

AMENDED IN ASSEMBLY APRIL 17, 1995

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 1786

Introduced by Assembly Member Bates

February 24, 1995

An act to ~~add Section 12301.4 to~~ *amend Section 14132.95 of the Welfare and Institutions Code, relating to in-home supportive services.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1786, as amended, Bates. In-home supportive service providers.

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.

Under existing law, counties may provide in-home supportive services through the individual provider mode, the contractor mode, and the county employee mode.

This bill would require the State Department of Social Services to ~~implement a statewide system to provide substitute individual providers for recipients who lose their individual provider and who are at risk of institutionalization without in-home supportive services~~ *convene a work group to develop recommendations regarding ways to improve the*

delivery of IHSS benefits and report to the appropriate committees of the Legislature by January 1, 1997.

Existing law also provides for the Medi-Cal program, which is administered by the State Department of Health Services, pursuant to which medical benefits are provided to public assistance recipients and certain other low-income persons.

Existing law, operative until July 1, 1996, and repealed on January 1, 1997, includes personal care services within the scope of benefits under the Medi-Cal program, for persons defined as categorically needy, when federal participation is available.

This bill would delete the provision to make inoperative and repeal the provision for Medi-Cal personal care services.

Existing law requires the county in which a person resides to determine a person's eligibility for Medi-Cal benefits and continued eligibility under that program.

To the extent this bill would increase the counties' responsibilities for eligibility determination, it would impose a state-mandated 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: ~~no~~ yes.

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

- 1 ~~SECTION 1. Section 12301.4 is added to the Welfare~~
- 2 ~~and Institutions Code, to read:~~
- 3 ~~12301.4. The department shall implement a statewide~~
- 4 ~~system~~



1 SECTION 1. Section 14132.95 of the Welfare and
2 Institutions Code is amended to read:

3 14132.95. (a) Personal care services, when provided
4 to a categorically needy person as defined in Section
5 14050.1 is a covered benefit to the extent federal financial
6 participation is available if these services are:

7 (1) Provided in the beneficiary's home and other
8 locations as may be authorized by the director subject to
9 federal approval.

10 (2) Authorized by county social services staff in
11 accordance with a plan of treatment.

12 (3) Provided by a qualified person.

13 (4) Provided to a beneficiary who has a chronic,
14 disabling condition that causes functional impairment
15 that is expected to last at least 12 consecutive months or
16 that is expected to result in death within 12 months and
17 who is unable to remain safely at home without the
18 services described in this section.

19 (b) The department shall seek federal approval of a
20 state plan amendment necessary to include personal care
21 as a medicaid service pursuant to subdivision (f) of
22 Section 440.170 of Title 42 of the Code of Federal
23 Regulations.

24 (c) Subdivision (a) shall not be implemented unless
25 the department has obtained federal approval of the state
26 plan amendment described in subdivision (b), and the
27 Department of Finance has determined, and has
28 informed the department in writing, that the
29 implementation of this section will not result in additional
30 costs to the state relative to state appropriation for
31 in-home supportive services under Article 7
32 (commencing with Section 12300) of Chapter 3, in the
33 1992–93 fiscal year.

34 (d) (1) For purposes of this section, personal care
35 services shall mean all of the following:

- 36 (A) Assistance with ambulation.
- 37 (B) Bathing, oral hygiene and grooming.
- 38 (C) Dressing.
- 39 (D) Care and assistance with prosthetic devices.
- 40 (E) Bowel, bladder, and menstrual care.



1 (F) Skin care.

2 (G) Repositioning, range of motion exercises, and
3 transfers.

4 (H) Feeding and assurance of adequate fluid intake.

5 (I) Respiration.

6 (J) Paramedical services.

7 (K) Assistance with self-administration of
8 medications.

9 (2) Ancillary services including meal preparation and
10 cleanup, routine laundry, shopping for food and other
11 necessities, and domestic services may also be provided
12 as long as these ancillary services are subordinate to
13 personal care services. Ancillary services may not be
14 provided separately from the basic personal care services.

15 (e) (1) (A) After consulting with the State
16 Department of Social Services, the department shall
17 adopt emergency regulations to establish the amount,
18 scope, and duration of personal care services available to
19 persons described in subdivision (a) in the fiscal year
20 whenever the department determines that General
21 Fund expenditures for personal care services provided
22 under this section and expenditures of both General
23 Fund moneys and federal funds received under Title XX
24 of the federal Social Security Act for services pursuant to
25 Article 7 (commencing with Section 12300) of Chapter 3,
26 are expected to exceed the General Fund appropriation
27 and the federal appropriation under Title XX of the
28 federal Social Security Act provided for the 1992–93 fiscal
29 year pursuant to Article 7 (commencing with Section
30 12300) of Chapter 3, as it read on June 30, 1992, as adjusted
31 for caseload growth or as increased in the Budget Act or
32 appropriated by statute. At least 30 days prior to filing
33 these regulations with the Secretary of State, the
34 department shall give notice of the expected content of
35 these regulations to the fiscal committees of both houses
36 of the Legislature.

37 (B) In establishing the amount, scope, and duration of
38 personal care services, the department shall ensure that
39 General Fund expenditures for personal care services
40 provided for under this section and expenditures of both



1 General Fund moneys and federal funds received under
2 Title XX of the federal Social Security Act for services
3 pursuant to Article 7 (commencing with Section 12300)
4 of Chapter 3, do not exceed the General Fund
5 appropriation and the federal appropriation under Title
6 XX of the federal Social Security Act provided for the
7 1992–93 fiscal year pursuant to Article 7 (commencing
8 with Section 12300) of Chapter 3, as it read on June 30,
9 1992, as adjusted for caseload growth or as increased in the
10 Budget Act or appropriated by statute.

11 (C) For purposes of this subdivision, “caseload
12 growth” means an adjustment factor determined by the
13 department based on (1) growth in the number of
14 persons eligible for benefits under Chapter 3
15 (commencing with Section 12000) on the basis of their
16 disability, (2) the average increase in the number of
17 hours in the program established pursuant to Article 7
18 (commencing with Section 12300) of Chapter 3 in the
19 1988–89 to 1992–93 fiscal years, inclusive, due to the level
20 of impairment, and (3) any increase in program costs that
21 is required by an increase in the mandatory minimum
22 wage.

23 (2) In establishing the amount, scope, and duration of
24 personal care services pursuant to this subdivision, the
25 department may define and take into account, among
26 other things:

27 (A) The extent to which the particular personal care
28 services are essential or nonessential.

29 (B) Standards establishing the medical necessity of the
30 services to be provided.

31 (C) Utilization controls.

32 (D) A minimum number of hours of personal care
33 services that must first be assessed as needed as a
34 condition of receiving personal care services pursuant to
35 this section.

36 The level of personal care services shall be established
37 so as to avoid, to the extent feasible within budgetary
38 constraints, medical out-of-home placements.

39 (3) To the extent that General Fund expenditures for
40 services provided under this section and expenditures of



1 both General Fund moneys and federal funds received
2 under Title XX of the federal Social Security Act for
3 services pursuant to Article 7 (commencing with Section
4 12300) of Chapter 3 in the 1992–93 fiscal year, adjusted for
5 caseload growth, exceed General Fund expenditures for
6 services provided under this section and expenditures of
7 both General Fund moneys and federal funds received
8 under Title XX of the federal Social Security Act for
9 services pursuant to Article 7 (commencing with Section
10 12300) of Chapter 3 in any fiscal year, the excess of these
11 funds shall be expended for any purpose as directed in the
12 Budget Act or as otherwise statutorily disbursed by the
13 Legislature.

14 (f) Services pursuant to this section shall be rendered,
15 under the administrative direction of the State
16 Department of Social Services, in the manner authorized
17 in Article 7 (commencing with Section 12300) of Chapter
18 3, for the In-Home Supportive Services program. A
19 provider of personal care services shall be qualified to
20 provide the service and shall be a person other than a
21 member of the family. For purposes of this section, a
22 family member means a parent of a minor child or a
23 spouse.

24 (g) A beneficiary who is eligible for assistance under
25 this section shall receive services that do not exceed 283
26 hours per month of personal care services.

27 (h) Personal care services shall not be provided to
28 residents of facilities licensed by the department, and
29 shall not be provided to residents of a community care
30 facility or a residential care facility for the elderly licensed
31 by the Community Care Licensing Division of the State
32 Department of Social Services.

33 (i) Subject to any limitations that may be imposed
34 pursuant to subdivision (e), determination of need and
35 authorization for services shall be performed in
36 accordance with Article 7 (commencing with Section
37 12300) of Chapter 3.

38 (j) (1) To the extent permitted by federal law,
39 reimbursement rates for personal care services shall be
40 equal to the rates in each county for the same mode of



1 services in the In-Home Supportive Services program
2 pursuant to Article 7 (commencing with Section 12300)
3 of Chapter 3, plus any increase provided in the annual
4 Budget Act for personal care services rates or included in
5 a county budget pursuant to paragraph (2).

6 (2) (A) The department shall establish a provider
7 reimbursement rate methodology to determine payment
8 rates for the individual provider mode of service that does
9 all of the following:

10 (i) Is consistent with the functions and duties of
11 entities created pursuant to Section 12301.6.

12 (ii) Makes any additional expenditure of state general
13 funds subject to appropriation in the annual Budget Act.

14 (iii) Permits county-only funds to draw down federal
15 financial participation consistent with federal law.

16 (B) This ratesetting method shall be in effect in time
17 for any rate increases to be included in the annual Budget
18 Act.

19 (C) The department may, in establishing the
20 ratesetting method required by subparagraph (A), do
21 both of the following:

22 (i) Deem the market rate for like work in each county,
23 as determined by the Employment Development
24 Department, to be the cap for increases in payment rates
25 for individual practitioner services.

26 (ii) Provide for consideration of county input
27 concerning the rate necessary to ensure access to services
28 in that county.

29 (D) If an increase in individual practitioner rates is
30 included in the annual Budget Act, the state-county
31 sharing ratio shall be as established in Section 12306. If the
32 annual Budget Act does not include an increase in
33 individual practitioner rates, a county may use
34 county-only funds to meet federal financial participation
35 requirements consistent with federal law.

36 (3) (A) By November 1, 1993, the department shall
37 submit a state plan amendment to the federal Health
38 Care Financing Administration to implement this
39 subdivision. To the extent that any element or
40 requirement of this subdivision is not approved, the



1 department shall submit a request to the federal Health
2 Care Financing Administration for such waivers as would
3 be necessary to implement this subdivision.

4 (B) The provider reimbursement ratesetting
5 methodology authorized by the amendments to this
6 subdivision in the 1993-94 Regular Session of the
7 Legislature shall not be operative until all necessary
8 federal approvals have been obtained.

9 (k) (1) The State Department of Social Services shall,
10 by September 1, 1993, notify the following persons that
11 they are eligible to participate in the personal care
12 services program:

13 (A) Persons eligible for services pursuant to the Pickle
14 Amendment, as adopted October 28, 1976.

15 (B) Persons eligible for services pursuant to subsection
16 (c) of Section 1383c of Title 42 of the United States Code.

17 (2) The State Department of Social Services shall, by
18 September 1, 1993, notify persons to whom paragraph (1)
19 applies and who receive advance payment for in-home
20 supportive services that they will qualify for services
21 under this section without a share of cost if they elect to
22 accept payment for services on an arrears rather than an
23 advance payment basis.

24 (3) Upon request by the board of supervisors, of the
25 funds in the subaccount created pursuant to Section
26 17600.110, the Controller shall allocate the following
27 amounts for the establishment of an entity specified in
28 Section 12301.6:

29 (A) Two hundred fifty thousand dollars (\$250,000)
30 each to a county of the fourth, sixth, and tenth class.

31 (B) Two million dollars (\$2,000,000) to a county of the
32 first class.

33 (C) Five hundred fifty thousand dollars (\$550,000)
34 shall be allocated to counties, in the order of application
35 by counties for these funds, as follows:

36 (i) Not more than one hundred thousand dollars
37 (\$100,000) may be allocated to a county with a total of
38 fewer than 3,000 recipients of services under this section
39 and Article 7 (commencing with Section 12300) of
40 Chapter 3.



1 (ii) Not more than two hundred thousand dollars
2 (\$200,000) may be allocated to a county with a total of
3 more than 3,000 recipients of services under this section
4 and Article 7 (commencing with Section 12300) of
5 Chapter 3.

6 (iii) A county to whom either subparagraph (A) or
7 (B) applies shall not be eligible for funds under this
8 subparagraph.

9 (l) An individual who is eligible for services subject to
10 the maximum amount specified in subdivision (b) of
11 Section 12303.4 shall be given the option of hiring his or
12 her own provider.

13 (m) The county welfare department shall inform in
14 writing any individual who is potentially eligible for
15 services under this section of his or her right to the
16 services.

17 (n) It is the intent of the Legislature that this entire
18 section be an inseparable whole and that no part of it be
19 severable. If any portion of this section is found to be
20 invalid, as determined by a final judgment of a court of
21 competent jurisdiction, this section shall become
22 inoperative.

23 (o) Paragraphs (2) and (3) of subdivision (a) shall be
24 implemented so as to conform to federal law authorizing
25 their implementation.

26 ~~(p) This section shall become inoperative on July 1,
27 1996, and, as of January 1, 1997, is repealed, unless a later
28 enacted statute, which becomes effective on or before
29 January 1, 1997, deletes or extends the dates on which it
30 becomes inoperative and is repealed.~~

31 *SEC. 2. The State Department of Social Services shall*
32 *convene a work group to develop recommendations*
33 *regarding ways to improve the delivery of in-home*
34 *supportive services under the In-Home Supportive*
35 *Services Program by individual providers. The*
36 *recommendations shall address all of the following:*

37 (1) *Implementation of statewide systems* to provide
38 substitute individual providers for recipients under this
39 article who lose their individual provider and who are at



1 risk of institutionalization without in-home supportive
2 services.

3 (2) *Systems to provide training opportunities to*
4 *individual providers, and to encourage individual*
5 *providers to take advantage of training opportunities that*
6 *may currently exist, in order to increase their skills as*
7 *providers.*

8 (b) *The work group shall include, but need not be*
9 *limited to, representatives of all of the following:*

10 (1) *Counties where services are provided by*
11 *individual providers.*

12 (2) *The County Welfare Directors Association.*

13 (3) *Organizations that represent individual providers.*

14 (4) *Recipients or organizations that represent*
15 *recipients who receive their in-home supportive services*
16 *from individual providers.*

17 (c) *The department shall report the*
18 *recommendations of the work group to the appropriate*
19 *committees of the Legislature by January 1, 1997.*

