

AMENDED IN ASSEMBLY JANUARY 29, 1996

AMENDED IN ASSEMBLY JANUARY 9, 1996

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

**ASSEMBLY BILL**

**No. 857**

**Introduced by Assembly Member Woods**

February 22, 1995

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An act to add Chapter 3.5 (commencing with Section 100600) to Part 1 of Division 101 of the Health and Safety Code, and to add Section 12300.8 to the Welfare and Institutions Code, relating to public social services.

LEGISLATIVE COUNSEL'S DIGEST

AB 857, as amended, Woods. In-home supportive service providers: criminal record checks.

Existing law provides for the In-Home Supportive Services (IHSS) program, under which, either through employment by the recipient, or by or through contract by the county, qualified aged, blind, and disabled persons receive services enabling them to remain in their own homes. Counties are responsible for the administration of the IHSS program.

This bill would require the State Department of Social Services to conduct fingerprint checks of in-home care providers, except for home health aides, and would require the in-home care provider to pay a fee to cover the *full* cost of the fingerprint check.

By increasing the responsibilities of the counties, this bill would impose a state-mandated local program.

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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

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.

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

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

1 SECTION 1. Chapter 3.5 (commencing with Section  
2 100600) is added to Part 1 of Division 101 of the Health  
3 and Safety Code, to read:

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5 CHAPTER 3.5. FINGERPRINT CHECKS FOR HOME HEALTH  
6 CARE WORKERS

7

8 100600. This chapter shall apply to all in-home  
9 personal care providers, other than those providing  
10 services pursuant to the In-Home Supportive Services  
11 Program and certified home health aides as defined in  
12 Section 1727.

13 100601. All providers to whom this chapter applies  
14 shall be required to obtain a fingerprint check pursuant  
15 to the program provided for in Section 12300.8 of the  
16 Welfare and Institutions Code.

17 100602. (a) No person covered by this chapter may  
18 provide in-home personal care services until he or she has  
19 received a fingerprint clearance from the State  
20 Department of Social Services, except that a person  
21 providing these services on January 1, 1997, shall be given  
22 until his or her 1998 calendar year birthday to obtain a  
23 fingerprint clearance. A clearance obtained under this  
24 section shall permit the provider to work for a period of



1 two years, after which time a new clearance shall be  
2 required as a condition of employment, except that any  
3 person obtaining an initial fingerprint clearance on a day  
4 other than his or her birthday shall be required to obtain  
5 an initial renewal not later than his or her last birthday  
6 occurring within the 24-month period from the date the  
7 initial clearance was granted.

8 (b) No fingerprint clearance shall be given if the  
9 person has been convicted of any of the crimes specified  
10 in subdivision (g) of Section 12300.8 of the Welfare and  
11 Institutions Code, unless either of the following apply:

12 (1) The person was convicted of a felony and has  
13 obtained a certificate of rehabilitation under Chapter 3.5  
14 (commencing with Section 4852.01) of Title 6 of the Penal  
15 Code and the information or accusation against him or  
16 her has been dismissed pursuant to Section 1203.4 of the  
17 Penal Code.

18 (2) The person was convicted of a misdemeanor and  
19 the information or accusation against him or her has been  
20 dismissed pursuant to Section 1203.4 or 1203.4a of the  
21 Penal Code.

22 100603. The State Department of Social Services shall  
23 maintain fingerprint information compiled under this  
24 chapter in accordance with subdivision (d) of Section  
25 12300.8 of the Welfare and Institutions Code for access by  
26 prospective employers and individuals who sought or  
27 received fingerprint clearances.

28 SEC. 2. Section 12300.8 is added to the Welfare and  
29 Institutions Code, to read:

30 12300.8. (a) The department shall establish a  
31 program to conduct a fingerprint check of each in-home  
32 care provider employed or seeking employment under  
33 this article or Chapter 3.5 (commencing with Section  
34 100600) of Part 1 of Division 101 of the Health and Safety  
35 Code.

36 (b) (1) Any person who seeks employment as an  
37 in-home care provider under this article or Chapter 3.5  
38 (commencing with Section 100600) of Part 1 of Division  
39 101 of the Health and Safety Code shall obtain a  
40 fingerprint check by the department. The in-home care



1 provider applicant shall pay a fee to cover the *full* cost of  
2 the check. The amount of the fee shall be set by the  
3 department. A provider of services under this article may  
4 pay this fee during a three-month period, through  
5 deductions from the paycheck received under this  
6 article..

7 (c) The department shall maintain a record of all  
8 in-home personal care providers. The record shall include  
9 the results of all fingerprint checks. For purposes of the  
10 In-Home Supportive Services Program, the information  
11 shall be made available to counties to inform their IHSS  
12 recipients upon request by the recipient.

13 (d) Counties shall notify each IHSS recipient that a  
14 fingerprint check will be performed by the department  
15 or his or her in-home supportive services provider and  
16 that the results will be made available to the recipient.

17 ~~(e) At no charge to the department, and within a~~  
18 ~~three-week period of the receipt of a request by the~~  
19 ~~department, the~~

20 (e) The Department of Justice shall inform the  
21 department whether an individual receiving a  
22 fingerprint check in accordance with this section is guilty  
23 of a violation or an attempted violation of any of the  
24 offenses specified in subdivision (g).

25 (f) No person may provide in-home supportive  
26 services under this article until he or she has received a  
27 fingerprint clearance from the department, except that  
28 a person providing these services on January 1, 1997, shall  
29 be given until his or her 1998 calendar year birthday to  
30 obtain a fingerprint clearance. A clearance obtained  
31 under this section shall permit the provider to work for  
32 a period of two years, after which time a new clearance  
33 shall be required as a condition of employment, except  
34 that any person obtaining an initial fingerprint clearance  
35 on a day other than his or her birthday shall be required  
36 to obtain an initial renewal not later than his or her last  
37 birthday occurring within the 24-month period from the  
38 date the initial clearance was granted.

39 (g) The county or the IHSS recipient may deny  
40 employment to an in-home care provider if the provider



1 has been convicted of a violation or attempted violation  
2 of Section 187, subdivision (a) of Section 192, Section 203,  
3 205, 206, 207, 209, 210, 210.5, 211, 220, 222, 243.4, 245, 261,  
4 262, or 264.1, Sections 265 to 267, inclusive, Section 273a,  
5 273.5, or 285, subdivisions (c), (d), (f), and (g) of Section  
6 286, Section 288, subdivisions (c), (d), (f), and (g) of  
7 Section 288a, Section 288.5, 289, 368, 451, 459, 470, 475, 484,  
8 or 484b, Section 484d, to 484j, inclusive, Section 487, 503,  
9 or 518, of the Penal Code, unless either of the following  
10 apply:

11 (1) The person was convicted of a felony and has  
12 obtained a certificate of rehabilitation under Chapter 3.5  
13 (commencing with Section 4852.01) of Title 6 of the Penal  
14 Code and the information or accusation against him or  
15 her has been dismissed pursuant to Section 1203.4 of the  
16 Penal Code, and the in-home supportive services  
17 recipient signs a waiver stating that he or she will employ  
18 the person regardless of his or her criminal background  
19 and that the state and the county are not liable due to the  
20 recipient's decision.

21 (2) The person was convicted of a misdemeanor and  
22 the information or accusation against him or her has been  
23 dismissed pursuant to Section 1203.4 or 1203.4a of the  
24 Penal Code.

25 (h) If a county has a registry, a record of the criminal  
26 record check shall be included in the information  
27 recorded on the registry.

28 (i) Notwithstanding any other provision of law, the  
29 department and the county in which a recipient under  
30 this article resides shall not be liable to the recipient for  
31 any act or omission relating to the implementation of this  
32 section.

33 SEC. 3. Notwithstanding Section 17610 of the  
34 Government Code, if the Commission on State Mandates  
35 determines that this act contains costs mandated by the  
36 state, reimbursement to local agencies and school  
37 districts for those costs shall be made pursuant to Part 7  
38 (commencing with Section 17500) of Division 4 of Title  
39 2 of the Government Code. If the statewide cost of the  
40 claim for reimbursement does not exceed one million



1 dollars (\$1,000,000), reimbursement shall be made from  
2 the State Mandates Claims Fund.  
3 Notwithstanding Section 17580 of the Government  
4 Code, unless otherwise specified, the provisions of this act  
5 shall become operative on the same date that the act  
6 takes effect pursuant to the California Constitution.

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