

ASSEMBLY BILL

No. 16

Introduced by Assembly Member Honda

December 7, 1998

An act to amend Section 12301.6 of, and to add Section 12301.8 to, the Welfare and Institutions Code, relating to public social services.

LEGISLATIVE COUNSEL'S DIGEST

AB 16, as introduced, Honda. 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 in order to permit them to remain in their own homes and avoid institutionalization.

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.

Existing law provides that when any increase in provider wages or benefits is negotiated or agreed to by a public authority or nonprofit consortium, the county shall use county-only funds to fund both the county's share and the state's share, including employment taxes, of any increase in IHSS costs, unless otherwise provided for by law.

This bill would delete this provision, and would, instead, provide that the annual costs for any public authority or nonprofit consortium shall be shared by the state and county according to provisions of existing law.

The bill would also authorize counties to designate funds to be used to increase provider wages and benefits for the provision of IHSS services through a nonprofit consortium or public authority or through a 3-year contract with various providers, and would provide for the reimbursement of any county that designates an amount at least equal to the reduction in the county’s share of cost that results from federal financial participation in services provided to medically needy aged, blind, and disabled persons, for the cost of the increase in wages and benefits that exceeds the reduction in the county share of cost.

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. The Legislature finds and declares all of
2 the following:

3 (a) The In-Home Supportive Services (IHSS)
4 program was developed to permit the aged and persons
5 with disabilities to live safely in their own homes and to
6 avoid more costly institutionalization.

7 (b) Commencing in 1992, many services that had been
8 provided through the IHSS program were able to be
9 provided to certain recipients through the adoption of
10 the personal care option provisions in the Medi-Cal
11 program.

12 (c) By 1998, this conversion resulted in savings to the
13 General Fund of almost one billion dollars
14 (\$1,000,000,000).

15 (d) The original intent was to use this savings to
16 enhance the program, including improving the wages
17 and benefits of IHSS program personnel pursuant to
18 Section 12301.6 of the Welfare and Institutions Code.

19 (e) Most IHSS personnel are paid at the minimum
20 wage, with no additional benefits.



1 (f) Due to the recession and resulting decreases in
2 revenues, this savings was used to prevent program
3 reductions.

4 (g) In addition, counties lost revenue from the
5 recession and from the property tax transfer.

6 (h) The state's economy has now improved, and there
7 is additional revenue available. There are also additional
8 savings available through the IHSS program by
9 transferring the aged, blind, and disabled medically
10 needy recipients to the personal care option program.

11 (i) Therefore, in order to improve the quality of IHSS
12 personnel and their working conditions, and in order to
13 reduce turnover in IHSS personnel, it is the intent of the
14 Legislature to reinvest a portion of these savings in the
15 program, specifically for wage and benefit increases, and
16 to provide county relief by providing funds for the county
17 share of cost.

18 SEC. 2. Section 12301.6 of the Welfare and Institutions
19 Code is amended to read:

20 12301.6. (a) Notwithstanding Sections 12302 and
21 12302.1, a county board of supervisors may, at its option,
22 elect to do either of the following:

23 (1) Contract with a nonprofit consortium to provide
24 for the delivery of in-home supportive services.

25 (2) Establish, by ordinance, a public authority to
26 provide for the delivery of in-home supportive services.

27 (b) (1) To the extent that a county elects to establish
28 a public authority pursuant to paragraph (2) of
29 subdivision (a), the enabling ordinance shall specify the
30 membership of the governing body of the public
31 authority, the qualifications for individual members, the
32 manner of appointment, selection, or removal of
33 members, how long they shall serve, and other matters as
34 the board of supervisors deems necessary for the
35 operation of the public authority.

36 (2) A public authority established pursuant to
37 paragraph (2) of subdivision (a) shall be both of the
38 following:



1 (A) An entity separate from the county, and shall be
2 required to file the statement required by Section 53051
3 of the Government Code.

4 (B) A corporate public body, exercising public and
5 essential governmental functions and that has all powers
6 necessary or convenient to carry out the delivery of
7 in-home supportive services, including the power to
8 contract for services pursuant to Sections 12302 and
9 12302.1 and that makes or provides for direct payment to
10 a provider chosen by the recipient for the purchase of
11 services pursuant to Sections 12302 and 12302.2.
12 Employees of the public authority shall not be employees
13 of the county for any purpose.

14 (3) (A) As an alternative, the enabling ordinance may
15 designate the board of supervisors as the governing body
16 of the public authority.

17 (B) Any enabling ordinance that designates the board
18 of supervisors as the governing body of the public
19 authority shall also specify that no fewer than 50 percent
20 of the membership of the advisory committee shall be
21 individuals who are current or past users of personal
22 assistance services paid for through public or private
23 funds or recipients of services under this article.

24 (C) If the enabling ordinance designates the board of
25 supervisors as the governing body of the public authority,
26 it shall also require the appointment of an advisory
27 committee of not more than 11 individuals who shall be
28 designated in accordance with subparagraph (B).

29 (D) Prior to making designations of committee
30 members pursuant to subparagraph (C), or governing
31 body members in accordance with paragraph (4), the
32 board of supervisors shall solicit recommendations of
33 qualified members of either the governing body of the
34 public authority or of any advisory committee through a
35 fair and open process that includes the provision of
36 reasonable, written notice to, and a reasonable response
37 time by, members of the general public and interested
38 persons and organizations.

39 (4) If the enabling ordinance does not designate the
40 board of supervisors as the governing body of the public



1 authority, the enabling ordinance shall require the
2 membership of the governing body to meet the
3 requirements of subparagraph (B) of paragraph (3).

4 (c) (1) Any public authority created pursuant to this
5 section shall be deemed to be the employer of in-home
6 supportive services personnel referred to recipients
7 under paragraph (3) of subdivision (d) within the
8 meaning of Chapter 10 (commencing with Section 3500)
9 of Division 4 of Title 1 of the Government Code.
10 Recipients shall retain the right to hire, fire, and supervise
11 the work of any in-home supportive services personnel
12 providing services to them.

13 (2) (A) Any nonprofit consortium contracting with a
14 county pursuant to this section shall be deemed to be the
15 employer of in-home supportive services personnel
16 referred to recipients pursuant to paragraph (3) of
17 subdivision (d) for the purposes of collective bargaining
18 over wages, hours, and other terms and conditions of
19 employment.

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

23 ~~(3) When any increase in provider wages or benefits~~
24 ~~is negotiated or agreed to by a (A) The annual cost for any~~
25 ~~public authority or nonprofit consortium under this~~
26 ~~section, then the county shall use county-only funds to~~
27 ~~fund both the county share and the state share, including~~
28 ~~employment taxes, of any increase in the cost of the~~
29 ~~program, unless otherwise provided for in the annual~~
30 ~~Budget Act or appropriated by statute. No created~~
31 ~~pursuant to this section shall be shared by the state and~~
32 ~~the counties as prescribed in Section 12306.~~

33 (B) No increase in wages or benefits negotiated or
34 agreed to pursuant to this section shall take effect unless
35 and until, prior to its implementation, the department has
36 obtained the approval of the State Department of Health
37 Services for the increase pursuant to a determination that
38 it is consistent with federal law and to ensure federal
39 financial participation for the services under Title XIX of
40 the federal Social Security Act.



1 (d) A public authority established pursuant to this
2 section or a nonprofit consortium contracting with a
3 county pursuant to this section, when providing for the
4 delivery of services under this article by contract in
5 accordance with Sections 12302 and 12302.1 or by direct
6 payment to a provider chosen by a recipient in
7 accordance with Sections 12302 and 12302.2, shall comply
8 with and be subject to, all statutory and regulatory
9 provisions applicable to the respective delivery mode.

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

15 (1) The provision of assistance to recipients in finding
16 in-home supportive services personnel through the
17 establishment of a registry.

18 (2) Investigation of the qualifications and background
19 of potential personnel.

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

23 (4) Providing for training for providers and recipients.

24 (5) Performing any other functions related to the
25 delivery of in-home supportive services.

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

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

37 (2) In no case shall a nonprofit consortium contracting
38 with a county pursuant to this section or any public
39 authority created pursuant to this section be held liable
40 for action or omission of any in-home supportive services



1 personnel whom the nonprofit consortium or public
2 authority did not list on its registry or otherwise refer to
3 a recipient.

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

12 (g) Any nonprofit consortium contracting with a
13 county pursuant to this section shall ensure that it has a
14 governing body that complies with the requirements of
15 subparagraph (B) of paragraph (3) of subdivision (b) or
16 an advisory committee that complies with subparagraphs
17 (B) and (C) of paragraph (3) of subdivision (b).

18 (h) Recipients of services under this section may elect
19 in-home supportive services personnel who are not
20 referred to them by the public authority or nonprofit
21 consortium. Those personnel shall be referred to the
22 public authority or nonprofit consortium for the purposes
23 of wages, benefits, and other terms and conditions of
24 employment.

25 (i) Nothing in this section shall be construed to affect
26 the state's responsibility with respect to the state payroll
27 system, unemployment insurance, or workers'
28 compensation and other provisions of Section 12302.2 for
29 providers of in-home supportive services. Any county
30 that elects to provide in-home supportive services
31 pursuant to this section shall be responsible for any
32 increased costs to the in-home supportive services case
33 management, information, and payrolling system
34 attributable to that election. The department shall
35 collaborate with any county that elects to provide
36 in-home supportive services pursuant to this section prior
37 to implementing the amount of financial obligation for
38 which the county shall be responsible.

39 (j) To the extent permitted by federal law, personal
40 care option funds, obtained pursuant to Subchapter 19



1 (commencing with Section 1396) of Chapter 7 of Title 42
2 of the United States Code, along with matching funds
3 using the state and county sharing ratio established in
4 subdivision (c) of Section 12306, or any other funds that
5 are obtained pursuant to Subchapter 19 (commencing
6 with Section 1396) of Chapter 7 of Title 42 of the United
7 States Code, may be used to establish and operate an
8 entity authorized by this section.

9 (k) Notwithstanding any other provision of law, the
10 county, in exercising its option to establish a public
11 authority, shall not be subject to competitive bidding
12 requirements. However, contracts entered into by either
13 the county, a public authority, or a nonprofit consortium
14 pursuant to this section shall be subject to competitive
15 bidding as otherwise required by law.

16 (l) (1) The department may adopt regulations
17 implementing this section as emergency regulations in
18 accordance with Chapter 3.5 (commencing with Section
19 11340) of Part 1 of Division 3 of Title 2 of the Government
20 Code. For the purposes of the Administrative Procedures
21 Act, the adoption of the regulations shall be deemed an
22 emergency and necessary for the immediate
23 preservation of the public peace, health and safety, or
24 general welfare. Notwithstanding Chapter 3.5
25 (commencing with Section 11340) of Part 1 of Division 3
26 of Title 2 of the Government Code, these emergency
27 regulations shall not be subject to the review and
28 approval of the Office of Administrative Law.

29 (2) Notwithstanding subdivision (h) of Section 11364.1
30 and Section 11349.6 of the Government Code, the
31 department shall transmit these regulations directly to
32 the Secretary of State for filing. The regulations shall
33 become effective immediately upon filing by the
34 Secretary of State.

35 (3) Except as otherwise provided for by Section 10554,
36 the Office of Administrative Law shall provide for the
37 printing and publication of these regulations in the
38 California Code of Regulations. Notwithstanding
39 Chapter 3.5 (commencing with Section 11340) of Part 1
40 of Division 3 of Title 2 of the Government Code, these



1 regulations shall not be repealed by the Office of
2 Administrative Law and shall remain in effect until
3 revised or repealed by the department.

4 (m) (1) In the event that a county elects to form a
5 nonprofit consortium or public authority pursuant to
6 subdivision (a) before the State Department of Health
7 Services has obtained all necessary federal approvals
8 pursuant to paragraph (3) of subdivision (j) of Section
9 14132.95, all of the following shall apply:

10 (A) Subdivision (c) shall apply only to those matters
11 that do not require federal approval.

12 (B) The second sentence of subdivision (g) shall not
13 be operative.

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

17 (2) Paragraph (1) shall become inoperative when the
18 State Department of Health Services has obtained all
19 necessary federal approvals pursuant to paragraph (3) of
20 subdivision (j) of Section 14132.95.

21 (n) (1) One year after the effective date of the first
22 approval by the department granted to the first public
23 authority, the Bureau of State Audits shall commission a
24 study to review the performance of that public authority.

25 (2) The study shall be submitted to the Legislature and
26 the Governor not later than two years after the effective
27 date of the approval specified in subdivision (a). The
28 study shall give special attention to the health and welfare
29 of the recipients under the public authority, including the
30 degree to which all required services have been
31 delivered, out-of-home placement rates, prompt
32 response to recipient complaints, and any other issue the
33 director deems relevant.

34 (3) The report shall make recommendations to the
35 Legislature and the Governor for any changes to this
36 section that will further ensure the well-being of
37 recipients and the most efficient delivery of required
38 services.

39 (o) Commencing July 1, 1997, the department shall
40 provide annual reports to the appropriate fiscal and



1 policy committees of the Legislature on the efficacy of the
2 implementation of this section, and shall include an
3 assessment of the quality of care provided pursuant to this
4 section.

5 SEC. 3. Section 12301.8 is added to the Welfare and
6 Institutions Code, to read:

7 12301.8. (a) A county may designate funds to be used
8 to increase provider wages and benefits for the provision
9 of services pursuant to Section 12301.6 or 12302.1. For the
10 1999–00 fiscal year, and for each fiscal year thereafter, any
11 county that designates an amount at least equal to the
12 reduction in the county's share of cost that results from
13 federal financial participation in services provided to
14 medically needy aged, blind, and disabled persons after
15 June 30, 1999, shall be reimbursed for the cost of the
16 increase in wages and benefits that exceeds the reduction
17 in the county share of cost after January 1, 2000. This
18 provision does not apply to any wage increase necessary
19 to meet federal or state minimum wage requirements.
20 This subdivision applies solely to individual providers and
21 contract employees who provide services pursuant to
22 Sections 12301.6 and 12302.1.

23 (b) The department shall determine the reduction in
24 the per capita state share of cost, pursuant to subdivision
25 (c) of Section 12301.6, for services provided after June 30,
26 1999, to medically needy aged, blind, and disabled
27 persons that results from providing those services under
28 the personal care option pursuant to Section 14132.95.
29 The department shall reimburse counties for the cost of
30 increased wages and benefits that exceed the amount of
31 the reduction in the county's share of cost as determined
32 pursuant to subdivision (a), provided that amount is not
33 greater than the county's actual cost.

34 (c) A county that provides services pursuant to
35 Section 12302.1 shall only be reimbursed pursuant to
36 subdivision (a) for the increase in the rate of
37 reimbursement negotiated after June 30, 1999, and for the
38 amount specifically designated for increases in wages and



1 benefits that is in addition to that necessary to meet
2 federal and state minimum wage requirements.

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