

AMENDED IN ASSEMBLY MARCH 18, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

**ASSEMBLY BILL**

**No. 16**

---

---

**Introduced by Assembly Member Honda**

*(Coauthors: Assembly Members Alquist, Aroner, Calderon, Cardenas, Cardoza, Cedillo, Corbett, Davis, Dutra, Firebaugh, Havice, Hertzberg, Jackson, Keeley, Knox, Kuehl, Leach, Lempert, Lowenthal, Nakano, Papan, Romero, Scott, Shelley, Soto, Steinberg, Strom-Martin, Torlakson, Villaraigosa, Washington, Wesson, Wiggins, and Wildman)*

*(Coauthors: Senators Chesbro, Figueroa, McPherson, Murray, O'Connell, Ortiz, Perata, Rainey, Sher, Solis, Speier, and Vasconcellos)*

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 amended, 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~~ *expends county funds in* 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



1 the personal care option provisions in the Medi-Cal  
2 program.

3 (c) By 1998, this conversion resulted in savings to the  
4 General Fund of almost one billion dollars  
5 (\$1,000,000,000).

6 (d) The original intent was to use this savings to  
7 enhance the program, including improving the wages  
8 and benefits of IHSS program personnel pursuant to  
9 Section 12301.6 of the Welfare and Institutions Code.

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

12 (f) Due to the recession and resulting decreases in  
13 revenues, this savings was used to prevent program  
14 reductions.

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

17 (h) The state's economy has now improved, and there  
18 is additional revenue available. There are also additional  
19 savings available through the IHSS program by  
20 transferring the aged, blind, and disabled medically  
21 needy recipients to the personal care option program.

22 (i) Therefore, in order to improve the quality of IHSS  
23 personnel and their working conditions, and in order to  
24 reduce turnover in IHSS personnel, it is the intent of the  
25 Legislature to reinvest a portion of these savings in the  
26 program, specifically for wage and benefit increases, and  
27 to provide county relief by providing funds for the county  
28 share of cost.

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

31 12301.6. (a) Notwithstanding Sections 12302 and  
32 12302.1, a county board of supervisors may, at its option,  
33 elect to do either of the following:

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

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

38 (b) (1) To the extent that a county elects to establish  
39 a public authority pursuant to paragraph (2) of  
40 subdivision (a), the enabling ordinance shall specify the



1 membership of the governing body of the public  
2 authority, the qualifications for individual members, the  
3 manner of appointment, selection, or removal of  
4 members, how long they shall serve, and other matters as  
5 the board of supervisors deems necessary for the  
6 operation of the public authority.

7 (2) A public authority established pursuant to  
8 paragraph (2) of subdivision (a) shall be both of the  
9 following:

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

13 (B) A corporate public body, exercising public and  
14 essential governmental functions and that has all powers  
15 necessary or convenient to carry out the delivery of  
16 in-home supportive services, including the power to  
17 contract for services pursuant to Sections 12302 and  
18 12302.1 and that makes or provides for direct payment to  
19 a provider chosen by the recipient for the purchase of  
20 services pursuant to Sections 12302 and 12302.2.  
21 Employees of the public authority shall not be employees  
22 of the county for any purpose.

23 (3) (A) As an alternative, the enabling ordinance may  
24 designate the board of supervisors as the governing body  
25 of the public authority.

26 (B) Any enabling ordinance that designates the board  
27 of supervisors as the governing body of the public  
28 authority shall also specify that no fewer than 50 percent  
29 of the membership of the advisory committee shall be  
30 individuals who are current or past users of personal  
31 assistance services paid for through public or private  
32 funds or recipients of services under this article.

33 (C) If the enabling ordinance designates the board of  
34 supervisors as the governing body of the public authority,  
35 it shall also require the appointment of an advisory  
36 committee of not more than 11 individuals who shall be  
37 designated in accordance with subparagraph (B).

38 (D) Prior to making designations of committee  
39 members pursuant to subparagraph (C), or governing  
40 body members in accordance with paragraph (4), the



1 board of supervisors shall solicit recommendations of  
2 qualified members of either the governing body of the  
3 public authority or of any advisory committee through a  
4 fair and open process that includes the provision of  
5 reasonable, written notice to, and a reasonable response  
6 time by, members of the general public and interested  
7 persons and organizations.

8 (4) If the enabling ordinance does not designate the  
9 board of supervisors as the governing body of the public  
10 authority, the enabling ordinance shall require the  
11 membership of the governing body to meet the  
12 requirements of subparagraph (B) of paragraph (3).

13 (c) (1) Any public authority created pursuant to this  
14 section shall be deemed to be the employer of in-home  
15 supportive services personnel referred to recipients  
16 under paragraph (3) of subdivision (d) within the  
17 meaning of Chapter 10 (commencing with Section 3500)  
18 of Division 4 of Title 1 of the Government Code.  
19 Recipients shall retain the right to hire, fire, and supervise  
20 the work of any in-home supportive services personnel  
21 providing services to them.

22 (2) (A) Any nonprofit consortium contracting with a  
23 county pursuant to this section shall be deemed to be the  
24 employer of in-home supportive services personnel  
25 referred to recipients pursuant to paragraph (3) of  
26 subdivision (d) for the purposes of collective bargaining  
27 over wages, hours, and other terms and conditions of  
28 employment.

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

32 (3) (A) The annual cost for any *services provided by*  
33 public authority or nonprofit consortium created  
34 pursuant to this section shall be shared by the state and  
35 the counties as prescribed in Section 12306.

36 (B) No increase in wages or benefits negotiated or  
37 agreed to pursuant to this section shall take effect unless  
38 and until, prior to its implementation, the department has  
39 obtained the approval of the State Department of Health  
40 Services for the increase pursuant to a determination that



1 it is consistent with federal law and to ensure federal  
2 financial participation for the services under Title XIX of  
3 the federal Social Security Act.

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

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

18 (1) The provision of assistance to recipients in finding  
19 in-home supportive services personnel through the  
20 establishment of a registry.

21 (2) Investigation of the qualifications and background  
22 of potential personnel.

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

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

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

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

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



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

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

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

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

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



1 to implementing the amount of financial obligation for  
2 which the county shall be responsible.

3 (j) To the extent permitted by federal law, personal  
4 care option funds, obtained pursuant to Subchapter 19  
5 (commencing with Section 1396) of Chapter 7 of Title 42  
6 of the United States Code, along with matching funds  
7 using the state and county sharing ratio established in  
8 subdivision (c) of Section 12306, or any other funds that  
9 are obtained pursuant to Subchapter 19 (commencing  
10 with Section 1396) of Chapter 7 of Title 42 of the United  
11 States Code, may be used to establish and operate an  
12 entity authorized by this section.

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

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

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

39 (3) Except as otherwise provided for by Section 10554,  
40 the Office of Administrative Law shall provide for the



1 printing and publication of these regulations in the  
2 California Code of Regulations. Notwithstanding  
3 Chapter 3.5 (commencing with Section 11340) of Part 1  
4 of Division 3 of Title 2 of the Government Code, these  
5 regulations shall not be repealed by the Office of  
6 Administrative Law and shall remain in effect until  
7 revised or repealed by the department.

8 (m) (1) In the event that a county elects to form a  
9 nonprofit consortium or public authority pursuant to  
10 subdivision (a) before the State Department of Health  
11 Services has obtained all necessary federal approvals  
12 pursuant to paragraph (3) of subdivision (j) of Section  
13 14132.95, all of the following shall apply:

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

16 (B) The second sentence of subdivision (g) shall not  
17 be operative.

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

21 (2) Paragraph (1) shall become inoperative when the  
22 State Department of Health Services has obtained all  
23 necessary federal approvals pursuant to paragraph (3) of  
24 subdivision (j) of Section 14132.95.

25 (n) (1) One year after the effective date of the first  
26 approval by the department granted to the first public  
27 authority, the Bureau of State Audits shall commission a  
28 study to review the performance of that public authority.

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

38 (3) The report shall make recommendations to the  
39 Legislature and the Governor for any changes to this  
40 section that will further ensure the well-being of



1 recipients and the most efficient delivery of required  
2 services.

3 (o) Commencing July 1, 1997, the department shall  
4 provide annual reports to the appropriate fiscal and  
5 policy committees of the Legislature on the efficacy of the  
6 implementation of this section, and shall include an  
7 assessment of the quality of care provided pursuant to this  
8 section.

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

11 12301.8. (a) ~~A county may designate funds to be used~~  
12 ~~to increase~~ *Increases in* provider wages and benefits for  
13 the provision of services pursuant to Section 12301.6 or  
14 12302.1 *may be made in a manner appropriate to the*  
15 *entities or contracts described in those sections.* For the  
16 ~~1999-00~~ 1999-2000 fiscal year, and for each fiscal year  
17 thereafter, any county that ~~designates~~ *expends county*  
18 *funds in* an amount at least equal to the reduction in the  
19 county's share of cost that results from federal financial  
20 participation in services provided to medically needy  
21 aged, blind, and disabled persons after ~~June 30, 1999,~~ *the*  
22 *implementation and approval of the state plan*  
23 *amendment pursuant to subdivision (p) of Section*  
24 *14132.95* shall be reimbursed for the cost of the increase  
25 in wages and benefits that exceeds the reduction in the  
26 county share of cost ~~after January 1, 2000 and is necessary~~  
27 *to meet the established rates.* This provision does not  
28 apply to any wage increase necessary to meet federal or  
29 state minimum wage requirements. This subdivision  
30 applies solely to ~~individual providers~~ *public authority,*  
31 *nonprofit consortium,* and contract employees who  
32 provide services pursuant to Sections 12301.6 and 12302.1.

33 (b) ~~The department shall determine the reduction in~~  
34 ~~the per capita state share of cost, pursuant to subdivision~~  
35 ~~(e) of Section 12301.6, for services provided after June 30,~~  
36 ~~1999, to medically needy aged, blind, and disabled~~  
37 ~~persons that results from providing those services under~~  
38 ~~the personal care option pursuant to Section 14132.95.~~

39 (b) The department shall reimburse counties for the  
40 cost of increased wages and benefits that exceed the



1 amount of the reduction in the county's share of cost as  
2 determined pursuant to subdivision (a), provided that  
3 amount is not greater than the county's actual cost.

4 ~~(e) A county that provides services pursuant to~~  
5 ~~Section 12302.1 shall only be reimbursed pursuant to~~  
6 ~~subdivision (a) for the increase in the rate of~~  
7 ~~reimbursement negotiated after June 30, 1999, and for the~~  
8 ~~amount specifically designated for increases in wages and~~  
9 ~~benefits that is in addition to that necessary to meet~~  
10 ~~federal and state minimum wage requirements.~~

11 *(c) Except as specifically set forth in subdivision (a),*  
12 *this section is not otherwise intended to alter the cost*  
13 *sharing described in Sections 12301.6 and 12306.*

