

Senate Bill No. 67

Passed the Senate May 13, 2013

Secretary of the Senate

Passed the Assembly May 20, 2013

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2013, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 12306.1 and 12309 of, to add Sections 12301.01, 12301.02, 12301.03, 12301.04, and 12301.05 to, and to repeal Sections 12301.07 and 12309.2 of, the Welfare and Institutions Code, relating to public social services, and making an appropriation therefor, to take effect immediately, bill related to the budget.

LEGISLATIVE COUNSEL'S DIGEST

SB 67, Committee on Budget and Fiscal Review. 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 to permit them to remain in their own homes and avoid institutionalization. Existing law requires the State Department of Social Services to implement, under specified circumstances, a 20% reduction in authorized hours of service to each IHSS recipient, beginning January 1, 2012, except as specified.

This bill would delete those provisions.

Existing law requires the department, until July 1, 2013, to implement a 3.6% reduction in authorized hours of service to each IHSS recipient, as specified.

This bill would require the department, from July 1, 2013, to June 30, 2014, inclusive, to implement an 8% reduction in authorized hours of service to each IHSS recipient, as specified. The bill would authorize a county to administratively deny a request for reassessment based only on that reduction. The bill would require a specified notice to be mailed to the recipient at least 10 days before the reduction goes into effect. The bill would also require the department, beginning July 1, 2014, to implement a 7% reduction in authorized hours of service to each IHSS recipient, as specified. The bill would require a specified notice to be mailed to the recipient at least 20 days before the reduction goes into effect.

This bill would state the intent of the Legislature to authorize an assessment on home care services, including, but not limited

to, home health care and in-home supportive services. This bill would require the Director of Finance, within 30 days after receipt of specified certification from the State Department of Health Care Services, to, among other things, estimate the total amount of additional funding that would be derived from that assessment for the next fiscal year and calculate, as a percentage, the amount by which the 7% reduction in authorized hours of service for each IHSS recipient is offset by General Fund savings from that assessment. The bill would require the department to perform these activities for the fiscal year that the certification is received and the following fiscal year, and on or before May 14, prior to the 3rd fiscal year after the certification is received. The bill would require the 7% reduction in authorized hours of services to be mitigated by the percentage offset determined by the Director of Finance, as specified. The bill would provide for these provisions to become operative only upon certification by the State Department of Health Care Services that any necessary federal approvals have been obtained.

This bill would create the In-Home Supportive Services Reinvestment Fund to receive moneys to the extent that the assessment is implemented retroactively, and use those moneys to provide goods or services for one-time direct reinvestments benefiting IHSS recipients, as prescribed. The bill would require the Director of Finance to consult with specified plaintiffs to develop a plan to reinvest those funds, and require that plan to be submitted to the appropriate policy and fiscal committees of the Legislature. The bill would require the Director of Finance to provide specified notice to the Joint Legislative Budget Committee at least 30 days prior to allocating any of those funds, as prescribed. The bill would, subject to specified conditions, continuously appropriate the moneys in the fund to the department for these purposes.

Existing law authorizes a county board of supervisors to elect to contract with a nonprofit consortium to provide for the delivery of IHSS or to establish a public authority to provide for the delivery of IHSS. Under existing law, the state is required to pay 65%, and the county 35%, of the nonfederal share of wage and benefit increases negotiated by a public authority or nonprofit consortium, as specified. Existing law, operative July 1, 2009, requires the state to participate in those wage and benefit increases in a total cost of

wages up to \$9.50 per hour and in individual health benefits up to \$0.60 per hour. Existing law provides that those provisions establishing those rates of participation shall not be implemented until July 1, 2012, and shall only be implemented if specified conditions are met.

This bill would delete those latter provisions.

Under existing law, the department is required to develop a uniform needs assessment tool to ensure that IHSS are delivered in all counties in a uniform manner. Existing law requires the uniform needs assessment tool to evaluate the recipient's functioning in activities of daily living and instrumental activities of daily living and quantifies the recipient's functioning ranks using a general 5-point scale for ranking each function, as specified. Under existing law, beginning September 1, 2009, only individuals who are ranked at a 4 or 5 in the activity of daily living relating to a domestic or related service are eligible for that service, except as specified.

This bill would delete those latter provisions.

Under existing law, beginning September 1, 2009, eligibility for IHSS shall also include functional index scores, which are assigned to a recipient as a weighted average based on his or her individual functional index rankings. Existing law, except as specified, provides that individuals with certain functional index scores are not eligible for IHSS.

This bill would delete those provisions.

The bill would appropriate \$1,000 from the General Fund to the State Department of Social Services for its administrative costs during the 2013–14 fiscal year. The bill would require the State Department of Social Services and the State Department of Health Care Services to adopt emergency regulations to implement the bill's provisions, as specified.

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 12301.01 is added to the Welfare and Institutions Code, to read:

12301.01. (a) (1) Notwithstanding any other law, except as provided in subdivision (d), the department shall implement an 8 percent reduction in hours of service to each recipient of services under this article, which shall be applied to the recipient's hours as authorized pursuant to the most recent assessment. This reduction shall become effective July 1, 2013. This reduction shall be effective for 12 months. The reduction required by this section shall not preclude any reassessment to which a recipient would otherwise be entitled. However, hours authorized pursuant to a reassessment shall be subject to the 8 percent reduction required by this section.

(2) A request for reassessment based only on the reduction required in paragraph (1) may be administratively denied by the county.

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

(4) For those individuals who have a documented unmet need, excluding protective supervision because of the limitations on authorized hours under Section 12303.4, the reduction shall be taken first from the documented unmet need.

(b) The reduction in hours of service pursuant to paragraph (1) of subdivision (a) shall cease to be implemented 12 months after the reduction takes effect.

(c) The notice of action informing the recipient of the reduction pursuant to subdivision (a) shall be mailed at least 10 days prior to the reduction going into effect. The notice of action shall be understandable to the recipient and translated into all languages spoken by a substantial number of the public served by the In-Home Supportive Services program, in accordance with Section 7295.2 of the Government Code. The notice shall not contain any recipient financial or confidential identifying information other than the recipient's name, address, and Case Management Information and Payroll System (CMIPS) client identification number, and shall include, but not be limited to, all of the following information:

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

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

(3) That a county shall assess a recipient's need for supportive services any time that the recipient notifies the county of a need to adjust the supportive services hours authorized, or when there are other indications or expectations of a change in circumstances affecting the recipient's need for supportive services. Counties shall not require recipients to submit a medical certification form or a doctor's note to show evidence of a change in the recipient's circumstances.

(d) A recipient shall have all appeal rights otherwise provided for under Chapter 7 (commencing with Section 10950) of Part 2.

SEC. 2. Section 12301.02 is added to the Welfare and Institutions Code, to read:

12301.02. (a) (1) Notwithstanding any other law, except as provided in subdivision (c), the department shall implement a 7 percent reduction in hours of service to each recipient of services under this article, which shall be applied to the recipient's hours as authorized pursuant to the most recent assessment. This reduction shall become effective 12 months after the implementation of the reduction set forth in Section 12301.01. The reduction required by this section shall not preclude any reassessment to which a recipient would otherwise be entitled. However, hours authorized pursuant to a reassessment shall be subject to the 7 percent reduction required by this section.

(2) A request for reassessment based only on the reduction required in paragraph (1) may be administratively denied by the county.

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

(4) For those individuals who have a documented unmet need, excluding protective supervision because of the limitations on authorized hours under Section 12303.4, the reduction shall be taken first from the documented unmet need.

(b) The notice of action informing the recipient of the reduction pursuant to subdivision (a) shall be mailed at least 20 days prior to the reduction going into effect. The notice of action shall be understandable to the recipient and translated into all languages

spoken by a substantial number of the public served by the In-Home Supportive Services program, in accordance with Section 7295.2 of the Government Code. The notice shall not contain any recipient financial or confidential identifying information other than the recipient's name, address, and Case Management Information and Payroll System (CMIPS) client identification number, and shall include, but not be limited to, all of the following information:

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

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

(3) A county shall assess a recipient's need for supportive services any time that the recipient notifies the county of a need to adjust the supportive services hours authorized, or when there are other indications or expectations of a change in circumstances affecting the recipient's need for supportive services. Counties shall not require recipients to submit a medical certification form or a doctor's note to show evidence of a change in the recipient's circumstances.

(c) A recipient shall have all appeal rights otherwise provided for under Chapter 7 (commencing with Section 10950) of Part 2.

(d) The reduction specified in paragraph (1) of subdivision (a) shall be ongoing and may be adjusted pursuant to Section 12301.03.

SEC. 3. Section 12301.03 is added to the Welfare and Institutions Code, to read:

12301.03. (a) It is the intent of this section to offset the reductions described in Section 12301.02 to the extent that an assessment as described in Section 12301.05 provides General Fund savings. This section shall become operative only upon certification by the State Department of Health Care Services that any necessary federal approvals to implement the assessment referenced in Section 12301.05 have been obtained. This certification shall be provided promptly to the Joint Legislative Budget Committee and the Department of Finance.

(b) Within 30 days after receipt of the certification described in subdivision (a), the Director of Finance shall perform the obligations described in this subdivision for the fiscal year in which

the certification is received and for the following fiscal year. Specifically, the Director of Finance shall do the following:

(1) Estimate the total amount of additional funding, less refunds, that will be derived from the assessment for the next fiscal year.

(2) Estimate the amount of the total revenues, if any, that are attributable to any permitted retroactive implementation of the assessment.

(3) Estimate the amount of the total General Fund savings generated by the assessment revenues that remain after taking into account reductions such as the revenues attributable to any retroactive application of the assessment that will be allocated pursuant to Section 12301.04, and any General Fund costs associated with establishment and administration of the assessment. The General Fund costs shall be estimated following consultation with the appropriate budget subcommittees of the Legislature.

(4) Calculate, as a percentage, the amount by which the reduction described in Section 12301.02 is offset by General Fund savings. In making this calculation, the Director of Finance shall estimate the amount of the reduction that may be partially or completely offset. If the estimated General Fund savings from the assessment are less than the amount required to fully offset the reduction pursuant to Section 12301.02, then the percentage offset shall be proportionate to the level of General Fund savings. At no point may the reduction pursuant to Section 12301.02 become negative or go below zero.

(5) Notify the Joint Legislative Budget Committee of the determinations made in paragraphs (1) to (4), inclusive.

(c) On or before May 14, prior to the third fiscal year after the certification described in subdivision (a) is received, the Director of Finance shall perform the activities described in paragraphs (1) to (5), inclusive, of subdivision (b).

(d) Within 10 days of the effective date of any federal change or action that prevents or reduces the amount of General Fund savings received from the assessment, the Director of Health Care Services shall provide a notification to the Joint Legislative Budget Committee and the Director of Finance of that change. Within 30 days of the receipt of this notification, the Director of Finance shall perform the activities described in paragraphs (1) to (5), inclusive, of subdivision (b).

(e) Notwithstanding any provision of Section 12301.02, the reduction of services required by Section 12301.02 shall be mitigated by the percentage offset determined by the Director of Finance in paragraph (4) of subdivision (b).

(f) (1) Any change in the percentage reduction of services as provided in Section 12301.02 shall occur on the first day of the first full month occurring 30 days after the determination provided for in subdivision (b) is made by the Director of Finance.

(2) Any change in the percentage reduction of services as provided in Section 12301.02 due to a determination of the Director of Finance required by subdivision (c) shall occur on July 1 of the fiscal year immediately following the determination.

(3) If a change in the percentage reduction of services as provided in Section 12301.02 is triggered based on a determination of the Director of Finance required by subdivision (d), that change in hours of service shall occur on July 1 after the notification referenced in subdivision (d) from the Director of Health Care Services is received, if the notification is received between the preceding September 30 and January 2. If the notification is received on any other date, then a change in hours shall occur on the first of the month that is nine months after the notification is received.

(g) In preparation of every Governor's Budget and for every May Revision, the Director of Finance shall perform the obligation described in paragraphs (1) to (3), inclusive, of subdivision (b).

SEC. 4. Section 12301.04 is added to the Welfare and Institutions Code, to read:

12301.04. (a) There is hereby created in the State Treasury an In-Home Supportive Services Reinvestment Fund, which shall receive moneys to the extent that an assessment described in Section 12301.05 is implemented retroactively.

(b) The fund shall be used to provide goods or services for one-time direct reinvestments benefiting IHSS recipients.

(c) The fund shall be used in a manner that does not create ongoing General Fund obligations.

(d) Pursuant to Section 12301.03, the Director of Finance shall estimate the amount of retroactive assessment due to the fund. In each fiscal year for which there are estimated retroactive revenues, the Director of Finance shall provide the Controller a schedule of what portion of the assessment shall be deposited in the fund.

(e) The resources in the fund shall be reinvested for the benefit of IHSS recipients, in compliance with the requirements in this section and those in the settlement agreement pertaining to *Oster v. Lightbourne*, N.D. Cal., Case No. CV 09-04668 CW, U.S. Court of Appeals for the Ninth Circuit, Case No. 12-15366, and *Dominguez v. Brown*, N.D. Cal., Case No. CV 09-02306 CW, U.S. Court of Appeals for the Ninth Circuit, Case No. 09-16359.

(f) The Director of Finance shall consult with plaintiffs in the lawsuits identified in subdivision (e) in order to develop a plan to reinvest the funds for the benefit of IHSS recipients. After the plan is developed and prior to the allocation of any funds, it shall be submitted to the appropriate policy and fiscal committees of the Legislature.

(1) If notice of federal approval of retroactive implementation of the assessment is received by the Director of Finance between January 1 and May 10 of any year, and the plan anticipates any expenditure of the funds before June 30 of that year, the Director of Finance shall notify the Joint Legislative Budget Committee at least 30 days prior to allocating any of those funds, for a purpose authorized by this section, if the allocation is proposed to be used in the current fiscal year.

(2) (A) If notice of federal approval of retroactive implementation of the assessment is received by the Director of Finance between January 1 and May 10 of any year, and the plan anticipates any expenditure of the funds after June 30 of that year, for a purpose authorized by this section, the Director of Finance shall seek legislative approval of those budget year expenditures through the annual Budget Act or in other legislation.

(B) Notwithstanding subparagraph (A), if the Legislature does not allocate moneys from the fund pursuant to subparagraph (A) in the annual Budget Act or in other legislation, the Director of Finance shall, on or after September 15, notify the Joint Legislative Budget Committee at least 30 days prior to allocating any of those funds, for a purpose authorized by this section, if the allocation is proposed to be used in that current fiscal year.

(3) If notice of federal approval of retroactive implementation of the assessment is received by the Director of Finance after May 10 and before January 1 of any year, the Director of Finance shall notify the Joint Legislative Budget Committee at least 30 days prior to allocating any of those funds, for a purpose authorized by

this section, if the allocation is proposed to be used in the current fiscal year.

(g) Notwithstanding Section 13340 of the Government Code, when the requirements of subdivision (f) have been met, the moneys in the fund are continuously appropriated to the State Department of Social Services for the purposes of this section.

SEC. 5. Section 12301.05 is added to the Welfare and Institutions Code, to read:

12301.05. It is the intent of the Legislature to enact legislation in 2013 to authorize an assessment on home care services, including, but not limited to, home health care and in-home supportive services, consistent with the settlement agreement pertaining to *Oster v. Lightbourne*, N.D. Cal., Case No. CV09-04668 CW, U.S. Court of Appeals for the Ninth Circuit, Case No. 12-15366, and *Dominguez v. Brown*, N.D. Cal., Case No. CV 09-02306 CW, U.S. Court of Appeals for the Ninth Circuit, Case No. 09-16359.

SEC. 6. Section 12301.07 of the Welfare and Institutions Code is repealed.

SEC. 7. Section 12306.1 of the Welfare and Institutions Code, as amended by Section 39 of Chapter 439 of the Statutes of 2012, 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.

(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 (5), 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.

(h) This section shall become inoperative only if Chapter 45 of the Statutes of 2012 is deemed inoperative pursuant to Section 15 of that chapter.

SEC. 8. Section 12306.1 of the Welfare and Institutions Code, as amended by Section 38 of Chapter 439 of the Statutes of 2012, 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.

(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 (5), inclusive, of subdivision (d).

(g) This section shall become operative only if Chapter 45 of the Statutes of 2012 is deemed inoperative pursuant to Section 15 of that chapter.

SEC. 9. Section 12309 of the Welfare and Institutions Code is amended to read:

12309. (a) In order to assure that in-home supportive services are delivered in all counties in a uniform manner, the department shall develop a uniform needs assessment tool.

(b) (1) Each county shall, in administering this article, use the uniform needs assessment tool developed pursuant to subdivision (a) in collecting and evaluating information.

(2) For purposes of paragraph (1), “information” includes, but is not limited to, all of the following:

(A) The recipient’s living environment.

(B) Alternative resources.

(C) The recipient's functional abilities.

(c) (1) The uniform needs assessment tool developed pursuant to subdivision (a) shall evaluate the recipient's functioning in activities of daily living and instrumental activities of daily living.

(2) The recipient's functioning shall be quantified, using the general hierarchical five-point scale for ranking each function, as specified in subdivision (d).

(d) The recipient's functioning ranks shall be as follows:

(1) Rank one. A recipient's functioning shall be classified as rank one if his or her functioning is independent, and he or she is able to perform the function without human assistance, although the recipient may have difficulty in performing the function, but the completion of the function, with or without a device or mobility aid, poses no substantial risk to his or her safety.

(2) Rank two. A recipient's functioning shall be classified as rank two if he or she is able to perform a function, but needs verbal assistance, such as reminding, guidance, or encouragement.

(3) Rank three. A recipient's functioning shall be classified as rank three if he or she can perform the function with some human assistance, including, but not limited to, direct physical assistance from a provider.

(4) Rank four. A recipient's functioning shall be classified as rank four if he or she can perform a function, but only with substantial human assistance.

(5) Rank five. A recipient's functioning shall be classified as rank five if he or she cannot perform the function, with or without human assistance.

SEC. 10. Section 12309.2 of the Welfare and Institutions Code is repealed.

SEC. 11. (a) 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 State Department of Social Services and the State Department of Health Care Services may implement and administer this act through all-county letters or similar instruction from their respective departments until regulations are adopted. Each department shall adopt emergency regulations implementing this act no later than July 1, 2015. Each department may readopt any emergency regulation authorized by this section that is the same

as or substantially equivalent to an emergency regulation previously adopted under this section.

(b) For each department identified in subdivision (a), the initial adoption of emergency regulations implementing this act and one readoption of emergency regulations authorized by this section shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare. Initial emergency regulations and the one readoption of emergency regulations authorized by this section shall be exempt from review by the Office of Administrative Law. The initial emergency regulations and the one readoption of emergency regulations authorized by this section shall be submitted to the Office of Administrative Law for filing with the Secretary of State and each shall remain in effect for no more than 180 days, by which time final regulations may be adopted.

SEC. 12. The amount of one thousand dollars (\$1,000) is hereby appropriated from the General Fund to the State Department of Social Services for its administrative costs during the 2013–14 fiscal year.

SEC. 13. 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.

Approved _____, 2013

Governor