

ASSEMBLY BILL

No. 2641

Introduced by Assembly Member Patterson

February 21, 2014

An act to amend Section 12305.81 of, and to repeal Section 12305.87 of, the Welfare and Institutions Code, relating to in-home supportive services.

LEGISLATIVE COUNSEL'S DIGEST

AB 2641, as introduced, Patterson. In-Home Supportive Services program: provider exclusions: crimes.

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.

Under existing law, a person is prohibited from providing or receiving payment for providing services for 10 years following conviction for, or incarceration following conviction for specified crimes, including fraud against a government health care or supportive services program. Existing law, subject to provisions authorizing waivers and exemptions, also prohibits a person from providing or receiving payment for providing services for 10 years following a conviction for, or incarceration following a conviction for, a serious or violent felony, a

felony for which registration as a sex offender is required, or a felony misuse of CalFresh funds.

This bill would repeal the provisions that authorize a waiver or exemption from the 10-year exclusion for a person who has committed a serious or violent felony, a felony for which registration as a sex offender is required, or a felony misuse of CalFresh funds.

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

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

1 SECTION 1. Section 12305.81 of the Welfare and Institutions
2 Code is amended to read:

3 12305.81. (a) Notwithstanding any other law, a person shall
4 not be eligible to provide or receive payment for providing
5 supportive services for 10 years following a conviction for, or
6 incarceration following a conviction for, ~~fraud~~ *any of the following:*

7 (1) *Fraud* against a government health care or supportive
8 services program, including Medicare, Medicaid, or services
9 provided under Title V, Title XX, or Title XXI of the federal Social
10 Security Act ~~or a~~.

11 (2) *A violation of subdivision (a) of Section 273a of the Penal*
12 *Code, or Section 368 of the Penal Code, or similar violations in*
13 *another jurisdiction.* ~~The~~

14 (3) *A violent or serious felony, as specified in subdivision (c)*
15 *of Section 667.5 of the Penal Code and subdivision (c) of Section*
16 *1192.7 of the Penal Code.*

17 (4) *A felony offense for which a person is required to register*
18 *under subdivision (c) of Section 290 of the Penal Code. The 10-year*
19 *time period specified in this section shall commence with the date*
20 *of conviction for, or incarceration following a conviction for, the*
21 *underlying offense, and not the date of registration.*

22 (5) *A felony offense described in paragraph (2) of subdivision*
23 *(c) or paragraph (2) of subdivision (g) of Section 10980.*

24 (b) *The department and the State Department of Health Care*
25 *Services shall develop a provider enrollment form that each person*
26 *seeking to provide supportive services shall complete, sign under*
27 *penalty of perjury, and submit to the county. Submission of the*
28 *form shall include the photocopying by the county of original*
29 *documentation verifying the provider’s identity, and shall be*

1 considered as an application to render services under the Medi-Cal
2 program consistent with subdivision (c) of Section 14043.1. A
3 provider shall submit the form to the county in person, and the
4 county shall retain the form and a copy of the identification
5 documentation in the file of the provider. The form shall ~~contain~~
6 ~~include statements to the following effect:~~ *that contain all of the*
7 *following:*

8 (1) ~~A~~ *Notice that a person who, in the last 10 years, has been*
9 *convicted for, or incarcerated following conviction for, fraud*
10 *against a government health care or supportive services program*
11 *any of the crimes listed in subdivision (a) is not eligible to be*
12 *enrolled as a provider or to receive payment for providing*
13 *supportive services.*

14 (2) ~~An individual who, in the last 10 years, has been convicted~~
15 ~~for, or incarcerated following conviction for, a violation of~~
16 ~~subdivision (a) of Section 273a of the Penal Code or Section 368~~
17 ~~of the Penal Code, or similar violations in another jurisdiction, is~~
18 ~~not eligible to be enrolled as a provider or to receive payment for~~
19 ~~providing supportive services.~~

20 (3)

21 (2) A statement declaring that the person has not, in the last 10
22 years, been convicted or incarcerated following conviction for a
23 ~~crime involving fraud against a government health care or~~
24 ~~supportive services program~~ *any of the crimes listed in subdivision*
25 *(a).*

26 (4) ~~A statement declaring that he or she has not, in the last 10~~
27 ~~years, been convicted for, or incarcerated following conviction~~
28 ~~for, a violation of subdivision (a) of Section 273a of the Penal~~
29 ~~Code or Section 368 of the Penal Code, or similar violations in~~
30 ~~another jurisdiction.~~

31 (5) ~~The~~

32 (3) *A statement that the person agrees to reimburse the state for*
33 *any overpayment paid to the person as determined in accordance*
34 *with Section 12305.83, and that the amount of any overpayment,*
35 *individually or in the aggregate, may be deducted from any future*
36 *warrant to that person for services provided to any recipient of*
37 *supportive services, as authorized in Section 12305.83.*

38 (b)

39 (c) The department shall include the text of subdivision (a) of
40 Section 273a of the Penal Code ~~and, subdivision (c) of Section 290~~

1 of the Penal Code, Section 368 of the Penal Code, subdivisions
 2 (c) and (g) of Section 667.5 of the Penal Code, subdivision (c) of
 3 Section 1192.7 of the Penal Code, and subdivision (g) of Section
 4 10980 on the provider enrollment form.

5 (e)

6 (d) A public authority or nonprofit consortium that is notified
 7 by the department or the State Department of Health Care Services
 8 that a supportive services provider is ineligible to receive payments
 9 under this chapter or under Medi-Cal law shall exclude that
 10 provider from its registry.

11 (d)

12 (e) A public authority or nonprofit consortium that determines
 13 that a registry provider is not eligible to provide supportive services
 14 based on the requirements of subdivision (a) shall report that
 15 finding to the department.

16 SEC. 2. Section 12305.87 of the Welfare and Institutions Code
 17 is repealed.

18 ~~12305.87. (a) (1) Commencing 90 days following the effective~~
 19 ~~date of the act that adds this section, a person specified in paragraph~~
 20 ~~(2) shall be subject to the criminal conviction exclusions provided~~
 21 ~~for in this section, in addition to the exclusions required under~~
 22 ~~Section 12305.81.~~

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

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

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

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

35 ~~(1) A violent or serious felony, as specified in subdivision (c)~~
 36 ~~of Section 667.5 of the Penal Code and subdivision (e) of Section~~
 37 ~~1192.7 of the Penal Code.~~

38 ~~(2) A felony offense for which a person is required to register~~
 39 ~~under subdivision (e) of Section 290 of the Penal Code. For~~
 40 ~~purposes of this paragraph, the 10-year time period specified in~~

1 ~~this section shall commence with the date of conviction for, or~~
2 ~~incarceration following a conviction for, the underlying offense,~~
3 ~~and not the date of registration.~~

4 ~~(3) A felony offense described in paragraph (2) of subdivision~~
5 ~~(e) or paragraph (2) of subdivision (g) of Section 10980.~~

6 ~~(e) Notwithstanding subdivision (b), an application shall not be~~
7 ~~denied under this section if the applicant has obtained a certificate~~
8 ~~of rehabilitation under Chapter 3.5 (commencing with Section~~
9 ~~4852.01) of Title 6 of Part 3 of the Penal Code or if the information~~
10 ~~or accusation against him or her has been dismissed pursuant to~~
11 ~~Section 1203.4 of the Penal Code.~~

12 ~~(d) (1) Notwithstanding subdivision (b), a recipient of services~~
13 ~~under this article who wishes to employ a provider applicant who~~
14 ~~has been convicted of an offense specified in subdivision (b) may~~
15 ~~submit to the county an individual waiver of the exclusion provided~~
16 ~~for in this section. This paragraph shall not be construed to allow~~
17 ~~a recipient to submit an individual waiver with respect to a~~
18 ~~conviction or convictions for offenses specified in Section~~
19 ~~12305.81.~~

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

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

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

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

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

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

11 (4) ~~The individual waiver form shall be signed by the recipient,~~
12 ~~or by the recipient's authorized representative, if applicable, and~~
13 ~~returned to the county welfare department by mail or in person.~~
14 ~~Except for a parent, guardian, or person having legal custody of a~~
15 ~~minor recipient, a conservator of an adult recipient, or a spouse or~~
16 ~~registered domestic partner of a recipient, a provider applicant~~
17 ~~shall not sign his or her own individual waiver form as the~~
18 ~~recipient's authorized representative. The county shall retain the~~
19 ~~waiver form and a copy of the provider applicant's criminal offense~~
20 ~~record information search response until the date that the~~
21 ~~convictions that are the subject of the waiver request are no longer~~
22 ~~within the 10-year period specified in subdivision (b).~~

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

36 (6) ~~Nothing in this section shall preclude a provider who is~~
37 ~~eligible to receive payment for services provided pursuant to an~~
38 ~~individual waiver under this subdivision from being eligible to~~
39 ~~receive payment for services provided to one or more additional~~
40 ~~recipients who obtain waivers pursuant to this same subdivision.~~

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

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

7 ~~(2) Upon receipt of a general exception request, the department~~
8 ~~shall request a copy of the applicant's criminal offender record~~
9 ~~information search response from the applicable county welfare~~
10 ~~department, public authority, or nonprofit consortium.~~
11 ~~Notwithstanding any other provision of law, the county, public~~
12 ~~authority, or nonprofit consortium shall provide a copy of the~~
13 ~~criminal offender record information search response, as provided~~
14 ~~to the county, public authority, or nonprofit consortium by the~~
15 ~~Department of Justice, to the department. The county, public~~
16 ~~authority, or nonprofit consortium shall provide this information~~
17 ~~in a manner that protects the confidentiality and privacy of the~~
18 ~~criminal offender record information search response. The state~~
19 ~~or federal criminal history record information search response shall~~
20 ~~not be modified or altered from its form or content as provided by~~
21 ~~the Department of Justice.~~

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

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

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

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

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

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

39 ~~(F) Employment history and current or former employer~~
40 ~~recommendations. Additional consideration shall be given to~~

1 employer recommendations provided by a person who has received
2 or has indicated a desire to receive supportive or personal care
3 services from the applicant, including, but not limited to, those
4 services, specified in Section 12300.

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

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

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

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

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

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

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

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

36 ~~(g) (1) Upon written notification that the department has
37 determined that a request for exception shall be denied, the
38 applicant may request an administrative hearing by submitting a
39 written request to the department within 15 business days of receipt
40 of the written notification. Upon receipt of a written request, the~~

1 department shall hold an administrative hearing consistent with
2 the procedures specified in Section 100171 of the Health and Safety
3 Code, except where those procedures are inconsistent with this
4 section.

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

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

12 (1) The text of subdivision (e) of Section 290 of the Penal Code,
13 subdivision (e) of Section 667.5 of the Penal Code, subdivision
14 (e) of Section 1192.7 of the Penal Code, and paragraph (2) of
15 subdivisions (e) and (g) of Section 10980.

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

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

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

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

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