

AMENDED IN ASSEMBLY APRIL 6, 1999
AMENDED IN ASSEMBLY MARCH 18, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 16

Introduced by Assembly ~~Member Honda~~ Members *Honda, Shelley, and Villaraigosa*

(Coauthors: Assembly Members Alquist, Aroner, Calderon, Cardenas, Cardoza, Cedillo, Corbett, Davis, Dutra, Firebaugh, Gallegos, Havice, Hertzberg, Jackson, Keeley, Knox, Kuehl, Leach, Lempert, Lowenthal, *Mazzoni*, 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 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~~ as
6 well as to avoid more costly institutionalization.



1 (b) Commencing in 1992, many services that had been
2 provided through the IHSS program were able to be
3 provided to certain recipients through the adoption of
4 the personal care option provisions in the Medi-Cal
5 program.

6 (c) By 1998, this conversion resulted in savings to the
7 General Fund of almost one billion dollars
8 (\$1,000,000,000).

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

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

15 (f) Due to the recession and resulting decreases in
16 revenues, this savings was used to prevent program
17 reductions.

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

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

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

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

34 12301.6. (a) Notwithstanding Sections 12302 and
35 12302.1, a county board of supervisors may, at its option,
36 elect to do either of the following:

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

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



1 (b) (1) To the extent that a county elects to establish
2 a public authority pursuant to paragraph (2) of
3 subdivision (a), the enabling ordinance shall specify the
4 membership of the governing body of the public
5 authority, the qualifications for individual members, the
6 manner of appointment, selection, or removal of
7 members, how long they shall serve, and other matters as
8 the board of supervisors deems necessary for the
9 operation of the public authority.

10 (2) A public authority established pursuant to
11 paragraph (2) of subdivision (a) shall be both of the
12 following:

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

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

26 (3) (A) As an alternative, the enabling ordinance may
27 designate the board of supervisors as the governing body
28 of the public authority.

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

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



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

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

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

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

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

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

39 (B) No increase in wages or benefits negotiated or
40 agreed to pursuant to this section shall take effect unless



1 and until, prior to its implementation, the department has
2 obtained the approval of the State Department of Health
3 Services for the increase pursuant to a determination that
4 it is consistent with federal law and to ensure federal
5 financial participation for the services under Title XIX of
6 the federal Social Security Act.

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

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

21 (1) The provision of assistance to recipients in finding
22 in-home supportive services personnel through the
23 establishment of a registry.

24 (2) Investigation of the qualifications and background
25 of potential personnel.

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

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

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

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

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



1 liability due to the negligence or intentional torts of the
2 in-home supportive services personnel.

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

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

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

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

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



1 collaborate with any county that elects to provide
2 in-home supportive services pursuant to this section prior
3 to implementing the amount of financial obligation for
4 which the county shall be responsible.

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

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

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

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



1 (3) Except as otherwise provided for by Section 10554,
2 the Office of Administrative Law shall provide for the
3 printing and publication of these regulations in the
4 California Code of Regulations. Notwithstanding
5 Chapter 3.5 (commencing with Section 11340) of Part 1
6 of Division 3 of Title 2 of the Government Code, these
7 regulations shall not be repealed by the Office of
8 Administrative Law and shall remain in effect until
9 revised or repealed by the department.

10 (m) (1) In the event that a county elects to form a
11 nonprofit consortium or public authority pursuant to
12 subdivision (a) before the State Department of Health
13 Services has obtained all necessary federal approvals
14 pursuant to paragraph (3) of subdivision (j) of Section
15 14132.95, all of the following shall apply:

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

18 (B) The second sentence of subdivision (g) shall not
19 be operative.

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

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

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

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

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

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

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

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

35 (b) The department shall reimburse counties for the
36 cost of increased wages and benefits that exceed the
37 amount of the reduction in the county’s share of cost as
38 determined pursuant to subdivision (a), provided that
39 amount is not greater than the county’s actual cost.



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

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