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AMENDED IN ASSEMBLY MAY 28, 1999  
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 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, Soto, Steinberg, Strom-Martin, Torlakson, Washington, Wesson, Wiggins, and Wildman)

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

December 7, 1998

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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 during the fiscal year 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:



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

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

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

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

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

19 (f) Due to the recession and resulting decreases in  
20 revenues, this savings was used to prevent program  
21 reductions.

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

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

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

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

38 12301.6. (a) Notwithstanding Sections 12302 and  
39 12302.1, a county board of supervisors may, at its option,  
40 elect to do either of the following:



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

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

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

14 (2) A public authority established pursuant to  
15 paragraph (2) of subdivision (a) shall be both of the  
16 following:

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

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

30 (3) (A) As an alternative, the enabling ordinance may  
31 designate the board of supervisors as the governing body  
32 of the public authority.

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



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

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

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

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

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

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



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

5 (B) No increase in wages or benefits negotiated or  
6 agreed to pursuant to this section shall take effect unless  
7 and until, prior to its implementation, the department has  
8 obtained the approval of the State Department of Health  
9 Services for the increase pursuant to a determination that  
10 it is consistent with federal law and to ensure federal  
11 financial participation for the services under Title XIX of  
12 the federal Social Security Act.

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

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

27 (1) The provision of assistance to recipients in finding  
28 in-home supportive services personnel through the  
29 establishment of a registry.

30 (2) Investigation of the qualifications and background  
31 of potential personnel.

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

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

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

38 (6) Ensuring that the requirements of the personal  
39 care option pursuant to Subchapter 19 (commencing



1 with Section 1396) of Chapter 7 of Title 42 of the United  
2 States Code are met.

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

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

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

25 (g) Any nonprofit consortium contracting with a  
26 county pursuant to this section shall ensure that it has a  
27 governing body that complies with the requirements of  
28 subparagraph (B) of paragraph (3) of subdivision (b) or  
29 an advisory committee that complies with subparagraphs  
30 (B) and (C) of paragraph (3) of subdivision (b).

31 (h) Recipients of services under this section may elect  
32 to receive services from in-home supportive services  
33 personnel who are not referred to them by the public  
34 authority or nonprofit consortium. Those personnel shall  
35 be referred to the public authority or nonprofit  
36 consortium for the purposes of wages, benefits, and other  
37 terms and conditions of employment.

38 (i) Nothing in this section shall be construed to affect  
39 the state's responsibility with respect to the state payroll  
40 system, unemployment insurance, or workers'



1 compensation and other provisions of Section 12302.2 for  
2 providers of in-home supportive services. Any county  
3 that elects to provide in-home supportive services  
4 pursuant to this section shall be responsible for any  
5 increased costs to the in-home supportive services case  
6 management, information, and payrolling system  
7 attributable to that election. The department shall  
8 collaborate with any county that elects to provide  
9 in-home supportive services pursuant to this section prior  
10 to implementing the amount of financial obligation for  
11 which the county shall be responsible.

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

22 (k) Notwithstanding any other provision of law, the  
23 county, in exercising its option to establish a public  
24 authority, shall not be subject to competitive bidding  
25 requirements. However, contracts entered into by either  
26 the county, a public authority, or a nonprofit consortium  
27 pursuant to this section shall be subject to competitive  
28 bidding as otherwise required by law.

29 (l) (1) The department may adopt regulations  
30 implementing this section as emergency regulations in  
31 accordance with Chapter 3.5 (commencing with Section  
32 11340) of Part 1 of Division 3 of Title 2 of the Government  
33 Code. For the purposes of the Administrative Procedure  
34 Act, the adoption of the regulations shall be deemed an  
35 emergency and necessary for the immediate  
36 preservation of the public peace, health and safety, or  
37 general welfare. Notwithstanding Chapter 3.5  
38 (commencing with Section 11340) of Part 1 of Division 3  
39 of Title 2 of the Government Code, these emergency



1 regulations shall not be subject to the review and  
2 approval of the Office of Administrative Law.

3 (2) Notwithstanding subdivision (h) of Section 11364.1  
4 and Section 11349.6 of the Government Code, the  
5 department shall transmit these regulations directly to  
6 the Secretary of State for filing. The regulations shall  
7 become effective immediately upon filing by the  
8 Secretary of State.

9 (3) Except as otherwise provided for by Section 10554,  
10 the Office of Administrative Law shall provide for the  
11 printing and publication of these regulations in the  
12 California Code of Regulations. Notwithstanding  
13 Chapter 3.5 (commencing with Section 11340) of Part 1  
14 of Division 3 of Title 2 of the Government Code, these  
15 regulations shall not be repealed by the Office of  
16 Administrative Law and shall remain in effect until  
17 revised or repealed by the department.

18 (m) (1) In the event that a county elects to form a  
19 nonprofit consortium or public authority pursuant to  
20 subdivision (a) before the State Department of Health  
21 Services has obtained all necessary federal approvals  
22 pursuant to paragraph (3) of subdivision (j) of Section  
23 14132.95, all of the following shall apply:

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

26 (B) The second sentence of subdivision (g) shall not  
27 be operative.

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

31 (2) Paragraph (1) shall become inoperative when the  
32 State Department of Health Services has obtained all  
33 necessary federal approvals pursuant to paragraph (3) of  
34 subdivision (j) of Section 14132.95.

35 (n) (1) One year after the effective date of the first  
36 approval by the department granted to the first public  
37 authority, the Bureau of State Audits shall commission a  
38 study to review the performance of that public authority.

39 (2) The study shall be submitted to the Legislature and  
40 the Governor not later than two years after the effective



1 date of the approval specified in subdivision (a). The  
2 study shall give special attention to the health and welfare  
3 of the recipients under the public authority, including the  
4 degree to which all required services have been  
5 delivered, out-of-home placement rates, prompt  
6 response to recipient complaints, and any other issue the  
7 director deems relevant.

8 (3) The report shall make recommendations to the  
9 Legislature and the Governor for any changes to this  
10 section that will further ensure the well-being of  
11 recipients and the most efficient delivery of required  
12 services.

13 (o) Commencing July 1, 1997, the department shall  
14 provide annual reports to the appropriate fiscal and  
15 policy committees of the Legislature on the efficacy of the  
16 implementation of this section, and shall include an  
17 assessment of the quality of care provided pursuant to this  
18 section.

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

21 12301.8. (a) Increases in provider wages and benefits  
22 for the provision of services pursuant to Section 12301.6  
23 or 12302.1 may be made in a manner appropriate to the  
24 entities or contracts described in those sections. For the  
25 1999–2000 fiscal year, and for each fiscal year thereafter,  
26 any county that expends county funds in an amount at  
27 least equal to the reduction during the fiscal year in the  
28 county's share of cost that results from federal financial  
29 participation in services provided to medically needy  
30 aged, blind, and disabled persons after the  
31 implementation of the state plan amendment pursuant to  
32 subdivision (p) of Section 14132.95 shall be reimbursed  
33 for the cost of the increase in wages and benefits that  
34 exceeds the reduction in the county share of cost and is  
35 necessary to meet the established rates. *This provision*  
36 *does not apply to any wage increase necessary to meet*  
37 *federal or state minimum wage requirements.* For the  
38 1999–2000 fiscal year, the reduction in the county's share  
39 of cost during the fiscal year shall also include any  
40 reduction that occurred in the 1998-99 fiscal year due to



1 the implementation of the state plan amendments  
2 pursuant to subdivision (p) of Section 14132.95, unless the  
3 county has used the savings during the 1998–99 fiscal year  
4 to pay for provider wages and benefit increases. This  
5 subdivision applies solely to public authority, nonprofit  
6 consortium, and contract employees who provide  
7 services pursuant to Sections 12301.6 and 12302.1.

8 (b) The department shall reimburse counties for the  
9 cost of increased wages and benefits that exceed the  
10 amount of the reduction in the county’s share of cost as  
11 determined pursuant to subdivision (a), provided that  
12 amount is not greater than the county’s actual cost.

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

