

AMENDED IN ASSEMBLY MAY 4, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 378

Introduced by Assembly Member Cook

(Coauthors: Assembly Members Adams, Beall, Tom Berryhill, Block, Davis, Hall, Lieu, Ma, Nestande, V. Manuel Perez, Portantino, Price, and Torres)

(Coauthors: Senators Liu and Maldonado)

February 23, 2009

An act to amend Section 12301.6 of the Welfare and Institutions Code, relating to in-home supportive services.

LEGISLATIVE COUNSEL'S DIGEST

AB 378, as amended, Cook. In-Home Supportive Services: provider training.

Existing law provides for the In-Home Supportive Services (IHSS) program, under which qualified aged, blind, and disabled persons receive services enabling them to remain in their own homes. Existing law permits 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, the functions of a nonprofit consortium contracting with the county, or a public authority established for this purpose, include providing training for providers and recipients.

This bill would require each public authority or nonprofit consortium, in consultation with its advisory committee and stakeholders, to develop training standards and core topics, ~~to be used in training it provides for~~ *the provided training*.

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 12301.6 of the Welfare and Institutions
2 Code is amended to read:
3 12301.6. (a) Notwithstanding Sections 12302 and 12302.1, a
4 county board of supervisors may, at its option, elect to do either
5 of the following:
6 (1) Contract with a nonprofit consortium to provide for the
7 delivery of in-home supportive services.
8 (2) Establish, by ordinance, a public authority to provide for
9 the delivery of in-home supportive services.
10 (b) (1) To the extent that a county elects to establish a public
11 authority pursuant to paragraph (2) of subdivision (a), the enabling
12 ordinance shall specify the membership of the governing body of
13 the public authority, the qualifications for individual members, the
14 manner of appointment, selection, or removal of members, how
15 long they shall serve, and other matters as the board of supervisors
16 deems necessary for the operation of the public authority.
17 (2) A public authority established pursuant to paragraph (2) of
18 subdivision (a) shall be both of the following:
19 (A) An entity separate from the county, and shall be required
20 to file the statement required by Section 53051 of the Government
21 Code.
22 (B) A corporate public body, exercising public and essential
23 governmental functions and that has all powers necessary or
24 convenient to carry out the delivery of in-home supportive services,
25 including the power to contract for services pursuant to Sections
26 12302 and 12302.1 and that makes or provides for direct payment
27 to a provider chosen by the recipient for the purchase of services
28 pursuant to Sections 12302 and 12302.2. Employees of the public
29 authority shall not be employees of the county for any purpose.
30 (3) (A) As an alternative, the enabling ordinance may designate
31 the board of supervisors as the governing body of the public
32 authority.
33 (B) Any enabling ordinance that designates the board of
34 supervisors as the governing body of the public authority shall
35 also specify that no fewer than 50 percent of the membership of

1 the advisory committee shall be individuals who are current or
2 past users of personal assistance services paid for through public
3 or private funds or recipients of services under this article.

4 (C) If the enabling ordinance designates the board of supervisors
5 as the governing body of the public authority, it shall also require
6 the appointment of an advisory committee of not more than 11
7 individuals who shall be designated in accordance with
8 subparagraph (B).

9 (D) Prior to making designations of committee members
10 pursuant to subparagraph (C), or governing body members in
11 accordance with paragraph (4), the board of supervisors shall solicit
12 recommendations of qualified members of either the governing
13 body of the public authority or of any advisory committee through
14 a fair and open process that includes the provision of reasonable
15 written notice to, and a reasonable response time by, members of
16 the general public and interested persons and organizations.

17 (4) If the enabling ordinance does not designate the board of
18 supervisors as the governing body of the public authority, the
19 enabling ordinance shall require the membership of the governing
20 body to meet the requirements of subparagraph (B) of paragraph
21 (3).

22 (c) (1) Any public authority created pursuant to this section
23 shall be deemed to be the employer of in-home supportive services
24 personnel referred to recipients under paragraph (3) of subdivision
25 (e) within the meaning of Chapter 10 (commencing with Section
26 3500) of Division 4 of Title 1 of the Government Code. Recipients
27 shall retain the right to hire, fire, and supervise the work of any
28 in-home supportive services personnel providing services to them.

29 (2) (A) Any nonprofit consortium contracting with a county
30 pursuant to this section shall be deemed to be the employer of
31 in-home supportive services personnel referred to recipients
32 pursuant to paragraph (3) of subdivision (e) for the purposes of
33 collective bargaining over wages, hours, and other terms and
34 conditions of employment.

35 (B) Recipients shall retain the right to hire, fire, and supervise
36 the work of any in-home supportive services personnel providing
37 services for them.

38 (d) A public authority established pursuant to this section or a
39 nonprofit consortium contracting with a county pursuant to this
40 section, when providing for the delivery of services under this

1 article by contract in accordance with Sections 12302 and 12302.1
2 or by direct payment to a provider chosen by a recipient in
3 accordance with Sections 12302 and 12302.2, shall comply with
4 and be subject to, all statutory and regulatory provisions applicable
5 to the respective delivery mode.

6 (e) Any nonprofit consortium contracting with a county pursuant
7 to this section or any public authority established pursuant to this
8 section shall provide for all of the following functions under this
9 article, but shall not be limited to those functions:

10 (1) The provision of assistance to recipients in finding in-home
11 supportive services personnel through the establishment of a
12 registry.

13 (2) (A) (i) The investigation of the qualifications and
14 background of potential personnel. The investigation may, with
15 respect to any prospective registry applicant who is not employed
16 before January 1, 2008, include criminal background checks
17 requested by the nonprofit consortium or public authority and
18 conducted by the Department of Justice pursuant to Section 15660,
19 for those public authorities or nonprofit consortia using the
20 agencies on January 1, 2008.

21 (ii) Upon notice from the Department of Justice notifying the
22 public authority or nonprofit consortium that the prospective
23 registry applicant has been convicted of a criminal offense specified
24 in Section 12305.81, the public authority or nonprofit consortium
25 shall deny the request to be placed on the registry for providing
26 supportive services to any recipient of the In-Home Supportive
27 Services program.

28 (B) If an applicant is rejected as a result of information contained
29 in the criminal background report, the applicant shall be advised
30 in writing of his or her right to request a copy of his or her own
31 criminal history record from the Department of Justice, as provided
32 in Article 5 (commencing with Section 11120) of Chapter 1 of
33 Title 1 of Part 4 of the Penal Code, to review the information for
34 accuracy and completeness. The applicant shall be advised that if,
35 upon review of his or her own criminal history record he or she
36 finds the information to be inaccurate or incomplete, the applicant
37 shall have the right to submit a formal challenge to the Department
38 of Justice to contest the criminal background report.

39 (C) An applicant shall be informed of his or her right to a waiver
40 of the fee for obtaining a copy of a criminal history record, and of

1 how to submit a claim and proof of indigency, as required by
2 Section 11123 of the Penal Code.

3 (D) No fee shall be charged to a provider, potential personnel,
4 or service recipient to cover any costs of administering this
5 paragraph associated with criminal background checks, or the cost
6 to the Department of Justice or any law enforcement agency for
7 processing the criminal background check. Nothing in this
8 paragraph shall be construed to prohibit the Department of Justice
9 from assessing a fee pursuant to Section 11105 or 11123 of the
10 Penal Code to cover the cost of furnishing summary criminal
11 history information. A public authority or nonprofit consortium
12 shall not seek reimbursement unless the conditions described in
13 subparagraph (F) are met.

14 (E) As used in this section, “nonprofit consortium” means a
15 nonprofit public benefit corporation that has all powers necessary
16 to carry out the delivery of in-home supportive services under the
17 delegated authority of a government entity.

18 (F) (i) Upon verification that at least 50 percent of the public
19 authority or nonprofit consortium list of registry applicants have
20 received a criminal background check, the county may request
21 reimbursement for the nonfederal share of cost associated with the
22 criminal fingerprint record check in accordance to the fiscal
23 claiming methodology.

24 (ii) The public authority or nonprofit consortium shall provide
25 a report to the State Department of Social Services on the number
26 of prospective registry applicants that have been referred to the
27 Department of Justice for a criminal background check.

28 (iii) The Department of Justice shall provide verification to the
29 State Department of Social Services on the number of prospective
30 registry applicants that have completed a criminal background
31 check.

32 (3) Establishment of a referral system under which in-home
33 supportive services personnel shall be referred to recipients.

34 (4) (A) Providing for training for providers and recipients.

35 (B) A public authority or nonprofit consortium, with input from
36 its advisory committee and other stakeholders, shall develop
37 training standards and core topics for the training ~~that it provides~~
38 *provided* pursuant to subparagraph (A).

39 (5) (A) Performing any other functions related to the delivery
40 of in-home supportive services.

(B) (i) Upon request of a recipient of in-home supportive services pursuant to this chapter, or a recipient of personal care services under the Medi-Cal program pursuant to Section 14132.95, a public authority or nonprofit consortium may provide a criminal background check on a nonregistry applicant or provider from the Department of Justice, in accordance with clause (i) of subparagraph (A) of paragraph (2) of subdivision (e). If the person who is the subject of the criminal background check is not hired or is terminated because of the information contained in the criminal background report, the provisions of subparagraph (B) of paragraph (2) of subdivision (e) shall apply.

(ii) A recipient of in-home supportive services pursuant to this chapter or a recipient of personal care services under the Medi-Cal program may elect to employ an individual as their service provider notwithstanding the individual's record of previous criminal convictions, unless those convictions include any of the offenses specified in Section 12305.81.

(6) Ensuring that the requirements of the personal care option pursuant to Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code are met.

(f) (1) Any nonprofit consortium contracting with a county pursuant to this section or any public authority created pursuant to this section shall be deemed not to be the employer of in-home supportive services personnel referred to recipients under this section for purposes of liability due to the negligence or intentional torts of the in-home supportive services personnel.

(2) In no case shall a nonprofit consortium contracting with a county pursuant to this section or any public authority created pursuant to this section be held liable for action or omission of any in-home supportive services personnel whom the nonprofit consortium or public authority did not list on its registry or otherwise refer to a recipient.

(3) Counties and the state shall be immune from any liability resulting from their implementation of this section in the administration of the In-Home Supportive Services program. Any obligation of the public authority or consortium pursuant to this section, whether statutory, contractual, or otherwise, shall be the obligation solely of the public authority or nonprofit consortium, and shall not be the obligation of the county or state.

1 (g) Any nonprofit consortium contracting with a county pursuant
2 to this section shall ensure that it has a governing body that
3 complies with the requirements of subparagraph (B) of paragraph
4 (3) of subdivision (b) or an advisory committee that complies with
5 subparagraphs (B) and (C) of paragraph (3) of subdivision (b).

6 (h) Recipients of services under this section may elect to receive
7 services from in-home supportive services personnel who are not
8 referred to them by the public authority or nonprofit consortium.
9 Those personnel shall be referred to the public authority or
10 nonprofit consortium for the purposes of wages, benefits, and other
11 terms and conditions of employment.

12 (i) (1) Nothing in this section shall be construed to affect the
13 state's responsibility with respect to the state payroll system,
14 unemployment insurance, or workers' compensation and other
15 provisions of Section 12302.2 for providers of in-home supportive
16 services.

17 (2) The Controller shall make any deductions from the wages
18 of in-home supportive services personnel, who are employees of
19 a public authority pursuant to paragraph (1) of subdivision (c), that
20 are agreed to by that public authority in collective bargaining with
21 the designated representative of the in-home supportive services
22 personnel pursuant to Chapter 10 (commencing with Section 3500)
23 of Division 4 of Title 1 of the Government Code and transfer the
24 deducted funds as directed in that agreement.

25 (3) Any county that elects to provide in-home supportive
26 services pursuant to this section shall be responsible for any
27 increased costs to the in-home supportive services case
28 management, information, and payrolling system attributable to
29 that election. The department shall collaborate with any county
30 that elects to provide in-home supportive services pursuant to this
31 section prior to implementing the amount of financial obligation
32 for which the county shall be responsible.

33 (j) To the extent permitted by federal law, personal care option
34 funds, obtained pursuant to Subchapter 19 (commencing with
35 Section 1396) of Chapter 7 of Title 42 of the United States Code,
36 along with matching funds using the state and county sharing ratio
37 established in subdivision (c) of Section 12306, or any other funds
38 that are obtained pursuant to Subchapter 19 (commencing with
39 Section 1396) of Chapter 7 of Title 42 of the United States Code,

1 may be used to establish and operate an entity authorized by this
2 section.

3 (k) Notwithstanding any other provision of law, the county, in
4 exercising its option to establish a public authority, shall not be
5 subject to competitive bidding requirements. However, contracts
6 entered into by either the county, a public authority, or a nonprofit
7 consortium pursuant to this section shall be subject to competitive
8 bidding as otherwise required by law.

9 (l) (1) The department may adopt regulations implementing
10 this section as emergency regulations in accordance with Chapter
11 3.5 (commencing with Section 11340) of Part 1 of Division 3 of
12 Title 2 of the Government Code. For the purposes of the
13 Administrative Procedure Act, the adoption of the regulations shall
14 be deemed an emergency and necessary for the immediate
15 preservation of the public peace, health and safety, or general
16 welfare. Notwithstanding Chapter 3.5 (commencing with Section
17 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
18 these emergency regulations shall not be subject to the review and
19 approval of the Office of Administrative Law.

20 (2) Notwithstanding subdivision (h) of Section 11346.1 and
21 Section 11349.6 of the Government Code, the department shall
22 transmit these regulations directly to the Secretary of State for
23 filing. The regulations shall become effective immediately upon
24 filing by the Secretary of State.

25 (3) Except as otherwise provided for by Section 10554, the
26 Office of Administrative Law shall provide for the printing and
27 publication of these regulations in the California Code of
28 Regulations. Emergency regulations adopted pursuant to this
29 subdivision shall remain in effect for no more than 180 days.

30 (m) (1) In the event that a county elects to form a nonprofit
31 consortium or public authority pursuant to subdivision (a) before
32 the State Department of Health Care Services has obtained all
33 necessary federal approvals pursuant to paragraph (3) of
34 subdivision (j) of Section 14132.95, all of the following shall apply:

35 (A) Subdivision (d) shall apply only to those matters that do
36 not require federal approval.

37 (B) The second sentence of subdivision (h) shall not be
38 operative.

1 (C) The nonprofit consortium or public authority shall not
2 provide services other than those specified in paragraphs (1), (2),
3 (3), (4), and (5) of subdivision (e).

4 (2) Paragraph (1) shall become inoperative when the State
5 Department of Health Care Services has obtained all necessary
6 federal approvals pursuant to paragraph (3) of subdivision (j) of
7 Section 14132.95.

8 (n) (1) One year after the effective date of the first approval by
9 the department granted to the first public authority, the Bureau of
10 State Audits shall commission a study to review the performance
11 of that public authority.

12 (2) The study shall be submitted to the Legislature and the
13 Governor not later than two years after the effective date of the
14 approval specified in subdivision (a). The study shall give special
15 attention to the health and welfare of the recipients under the public
16 authority, including the degree to which all required services have
17 been delivered, out-of-home placement rates, prompt response to
18 recipient complaints, and any other issue the director deems
19 relevant.

20 (3) The report shall make recommendations to the Legislature
21 and the Governor for any changes to this section that will further
22 ensure the well-being of recipients and the most efficient delivery
23 of required services.

24 (o) Commencing July 1, 1997, the department shall provide
25 annual reports to the appropriate fiscal and policy committees of
26 the Legislature on the efficacy of the implementation of this
27 section, and shall include an assessment of the quality of care
28 provided pursuant to this section.

29 (p) (1) Notwithstanding any other provision of law, and except
30 as provided in paragraph (2), the department shall, no later than
31 January 1, 2009, implement subparagraphs (A) and (B) through
32 an all county letter from the director:

33 (A) Subparagraphs (A) and (B) of paragraph (2) of subdivision
34 (e).

35 (B) Subparagraph (B) of paragraph (5) of subdivision (e).

36 (2) The department shall, no later than July 1, 2009, adopt
37 regulations to implement subparagraphs (A) and (B) of paragraph
38 (1).

39 (q) The amendments made to paragraphs (2) and (5) of
40 subdivision (e) made by the act that added this subdivision during

1 the 2007–08 Regular Session of the Legislature shall only be
2 implemented to the extent that an appropriation is made in the
3 annual Budget Act or other statute, except for the amendments
4 that added subparagraph (D) of paragraph (2) of subdivision (e),
5 which shall go into effect January 1, 2009.

O