of uniform and orderly methods of communication between the recognized

employee organizations and the Statewide Authority. Except as expressly provided herein, this title is not intended to require changes in existing bargaining units or memoranda of agreement or understanding.

110002. Except as otherwise provided by the Legislature, employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters within the scope of representation. Employees also shall have the right to refuse to join or participate in the activities of employee organizations.

110003. As used in this title:

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

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

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

(d) “Employer” means, for the purposes of collective bargaining, the Statewide Authority established pursuant to Section 6531.5. The in-home supportive services recipient shall be the employer of an individual in-home supportive services provider with the unconditional and exclusive right to hire, fire, and supervise his or her provider.

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

(f) “In-home supportive services recipient” means the individual who receives the in-home supportive services provided by the individual provider. The in-home supportive services recipient is the employer for the purposes of hiring, firing, and supervising his or her respective individual provider.

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

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

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

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

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

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

(k) “Statewide Authority” means the California In-Home Supportive Services Authority established pursuant to Section 6531.5.

CHAPTER 2. TRANSITIONAL PROVISIONS

110004. It is the intent of the Legislature to stabilize the labor and employment relations of individual providers in order to provide continuity of care and services to the maximum extent possible, and consistent with the responsibilities of the Statewide Authority under the act adding this title.

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

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

110007. Individual providers employed by any predecessor agency as of the county implementation date shall retain employee status and shall not be required by the Statewide Authority to requalify to receive payment for providing services pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code. In the same manner as set forth in subdivision (e) of Section 12305.86 of the Welfare and Institutions Code, the Statewide Authority shall accept a clearance that was obtained or accepted by any predecessor agency pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code. Existence of a clearance shall be determined by verification through the case management, information, and payroll system of the predecessor agency that the

predecessor agency has deemed the provider to be eligible to receive payment for providing services pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code.

110008. On the county implementation date, separate bargaining units shall be created consistent with the bargaining units that have been recognized by predecessor agencies. Bargaining units consisting of employees in a single county shall be the only appropriate unit for collective bargaining under this title. In those counties where no recognized employee organization exists as of the county implementation date, a bargaining unit consisting of all employees in that county shall be deemed an appropriate unit for collective bargaining.

110009. If, on the county implementation date, individual providers are represented by a recognized employee organization, the Statewide Authority shall be deemed the successor employer of the predecessor agency for the purposes of negotiating a collective bargaining agreement, and shall be obligated to recognize and to meet and confer in good faith with the recognized employee organization on all matters within the scope of representation, as defined in Section 110023, as to those individual providers.

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

(a) As of July 1, 2012, all recognized employee organizations affiliated with the same national parent union shall negotiate as a coalition on behalf of all bargaining units they represent. If recognized employee organizations are affiliated with two or more different national parent unions, those recognized employee organizations shall also negotiate as a coalition on behalf of all bargaining units they represent.

(b) An employee organization obtaining recognition after July 1, 2012, which is affiliated with the same national parent union or unions as the coalitions described in subdivision (a), shall become a part of the coalition affiliated with its same national parent union or unions.

(c) An employee organization not affiliated with a national parent union covered by subdivision (a), that obtains recognition after July 1, 2012, and represents fewer than 100,000 employees subject to this title, shall negotiate as a member of a coalition, separate from the coalitions described in subdivision (a) and comprised of all those recognized employee organizations on behalf of all units they collectively represent. If that employee organization represents 100,000 or more employees subject to this title, it shall have the right to negotiate as its own coalition on behalf of all bargaining units it represents.

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

110011. (a) Except as otherwise expressly provided in this title, the enactment of this title shall not be a cause for the employer or any predecessor agency to modify or eliminate any existing memorandum of agreement or understanding, or to modify existing wages, benefits, or other terms and conditions of employment. Except to the extent set forth in this title, the enactment of this title shall not prevent the modification of existing wages, benefits, or terms and conditions of employment through the meet and confer in good faith process or, in those situations in which the employees are not represented by a recognized employee organization, through appropriate procedures.

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

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

(d) Nothing in this title shall be construed to relieve any predecessor agency of its obligation to meet and confer in good faith with a recognized employee organization pursuant to the Meyers-Milius-Brown Act (Chapter 10 (commencing with Section 3500) of Division 4 of Title 1) until the county implementation date. Nothing in this title shall require the predecessor agency to meet and confer after the Statewide Authority assumes the predecessor agency's rights and obligations on the county implementation date.

(e) With the exception of all economic terms covered by Section 12306.15 of the Welfare and Institutions Code and notwithstanding any other provision of law, beginning July 1, 2012, and ending on the county implementation date as set forth in subdivision (a) of Section 12300.7 of the Welfare and Institutions Code, any alterations or modifications to either current or expired memoranda of understanding that were in effect on July 1, 2012, and any newly negotiated memoranda of understanding or agreements reached after July 1, 2012, shall be submitted for review to the State Department of Social

Services. This review requirement shall be performed by the department until the Statewide Authority becomes operational, after which date the Statewide Authority shall continue to perform this review requirement. If, upon review, but not later than 180 days after the county commences transition pursuant to paragraph (1) of subdivision (g) of Section 14132.275 of the Welfare and Institutions Code, the department or Statewide Authority reasonably determines that there are one or more newly negotiated or amended noneconomic terms in the memorandum of understanding or agreement to which it objects for a bona fide business-related reason, the department or Statewide Authority shall provide written notice to the signatory recognized employee organization of each objection and the reason for it. Upon demand from the recognized employee organization, the department, or the Statewide Authority, the parties shall meet and confer regarding the objection and endeavor to reach agreement prior to the county implementation date. If an agreement is not reached by the county implementation date, the objectionable language is deemed inoperable. All terms to which no objection is made shall be deemed accepted by the Statewide Authority. If the Statewide Authority fails to provide the 180 days' notice of objection, it shall be deemed waived.

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

CHAPTER 3. ADMINISTRATION

110013. The Legislature hereby finds and declares that collective bargaining for individual providers under this title constitutes a matter of statewide concern. Therefore, this title is applicable to all counties, notwithstanding charter provisions to the contrary as set forth in Section 110005.

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

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

110016. Notwithstanding any other law, if a decision by an administrative law judge regarding the recognition, certification, decertification, or unit modification, consistent with Section 110008, of an employee organization is appealed, the decision shall be deemed the final order of the board if the

board does not issue a ruling that supersedes the decision no later than 180 days after the appeal is filed.

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

(b) A petition for a writ of extraordinary relief shall be filed in the district court of appeal having jurisdiction over the county where the events giving rise to the decision or order occurred. The petition shall be filed within 30 days from the date of the issuance of the board's final decision or order, or order denying reconsideration, as applicable. Upon the filing of the petition, the court shall cause notice to be served upon the board and thereafter shall have jurisdiction of the proceeding. The board shall file in the court the record of the proceeding, certified by the board, within 10 days after the clerk's notice unless that time is extended by the court for good cause shown. The court shall have jurisdiction to grant any temporary relief or restraining order it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as modified, or setting aside in whole or in part the decision or order of the board. The findings of the board with respect to questions of fact, including ultimate facts, if supported by substantial evidence on the record considered as a whole, shall be conclusive. Title 1 (commencing with Section 1067) of Part 3 of the Code of Civil Procedure relating to writs shall, except where specifically superseded by this section, apply to proceedings pursuant to this section.

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

CHAPTER 4. LABOR RELATIONS

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

110019. (a) Notwithstanding Section 110002, any other provision of this title, or any other law, rule, or regulation, an agency shop agreement may be negotiated between the employer and a recognized public employee organization that has been recognized as the exclusive or majority bargaining agent, in accordance with this title. As used in this title, “agency shop” means an arrangement that requires an employee, as a condition of continued employment, either to join the recognized employee organization or to pay the organization a service fee in an amount not to exceed the standard initiation fee, periodic dues, and general assessments of the organization, to be determined by the organization in accordance with applicable law.

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

(c) An individual provider who is a member of a bona fide religion, body, or sect that has historically held conscientious objections to joining or financially supporting public employee organizations shall not be required to join or financially support a public employee organization as a condition of employment. The employee may be required, in lieu of periodic dues, initiation fees, or agency shop fees, to pay sums equal to the dues, initiation fees, or agency shop fees to a nonreligious, nonlabor charitable fund exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, chosen

by the employee from a list of at least three of these funds, designated in a memorandum of understanding between the employer and the recognized employee organization, or if the memorandum of understanding fails to designate the funds, then to a fund of that type chosen by the employee. Proof of the payments shall be made on a monthly basis to the employer as a condition of continued exemption from the requirement of financial support to the public employee organization.

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

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

110020. (a) Nothing in this title shall affect the right of an employee to authorize a dues or service fees deduction from his or her salary or wages pursuant to Article 6 (commencing with Section 1150) of Chapter 1 of Division 4 of Title 1.

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

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

110021. If a predecessor agency is party to any memorandum of understanding or agreement with any bargaining unit that includes individual providers that contains an agency shop provision as of the effective date of this title, the predecessor agency and the employer shall be obligated to

honor the terms of the agency shop provision, including indemnification provisions, if any, for the duration of the memorandum of understanding or agreement, and until the adoption of a successor memorandum of understanding or agreement. However, upon the request of a recognized employee organization, an agency shop provision in effect on the county implementation date may be reopened for the sole purpose of renegotiating the terms of that provision in accordance with this title. The implementation of this title shall not be a cause for a new agency shop election.

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

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

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

- (1) Determining an applicant's eligibility for IHSS benefits.
- (2) Assessing, approving, and authorizing an IHSS recipient's initial and continuing need for services.
- (3) Enrolling providers and conducting provider orientation.
- (4) Conducting criminal background checks on all potential providers.
- (5) Providing assistance to IHSS recipients in finding eligible providers through the establishment of a provider registry, as well as providing orientation to recipients.
- (6) Pursuing overpayment recovery recollection.
- (7) Performing quality assurance activities.
- (8) Performing any other function or responsibility required pursuant to statute or regulation to be performed by the county.

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

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

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

110025. (a) Consistent with Section 12300.5 of the Welfare and Institutions Code, the Statewide Authority shall meet and confer in good

faith regarding matters within the scope of representation with representatives of recognized employee organizations and shall consider fully those presentations as are made by the employee organization on behalf of its members prior to arriving at a determination of policy or course of action.

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

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

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

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

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

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

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

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

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

(c) The panel shall, within 10 days after its appointment, meet with the parties or their representatives, either jointly or separately, and may make inquiries and investigations, hold hearings, and take any other steps it deems appropriate. For the purpose of the hearings, investigations, and inquiries,

the panel shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence. Any state agency, as defined in Section 11000, or any political subdivision of the state, shall furnish the panel, upon its request, with all records, papers, and information in their possession relating to any matter under investigation by or in issue before the panel.

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

- (1) State and federal laws that are applicable to the employer.
- (2) Local rules, regulations, or ordinances.
- (3) Stipulations of the parties.
- (4) The interests and welfare of the public and the financial ability of the employer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Registering employee organizations.

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) For the period during which Section 12306.15 is operative, each county's share of the nonfederal costs of the county services block grant

and the in-home supportive services administration requirements as specified in subdivision (a) shall remain, but the County IHSS Maintenance of Effort pursuant to Section 12306.15 shall be in lieu of that share.

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

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

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

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

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

12300.6. There is hereby created the In-Home Supportive Services Fund in the State Treasury. Moneys in the fund shall be made available, upon appropriation by the Legislature, to the California In-Home Supportive Services Authority, for the purposes of funding the functions of the Statewide Authority.

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

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

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

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

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

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

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

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

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

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

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

12302.6. (a) A managed care health plan may enter into contracts pursuant to paragraph (14) of subdivision (a) of Section 14186.35 solely in the manner prescribed in this section.

(b) For purposes of this section:

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

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

(3) "County" means a political unit, unless otherwise indicated.

(4) "Department" means the State Department of Social Services.

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

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

(7) "Managed care health plan" shall have the same meaning as set forth in Section 14186.1.

(8) "Qualified agency" means an agency that has been certified by the department.

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

(10) "Statewide Authority" means the California In-Home Supportive Services Authority established pursuant to Section 6531.5 of the Government Code.

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

(1) (A) Managed care health plans shall assume the authority as described in subdivision (a) only upon their integration into Medi-Cal managed care pursuant to Article 5.7 (commencing with Section 14186) of Chapter 7.

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

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

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

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

(2) An agency seeking certification as a qualified agency shall submit to the department a verified application showing that it satisfies the conditions and providing the information specified. The department shall develop the form and establish the conditions to be met. The verified application shall include the three most recent audited financial statements or other independently verified documentation showing that the applicant maintains liquid assets sufficient to cover 180 days of in-home supportive services' operating expenses, evidence of liability and workers'

compensation insurance, and evidence that the applicant has not been the subject of bankruptcy proceedings in the last five years.

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

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

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

(B) Guarantees the supervision of contract providers.

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

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

(E) Complies with applicable rules and regulations regarding civil rights and those rights' relations with contract providers.

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

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

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

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

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

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

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

(f) A managed care health plan that has entered into a contract in the manner prescribed in this section shall notify the department within 30 days

if the contract between the managed care health plan and the qualified agency is suspended or terminated for any reason.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The department shall restore the funding reductions required by subdivision (c) of Section 12301, fully or in part, as soon as administratively practicable, if the amount appropriated from the General Fund for the 1992-93 fiscal year under this article is projected to exceed the sum of the General Fund expenditures under Section 14132.95 and the actual General Fund expenditures under this article for the 1992-93 fiscal year. The entire amount of the excess shall be applied to the restoration. Services shall not be restored under this paragraph until the Department of Finance has determined that the restoration of services would result in no additional costs to the state or to the counties relative to the combined state appropriation and county matching funds for in-home supportive services under this article in the 1992-93 fiscal year.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) If the demonstration project and the responsibilities of the Statewide Authority become inoperative pursuant to Section 15 or 17 of the act adding this section on a date other than July 1, this section shall become inoperative on the first day of the following state fiscal year.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Assess, approve, and authorize each recipient's initial and continuing need for services pursuant to Article 7 (commencing with Section 12300) of Chapter 3. County agency assessments shall be shared with the care coordination teams established under paragraph (4), when applicable, and the county agency thereafter may receive and consider additional input from the care coordination team.

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

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

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

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

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

(vii) Pursue overpayment recovery pursuant to Section 12305.83.

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

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

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

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

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

(10) Enter into a contract with the State Department of Social Services to perform the following activities:

(A) Pay wages to IHSS providers in accordance with the wages negotiated pursuant to Title 23 (commencing with Section 110000) of the Government Code.

(B) Perform obligations on behalf of the IHSS recipient as the employer of his or her provider, including unemployment compensation, disability benefits, applicable federal and state taxes, and federal old age survivor's and disability insurance through the state's payroll system for IHSS in accordance with Sections 12302.2 and 12317.

(C) Provide technical assistance and support for all payroll-related activities involving the state's payroll system for IHSS, including, but not limited to, the monthly restaurant allowance as set forth in Section 12303.7, the monthly cash payment in advance as set forth in Section 12304, and the direct deposit program as set forth in Section 12304.4.

(D) Share recipient and provider data with managed care health plans for members who are receiving IHSS to support care coordination.

(E) Provide an option for managed care health plans to participate in quality monitoring activities conducted by the State Department of Social Services pursuant to subdivision (f) of Section 12305.7 for recipients who are plan members.

(11) In concert with the department, timely reimburse the State Department of Social Services for payroll and other obligations of the beneficiary as the employer, including unemployment compensation, disability benefits, applicable federal and state taxes, and federal old age survivors and disability insurance benefits through the state's payroll system.

(12) In a county where services are provided in the homemaker mode, enter into a contract with the county to implement the provision of services pursuant to the homemaker mode as set forth in Section 12302.

(13) Retain the IHSS individual provider mode as a choice available to beneficiaries in all participating managed care health plans in each county.

(14) In a county where services are provided pursuant to a contract, enter into a contract with a city, county, or city and county agency, a local health district, a voluntary nonprofit agency, or a proprietary agency as set forth in Sections 12302 and 12302.1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) (1) No later than June 1, 2013, the department, the State Department of Social Services, and the California Department of Aging shall establish a stakeholder workgroup to develop the universal assessment process, including a universal assessment tool, for home- and community-based services, as defined in subdivision (a) of Section 14186.1. The stakeholder workgroup shall include, but not be limited to, consumers of IHSS and other home- and community-based services and their authorized representatives, managed care health plans, counties, IHSS, MSSP, and CBAS providers, and legislative staff. The universal assessment process shall be used for all home- and community-based services, including IHSS. In developing the process, the workgroup shall build upon the IHSS uniform assessment process and hourly task guidelines, the MSSP assessment process, and other appropriate home- and community-based assessment tools.

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

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

(ii) The criteria for reassessment.

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

(iv) How the appeals process would be affected by the assessment.
(v) The ability to automate and exchange data and information between home- and community-based services providers.

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

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

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

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

(d) No later than March 1, 2014, the department, the State Department of Social Services, and the California Department of Aging shall report to the Legislature on the stakeholder workgroup's progress in developing the universal assessment process, and shall identify the counties and beneficiary categories for which the universal assessment process may be implemented pursuant to subdivision (e).

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Federal approval for the provisions of Section 14132.275 of the Welfare and Institutions Code regarding the requirement that, upon enrollment in a demonstration site, specified beneficiaries shall remain enrolled on a mandatory basis for six months from the date of initial enrollment.

(3) An alternate methodology that, in the determination of the Director of Finance, in consultation with the Director of Health Care Services and the Joint Legislative Budget Committee, will result in the same level of ongoing savings, as estimated in the Budget Act of 2012 for the 2012–13, 2013–14, 2014–15, and 2015–16 fiscal years.

SEC. 16. In the event that the conditions set forth in Section 10 of Assembly Bill 1468 or Senate Bill 1008 of the 2011–12 Regular Session of the Legislature are not met as described and the provisions of law set forth in Section 10 of those bills become inoperative, Sections 6531.5 and Title

23 (commencing with Section 11000) of the Government Code and Sections 12300.5, 12300.6, 12300.7, and 12302.6 of the Welfare and Institutions Code as added by this act shall become inoperative as of March 1, 2013.

SEC. 17. In the event the director decides to entirely forego the provision of services as specified in Section 14186.4 of the Welfare and Institutions Code, Section 6531.5 of the Government Code and Sections 12300.5, 12300.6, and 12300.7 of the Welfare and Institutions Code as added by this act shall cease to be implemented except as follows:

(a) For an agreement that has been negotiated and approved by the Statewide Authority, the Statewide Authority shall continue to retain its authority pursuant to Section 6531.5 and Title 23 (commencing with Section 11000) of the Government Code and Sections 12300.5, 12300.6, 12300.7, and 12302.6 of the Welfare and Institutions Code as added by this act, and remain the employer of record for all individual providers covered by the agreement until the agreement expires or is subject to renegotiation, whereby the authority of the Statewide Authority shall terminate and the county shall be the employer of record in accordance with Section 12302.25 of the Welfare and Institutions Code and may establish an employer of record pursuant to Section 12301.6 of the Welfare and Institutions Code.

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

SEC. 18. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

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

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

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