WELFARE AND INSTITUTIONS CODE - WIC

DIVISION 9. PUBLIC SOCIAL SERVICES [10000 - 18999.98] *(Division 9 added by Stats. 1965, Ch. 1784.)*

PART 3. AID AND MEDICAL ASSISTANCE [11000 - 15771] *(Part 3 added by Stats. 1965, Ch. 1784.)*

CHAPTER 3. State Supplementary Program for Aged, Blind and Disabled [12000 - 12351] *(Chapter 3 repealed and added by Stats. 1973, Ch. 1216.)*

ARTICLE 7. In-Home Supportive Services [12300 - 12318] *(Article 7 added by Stats. 1973, Ch. 1216.)*

12300. (a) The purpose of this article is to provide in every county, in a manner consistent with this chapter and the annual Budget Act, those supportive services identified in this section to aged, blind, or disabled persons, as defined under this chapter, who are unable to perform the services themselves and who cannot safely remain in their homes or abodes of their own choosing unless these services are provided.

(b) Supportive services shall include domestic services and services related to domestic services, heavy cleaning, personal care services, accompaniment by a provider when needed during necessary travel to health-related appointments or to alternative resource sites, yard hazard abatement, protective supervision, teaching and demonstration directed at reducing the need for other supportive services, and paramedical services that make it possible for the recipient to establish and maintain an independent living arrangement.

(c) Personal care services shall mean all of the following:

(1) Assistance with ambulation.

(2) Bathing, oral hygiene, and grooming.

(3) Dressing.

(4) Care and assistance with prosthetic devices.

(5) Bowel, bladder, and menstrual care.

(6) Repositioning, skin care, range of motion exercises, and transfers.

(7) Feeding and assurance of adequate fluid intake.

(8) Respiration.

(9) Assistance with self-administration of medications.

(d) Personal care services are available if these services are provided in the beneficiary's home and other locations as may be authorized by the director. Among the locations that may be authorized by the director under this subdivision is the recipient's place of employment if all of the following conditions are met:

(1) The personal care services are limited to those services that are currently authorized for a recipient in the recipient's home and those services are to be utilized by the recipient at the recipient's place of employment to enable the recipient to obtain, retain, or return to work. Authorized services utilized by the recipient at the recipient's place of employment shall be services that are relevant and necessary in supporting and maintaining employment. However, workplace services shall not be used to supplant any reasonable accommodations required of an employer by the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.; ADA) or other legal entitlements or third-party obligations.

(2) The provision of personal care services at the recipient's place of employment shall be authorized only to the extent that the total hours utilized at the workplace are within the total personal care services hours authorized for the recipient in the home. Additional personal care services hours may not be authorized in connection with a recipient's employment.

(e) When supportive services are provided to a minor, the provider of supportive services shall be paid only for the following:

(1) Services related to domestic services.

(2) Personal care services.

(3) Accompaniment by a provider when needed during necessary travel to health-related appointments or to alternative resource sites.

(4) Protective supervision only as needed because of the functional limitations of the child.

(5) Paramedical services.

(f) The policy changes made to minor provider eligibility guidelines in subdivision (e) by the act that added this subdivision shall take effect 60 days after the State Department of Social Services issues policy guidance and, if needed, fiscal guidance through all-county letter or similar written instructions.

(g) To encourage maximum voluntary services, so as to reduce governmental costs, respite care shall also be provided. Respite care is temporary or periodic service for eligible recipients to relieve persons who are providing care without compensation.

(h) A person who is eligible to receive a service or services under an approved federal waiver authorized pursuant to Section 14132.951, or a person who is eligible to receive a service or services authorized pursuant to Section 14132.95, shall not be eligible to receive the same service or services pursuant to this article. If the waiver authorized pursuant to Section 14132.951, as approved by the federal government, does not extend eligibility to all persons otherwise eligible for services under this article, or does not cover a service or particular services, or does not cover the scope of a service that a person would otherwise be eligible to receive under this article, those persons who are not eligible for services, or for a particular service under the waiver or Section 14132.95, shall be eligible for services under this article.

(i) A person who is eligible for state-only funded full-scope Medi-Cal benefits under Chapter 7 (commencing with Section 14000), and who meets all other applicable eligibility criteria for receiving services under this article, shall be eligible for services available under this article.

(j) (1) All services provided pursuant to this article shall be equal in amount, scope, and duration to the same services provided pursuant to Section 14132.95, including any adjustments that may be made to those services pursuant to subdivision (e) of Section 14132.95.

(2) Notwithstanding any other provision of this article, the rate of reimbursement for in-home supportive services provided through any mode of service shall not exceed the rate of reimbursement established under subdivision (j) of Section 14132.95 for the same mode of service unless otherwise provided in the annual Budget Act.

(3) The maximum number of hours available under Section 14132.95, Section 14132.951, and this section, combined, shall be 283 hours per month. Any recipient of services under this article shall receive no more than the applicable maximum specified in Section 12303.4.

(Amended by Stats. 2023, Ch. 43, Sec. 55. (AB 120) Effective July 10, 2023.)

12300.1. As used in Section 12300 and in this article, "supportive services" include those necessary paramedical services that are ordered by a licensed health care professional who is lawfully authorized to do so, which persons could provide for themselves but for their functional limitations. Paramedical services include the administration of medications, puncturing the skin or inserting a medical device into a body orifice, activities requiring sterile procedures, or other activities requiring judgment based on training given by a licensed health care professional. These necessary services shall be rendered by a provider under the direction of a licensed health care professional, subject to the informed consent of the recipient obtained as a part of the order for service. Any and all references to Section 12300 in any statute heretofore or hereafter enacted shall be deemed to be references to this section. All statutory references to the supportive services specified in Section 12300 shall be deemed to include paramedical services.

(Amended by Stats. 1992, Ch. 939, Sec. 2. Effective September 28, 1992.)

12300.2. In any in-home supportive services action concerning the amount of in-home supportive services to be provided, the department shall send a notice of the action to each recipient. The recipient shall also receive a description of each specific task authorized and the number of hours allotted. In the case of reassessment, the recipient shall receive an identification of hours for tasks increased or reduced and the difference from previous hours authorized.

(Added by Stats. 1983, Ch. 323, Sec. 116.5. Effective July 1, 1983.)

12300.3. (a) For purposes of this section, “authorized representative” means an individual who is designated in writing, on a form developed by the department, by an applicant for or recipient of in-home supportive services pursuant to this article, to accompany, assist, and represent the applicant or recipient for purposes related to the program, including, but not limited to, the application process, direction of services, and redetermination of eligibility.

(b) An applicant or recipient may designate an individual to act as his or her authorized representative for the purposes described in subdivision (a) on a form that does all of the following:

(1) Specifies an effective time period, to be determined by the department.

(2) Specifies the responsibilities to be performed by the authorized representative.

(3) May be revoked or changed by the applicant or recipient at any time.

(c) The authorized representative designation pursuant to this section shall not authorize representation for an administrative hearing conducted by the department. An applicant or recipient shall comply with Section 10950 to designate an authorized representative for the purposes of an administrative hearing.

(d) The authorized representative shall have the responsibility to act in the applicant or recipient’s best interest, shall not have any other power to act on behalf of the applicant or recipient, except as specified in writing pursuant to this section, and shall not act in lieu of the applicant or recipient.

(e) (1) An applicant or recipient who has a legal representative with the legal authority to act on behalf of the applicant or recipient that includes decisionmaking authority for purposes reasonably believed to be related to the program, as described in subdivision (a), shall not be required to complete an authorized representative form, except for the purpose specified in subdivision (g).

(2) A legal representative may designate an authorized representative for the applicant or recipient in accordance with the requirements of this section.

(3) For purposes of this subdivision, a legal representative shall include both of the following:

(A) A court-appointed guardian or conservator.

(B) For an applicant or recipient who is a minor, a parent or other individual determined by the county human services agency to be the legally authorized decisionmaker for the applicant or recipient.

(f) (1) The following individuals shall not serve as an authorized representative for an applicant or recipient:

(A) An individual who is prevented from being a provider of services pursuant to Section 12305.81.

(B) An individual who is prevented from being a provider of services pursuant to Section 12305.87.

(2) The prohibitions described in paragraph (1) shall not apply to an individual described in subdivision (e).

(g) An authorized representative may sign timesheets or other provider-related documents for in-home supportive services on behalf of the recipient, if specified by the recipient on the authorized representative form. Notwithstanding any other law, an authorized representative who is a provider of services for the recipient may not sign his or her own timesheet on behalf of the recipient unless the authorized representative is an individual specified in subdivision (e). For administrative processing purposes, a legal representative specified in subdivision (e) shall complete an authorized representative form to sign timesheets or other provider-related documents for in-home supportive services on behalf of the recipient.

(h) (1) The department, in consultation with the State Department of Health Care Services, the County Welfare Directors Association of California, representatives of applicants for and recipients of services under this article, and representatives of providers of services under this article, shall develop a standardized statewide form and procedures for effectuating the designation of an authorized representative pursuant to this section.

(2) The standard agreement form shall include a notification regarding the requirements of this subdivision and a statement that by signing the agreement, the individual designated as an authorized representative agrees to abide by those requirements.

(i) When an applicant or recipient designates an authorized representative on the authorized representative form, the county shall retain the original form in the applicant or recipient’s in-home supportive services case file. The form may be electronically retained. The county shall provide copies of the form to the applicant or recipient and to the individual designated as the authorized representative.

(j) (1) Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the department may implement and administer this section through all-county letters or similar instructions from the department until regulations are adopted. The department shall adopt emergency regulations implementing these provisions no later than July 1, 2016. The department may readopt any emergency regulation authorized by this section that is the same as or substantially equivalent to an emergency regulation previously adopted under this section.

(2) The initial adoption of emergency regulations pursuant to this section and one readoption of emergency regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare. Initial emergency regulations and the one readoption of emergency regulations authorized by this section shall be exempt from review by the Office of Administrative Law. The initial emergency regulations and the one readoption of emergency regulations authorized by this section shall be submitted to the Office of Administrative Law for filing with the Secretary of State, and each shall remain in effect for no more than 180 days, by which time final regulations may be adopted.

(Added by Stats. 2015, Ch. 707, Sec. 1. (AB 1436) Effective January 1, 2016.)

12300.4. (a) Notwithstanding any other law, including, but not limited to, Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code, a recipient who is authorized to receive in-home supportive services pursuant to this article, or Section 14132.95, 14132.952, or 14132.956, administered by the State Department of Social Services, or waiver personal care services pursuant to Section 14132.97, administered by the State Department of Health Care Services, or any combination of these services, shall direct these authorized services, and the authorized services shall be performed by a provider or providers within a workweek and in a manner that complies with the requirements of this section.

(b) (1) A workweek is defined as beginning at 12:00 a.m. on Sunday and includes the next consecutive 168 hours, terminating at 11:59 p.m. the following Saturday.

(2) A provider of services specified in subdivision (a) shall not work a total number of hours within a workweek that exceeds 66, in accordance with subdivision (d). The total number of hours worked within a workweek by a provider is defined as the sum of the following:

(A) All hours worked providing authorized services specified in subdivision (a).

(B) Travel time, as defined in subdivision (f), only if federal financial participation is not available to compensate for that travel time. If federal financial participation is available for travel time, as defined in subdivision (f), the travel time shall not be included in the calculation of the total weekly hours worked within a workweek.

(3) (A) If the authorized in-home supportive services of a recipient cannot be provided by a single provider as a result of the limitation specified in paragraph (2), it is the responsibility of the recipient to employ an additional provider or providers, as needed, to ensure the provider's authorized services are provided within that provider's total weekly authorized hours of services established pursuant to subdivision (b) of Section 12301.1.

(B) (i) It is the intent of the Legislature that this section not result in reduced services authorized to recipients of waiver personal care services, as described in subdivision (a).

(ii) The State Department of Health Care Services shall work with and assist recipients receiving services pursuant to the Nursing Facility/Acute Hospital Transition and Diversion Waiver or the In-Home Operations Waiver, or their successors, who are at or near their individual cost cap, as that term is used in the waivers, to avoid a reduction in the recipient's services that may result because of increased overtime pay for providers. As part of this effort, the department shall consider allowing the recipient to exceed the individual cost cap, if appropriate, and authorize exemptions as set forth in subdivision (d) of Section 14132.99. The department shall provide timely information to waiver recipients as to the steps that will be taken to implement this clause.

(4) (A) A provider shall inform each recipient of the number of hours that the provider is available to work for that recipient, in accordance with this section.

(B) A recipient, the recipient's authorized representative, or any other entity shall not authorize any provider to work hours that exceed the applicable limitation or limitations of this section.

(C) A recipient may authorize a provider to work hours in excess of the recipient's weekly authorized hours established pursuant to Section 12301.1 without notification of the county welfare department, in accordance with both of the following:

(i) The authorization does not result in more than 40 hours of authorized services per week being provided.

(ii) The authorization does not exceed the recipient's authorized hours of monthly services pursuant to paragraph (1) of subdivision (b) of Section 12301.1.

(5) For providers of in-home supportive services, the State Department of Social Services or a county may terminate the provider from providing services under the IHSS program if a provider continues to violate the limitations of this section on multiple occasions.

(c) Notwithstanding any other law, only federal law and regulations regarding overtime compensation apply to providers of services described in subdivision (a).

(d) A provider of services described in subdivision (a) is subject to all of the following, as applicable to the situation of that provider:

(1) (A) A provider who works for one individual recipient of those services shall not work a total number of hours within a workweek that exceeds 66 hours. The provision of these services by that provider to the individual recipient shall not exceed the total weekly hours of the services authorized to that recipient, except as additionally authorized pursuant to subparagraph (C) of paragraph (4) of subdivision (b). If multiple providers serve the same recipient, it shall continue to be the responsibility of that recipient or the authorized representative of that recipient to schedule the work of the providers to ensure the authorized services of the recipient are provided in accordance with this section.

(B) If a recipient's weekly authorized hours are adjusted pursuant to subparagraph (C) of paragraph (1) of subdivision (b) of Section 12301.1 and exceed 66 hours, and at the time of adjustment the recipient currently receives all authorized hours of service from one provider, that provider shall be deemed authorized to work the recipient's county-approved adjusted hours for that week, but only if the additional hours of work, based on the adjustment, do not exceed the total number of hours worked that are compensable at an overtime pay rate that the provider would have been authorized to work in that month if the weekly hours had not been adjusted.

(2) A provider of in-home supportive services described in subdivision (a) who serves multiple recipients is not authorized to, and shall not, work more than 66 total hours in a workweek, regardless of the number of recipients for whom the provider provides services authorized by subdivision (a). Providers are subject to the limits of each recipient's total authorized weekly hours of in-home supportive services described in subdivision (a), except as additionally authorized pursuant to subparagraph (C) of paragraph (4) of subdivision (b).

(3) Notwithstanding paragraph (2), the 66-hour workweek limit described in subdivision (b) does not apply to a provider of in-home supportive services described in subdivision (a), and a recipient of those services may receive those services from a requested provider, if the provider has an approved exemption, as set forth in subparagraph (A) or (B). A provider who has an approved exemption pursuant to subparagraph (A) or (B) shall not work a total number of hours in excess of 360 hours per month combined for the recipients of in-home supportive services served by that provider and may not exceed a recipient's monthly authorized hours.

(A) A provider is eligible for an exemption if that provider met all of the following on or before January 31, 2016:

(i) The provider provided services to two or more recipients of in-home supportive services described in subdivision (a).

(ii) The provider lived in the same home as all of the recipients for whom that provider provided services.

(iii) The provider is related, biologically, by adoption, or as a foster caregiver, legal guardian, or conservator, to all of the recipients for whom the provider provides services as the recipients' parent, stepparent, foster or adoptive parent, grandparent, legal guardian, or conservator.

(B) A provider is eligible for an exemption if the provider provides services to two or more recipients of in-home supportive services described in subdivision (a), if each recipient for whom the provider provides services has at least one of the following circumstances that puts the recipient at serious risk of placement in out-of-home care if the services could not be provided by that provider:

(i) The recipient has complex medical or behavioral needs that must be met by a provider who lives in the same home as the recipient.

(ii) The recipient lives in a rural or remote area where available providers are limited, and, as a result, the recipient is unable to hire another provider.

(iii) The recipient is unable to hire another provider who speaks the same language as the recipient, resulting in the recipient being unable to direct the recipient's own care.

(C) At the time of assessment or reassessment, the county shall evaluate each recipient to determine if the recipient's circumstances appear to indicate that the provider for that recipient may be eligible for an exemption described in

subparagraph (A) or (B). The county shall then inform those recipients about the potentially applicable exemptions and the process by which they or their provider may apply for the exemption.

(D) On a one-time basis upon implementation of this paragraph, the department shall mail an informational notice and an exemption request form to all providers of multiple recipients who may be eligible for an exemption pursuant to subparagraph (B) and to the recipients to whom those providers provide services.

(E) (i) The county shall review the requests for consideration for an exemption described in subparagraph (B) pursuant to a process developed by the department with input from counties and stakeholders. The county shall consider whether the denial of an exemption would place a recipient or recipients at serious risk of placement in out-of-home care due to any of the circumstances described in clauses (i) to (iii), inclusive, of subparagraph (B).

(ii) Within 30 days of receiving an application for an exemption described in subparagraph (B) from a provider or from a recipient on behalf of a provider, the county shall mail a written notification letter to the provider and the recipients for whom the provider provides services of its approval or denial of the exemption. If the county denies the exemption, the county shall also explain in the notification letter the reason for the denial and information about the process to request a review by the department, independent of the county's decision. The county shall use a standardized notification letter, developed by the department in consultation with stakeholders, for purposes of providing the notification letter that is required by this clause.

(iii) (I) A provider whose exemption under subparagraph (B) has been denied, or a recipient on behalf of the provider whose exemption under subparagraph (B) has been denied, may request a review by the department, independent of the county's decision.

(II) The department shall develop the review process with input from stakeholders. At a minimum, the review process shall ensure that it provides the provider or the recipient, or that person's authorized representative, with the opportunity to speak with, and provide written information to, staff of the department conducting the review about how the recipient meets the criteria described in subparagraph (B) and how any alternative services proposed by the county would place the recipient at serious risk of placement in out-of-home care.

(III) The department shall consider the information provided by the provider or the recipient, or that person's authorized representative, and the information provided by the county in reaching its decision.

(IV) The department shall mail its written decision within 20 days of the date the provider or the recipient is scheduled to speak with the staff of the department conducting the review, unless the provider or the recipient has requested additional time to submit information and the department has granted that request. The written decision shall inform the provider and the recipients for whom the provider provides services if the exemption is granted or denied. If the department denies the exemption, the department shall also explain in the written decision the reason for the denial.

(iv) The county shall record the number of requests for exemptions that are received from providers or recipients on the provider's behalf and the number of requests approved or denied, and shall submit these numbers to the department. The department shall record the number of requests for the review by the department that are received from providers or recipients and the number of exemptions that are approved or denied through the review process. The numbers by the county and the department shall be posted no later than every three months on the department's internet website.

(e) Recipients and providers shall be informed of the limitations and requirements contained in this section, through notices at intervals and on forms as determined by the State Department of Social Services or the State Department of Health Care Services, as applicable, following consultation with stakeholders.

(f) (1) A provider of services described in subdivision (a) shall not engage in travel time in excess of seven hours per week. For purposes of this subdivision, "travel time" means time spent traveling directly from a location where authorized services specified in subdivision (a) are provided to one recipient to another location where authorized services are to be provided to another recipient. A provider shall coordinate hours of work with the provider's recipients to comply with this section.

(2) The hourly wage to compensate a provider for travel time described in this subdivision when the travel is between two counties shall be the hourly wage of the destination county.

(3) Travel time, and compensation for that travel time, between a recipient of authorized in-home supportive services specified in subdivision (a) and a recipient of authorized waiver personal care services specified in subdivision (a) shall be attributed to the program authorizing services for the recipient to whom the provider is traveling.

(4) Hours spent by a provider while engaged in travel time shall not be deducted from the authorized hours of service of any recipient of services specified in subdivision (a).

(5) The State Department of Social Services and the State Department of Health Care Services shall issue guidance and processes for travel time between recipients that will assist the provider and recipient to comply with this subdivision. Each county shall provide technical assistance to providers and recipients, as necessary, to implement this subdivision.

(g) A provider of authorized in-home supportive services specified in subdivision (a) shall timely submit, deliver, or mail, verified by postmark or request for delivery, a signed payroll timesheet within two weeks after the end of each bimonthly payroll period. Notwithstanding any other law, a provider who submits an untimely payroll timesheet for providing authorized in-home supportive services specified in subdivision (a) shall be paid by the state within 30 days of the receipt of the signed payroll timesheet.

(h) This section does not apply to a contract entered into pursuant to Section 12302 for authorized in-home supportive services. Contract rates negotiated pursuant to Section 12302 shall be based on costs consistent with a 40-hour workweek.

(i) The state and counties are immune from any liability resulting from implementation of this section.

(j) An action authorized under this section that is implemented in a program authorized pursuant to Section 14132.95, 14132.956, or 14132.97 shall be compliant with federal Medicaid requirements, as determined by the State Department of Health Care Services.

(k) Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the State Department of Social Services and the State Department of Health Care Services may implement, interpret, or make specific this section by means of all-county letters or similar instructions, without taking any regulatory action.

(l) (1) This section shall become operative only when the regulatory amendments made by RIN 1235-AA05 to Part 552 of Title 29 of the Code of Federal Regulations are deemed effective, either on the date specified in RIN 1235-AA05 or at a later date specified by the United States Department of Labor, whichever is later.

(2) If the regulatory amendments described in paragraph (1) become only partially effective by the date specified in paragraph (1), this section shall become operative only for those persons for whom federal financial participation is available as of that date.

(Amended by Stats. 2021, Ch. 85, Sec. 48. (AB 135) Effective July 16, 2021. Section conditionally operative, as prescribed in subd. (l).)

12300.41. (a) For three months following the effective date specified in paragraph (1) of subdivision (l) of Section 12300.4, timesheets submitted by providers may be paid in excess of the limitations specified in Section 12300.4, so long as the number of hours worked by the provider within a month do not exceed the authorized hours of the recipient or recipients served by that provider.

(b) The State Department of Social Services, in consultation with stakeholders, shall oversee a study of the implementation of Section 12300.4, Section 12301.1, and this section. This study shall cover the 24-month period subsequent to the three-month period specified in subdivision (a). Information collected for the study shall periodically be made available to stakeholders, including, but not limited to, representatives of recipients and providers, counties, and the legislative staff. Upon completion of the study, a report shall be submitted to the Legislature.

(c) Using the study described in (b), it is the intent of the Legislature to evaluate implementation of the federal regulations described in paragraph (1) of subdivision (l) of Section 12300.4 and make any adjustments determined appropriate or necessary through subsequent legislation.

(Amended by Stats. 2015, Ch. 303, Sec. 599. (AB 731) Effective January 1, 2016.)

12300.5. The department, in consultation with stakeholders, shall create, and provide to the Legislature, the framework for a permanent provider backup system. The permanent backup provider system shall not be implemented, and state or federal funds appropriated in the 2021–22 fiscal year or any other fiscal year shall not be used, until statutes are enacted to define the parameters of this service, including, but not limited to, the criteria and circumstances when those services may be approved for a recipient who is authorized to receive in-home supportive services pursuant to this article or Sections 14132.95, 14132.952, or 14132.956, as administered by the department, or waiver personal care services pursuant to Section 14132.97, as administered by the State Department of Health Care Services, or any combination of these services.

(Added by Stats. 2021, Ch. 85, Sec. 49. (AB 135) Effective July 16, 2021.)

12300.6. (a) Effective no sooner than October 1, 2022, and no later than 60 days after the date of the final all-county letter, a county or a public authority, as established pursuant to Section 12301.6, in collaboration with the applicable county, shall administer a backup provider system for in-home supportive services and waiver personal care services providers in compliance with the requirements of this section and Section 12300.5.

(b) Under the backup provider system, a recipient shall be eligible to receive temporary in-home supportive services or waiver personal care services from a backup provider as set forth in this section if both of the following conditions are met:

(1) The recipient has an urgent need for backup supportive services due to a need for personal care services that cannot be met by an existing provider, or because they are transitioning to home-based care and do not yet have an identified provider.

(2) The recipient's health and safety will be at risk if they do not receive their regularly scheduled in-home supportive services or waiver personal care services such that it may result in the need for emergency services or out-of-home placement if backup supportive services are not provided.

(c) (1) The maximum total of hours received under the backup provider system shall not exceed 80 hours per state fiscal year for each eligible recipient. Exceptions to this 80-hour limit may be granted on an as-needed basis for severely impaired recipients, but shall not exceed 160 hours each state fiscal year. Exceptions shall only be granted if funding for the exception is appropriated in the annual Budget Act.

(2) All service hours received under the backup provider system shall count toward the recipient's total monthly authorized in-home supportive services or waiver personal care services hours, and shall not impact a recipient's authorized monthly hours, or the maximum number of hours allowed under Section 12303.4 and subdivision (g) of Section 14132.95.

(3) If a recipient has two or more regular providers, on each occasion a recipient has a need for backup supportive services as specified in this section, an exception from an applicable provider workweek limitation set forth in this article may be authorized for one of the regular providers, as authorized pursuant to subparagraph (C) of paragraph (1) of subdivision (b) of Section 12301.1, in lieu of finding a backup provider.

(d) The requirements established pursuant to this section shall not restrict or interfere with the right of a recipient to hire, terminate, and supervise their backup provider. If a recipient chooses not to use, or terminates, the backup provider referred to them by the county or public authority, it becomes the responsibility of the recipient to find and hire their own backup provider.

(e) To be eligible to provide authorized backup in-home supportive services or waiver personal care services and receive payment as a backup provider pursuant to this section, a backup provider shall meet all of the following requirements:

(1) The person shall not have been convicted of an offense specified in Section 12305.81 or 12305.87 within the past 10 years.

(2) The person shall have met all requirements of provider enrollment, as specified in Section 12301.24 and subdivision (a) of Section 12305.81.

(3) The person shall be enrolled as a provider through the county or public authority and meet all applicable local requirements to provide emergency backup care.

(f) Subject to an appropriation in the annual Budget Act, backup providers shall be paid a wage that is two dollars ($2) above the current county or public authority locally negotiated wage rate for a provider of in-home supportive services and waiver personal care services.

(g) The backup provider system shall be operated, at a minimum, by the county or public authority during normal county or public authority operating hours Monday through Friday, excluding holidays.

(h) In operating the backup provider system, counties and public authorities shall only be responsible for the following:

(1) Recruiting, enrolling, and making reasonable efforts to identify and recruit available providers, to the extent possible.

(2) Responding to recipient requests for backup care.

(3) Referring recipients to one or more backup providers, if available and if consistent with the recipient's preferences and needs. This section does not require a county or public authority to ensure the provision of backup services in the event the county or the public authority is unable to locate an available provider for referral.

(4) Entering information as required under this section in the Case Management Information and Payrolling System for purposes of tracking and payments to providers.

(i) Counties, public authorities, and the state shall be immune from liability resulting from a backup provider's untimely response to a request for provider backup services, subject to applicable legal limits, including federal and state protections against discrimination.

(j) (1) Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the department may implement and administer this section through all-county letters or similar instructions until regulations are adopted. The all-county letters or similar written instructions shall have the same force and effect as regulations until the adoption of regulations.

(2) The state shall seek any federal approvals it deems necessary to implement this section. This section shall be implemented only to the extent that any necessary federal approvals are obtained and federal financial participation under the Medi-Cal program is available and is not otherwise jeopardized.

(Added by Stats. 2022, Ch. 50, Sec. 58. (SB 187) Effective June 30, 2022.)

12301. (a) The intent of the Legislature in enacting this article is to provide supplemental or additional services to the social and rehabilitative services in Article 6 (commencing with Section 12250) of this chapter. The Legislature further intends that necessary in-home supportive services shall be provided in a uniform manner in every county based on individual need consistent with this chapter and, for the 1992–93 fiscal year the appropriation provided for those services in the Budget Act, in the absence of alternative in-home supportive services provided by an able and willing individual or local agency at no cost to the recipient, except as required under Section 12304.5. An able spouse who is available to assist the recipient shall be deemed willing to provide at no cost any services under this article except nonmedical personal services and paramedical services. When a spouse leaves full-time employment or is prevented from obtaining full-time employment because no other suitable provider is available and where the inability of the provider to provide supportive services may result in inappropriate placement or inadequate care, the spouse shall also be paid for accompaniment when needed during necessary travel to health-related appointments and protective supervision.

(b) Each county shall be notified of its allocation and projected caseload by July 31 of each fiscal year, or 30 days after the enactment of the Budget Act, whichever occurs later.

(c) This section shall remain operative until July 1, 1993, and on and after that date, shall remain inoperative until July 1, 1994, at which date, this section shall become operative.

(Amended (as amended by Stats. 1992, Ch. 722, Sec. 50.5) by Stats. 1993, Ch. 64, Sec. 48. Effective June 30, 1993. Note: This section, by its provisions in subd. (c), was inoperative from July 1, 1993, until July 1, 1994, during temporary operation of the related version as amended by Stats. 1993, Ch. 64, Sec. 47.)

12301.1. (a) The department shall adopt regulations establishing a uniform range of services available to all eligible recipients based upon individual needs. The availability of services under these regulations is subject to the provisions of Section 12301 and county plans developed pursuant to Section 12302.

(b) (1) The county welfare department shall assess each recipient's continuing monthly need for in-home supportive services at varying intervals as necessary, but at least once every 12 months. The results of this assessment of monthly need for hours of in-home supportive services shall be divided by 4.33, to establish a recipient's weekly authorized number of hours of in-home supportive services, subject to any of the following, as applicable:

(A) Within the limit of the assessed monthly need for hours of in-home supportive services, a county welfare department may adjust the authorized weekly hours of a recipient for any particular week for known recurring or periodic needs of the recipient.

(B) Within the limit of the assessed monthly need for hours of in-home supportive services, a county welfare department may temporarily adjust the authorized weekly hours of a recipient at the request of the recipient, to accommodate unexpected extraordinary circumstances, including, but not limited to, a situation arising out of a natural disaster.

(C) In addition to the flexibility provided to a recipient pursuant to subparagraph (C) of paragraph (4) of subdivision (b) of Section 12300.4, a recipient may request the county welfare department to adjust his or her weekly authorized hours of services to exceed 40 hours of weekly authorized hours of services per week, within his or her total monthly authorized hours of services. A request for adjustment may be made retroactive to the hours actually worked. The county welfare department shall not unreasonably withhold approval of a recipient request made pursuant to this subparagraph.

(2) For purposes of subparagraph (C) of paragraph (1), and prior to its implementation, the State Department of Social Services shall develop a process for requests made pursuant to that subparagraph. The process shall include all of the following:

(A) The procedure, standards, and timeline for making a request to adjust the authorized weekly hours of service for a recipient described in this section.

(B) The language to be used for notices about the process.

(C) Provisions for adjustments to authorization, and for authorization after services have been provided, when the criteria for approval have been met.

(D) A requirement that the opportunity for a revision to the limitations of this section shall be discussed at each annual reassessment, and also may be authorized by the county welfare department outside of the reassessment process.

(3) Recipients shall be timely informed of their total monthly and weekly authorized hours.

(4) The weekly authorization of services defined in this section shall be used solely for the purposes of ensuring compliance with the federal Fair Labor Standards Act and its implementing regulations.

(5) Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the department may implement, interpret, or make specific this subdivision by means of all-county letters, or similar instructions, without taking any regulatory action.

(c) (1) Notwithstanding subdivision (b), at the county's option, assessments may be extended, on a case-by-case basis, for up to six months beyond the regular 12-month period, provided that the county documents that all of the following conditions exist:

(A) The recipient has had at least one reassessment since the initial program intake assessment.

(B) The recipient's living arrangement has not changed since the last annual reassessment and the recipient lives with others, or has regular meaningful contact with persons other than his or her service provider.

(C) The recipient or, if the recipient is a minor, his or her parent or legal guardian, or if incompetent, his or her conservator, is able to satisfactorily direct the recipient's care.

(D) There has not been a known change in the recipient's supportive service needs within the previous 24 months.

(E) A report has not been made to, and there has been no involvement of, an adult protective services agency or agencies since the county last assessed the recipient.

(F) The recipient has not had a change in provider or providers for at least six months.

(G) The recipient has not reported a change in his or her need for supportive services that requires a reassessment.

(H) The recipient has not been hospitalized within the last three months.

(2) If some, but not all, of the conditions specified in paragraph (1) are met, the county may consider other factors in determining whether an extended assessment interval is appropriate, including, but not limited to, involvement in the recipient's care of a social worker, case manager, or other similar representative from another human services agency, such as a regional center or county mental health program, or communications, or other instructions from a physician or other licensed health care professional that the recipient's medical condition is unlikely to change.

(3) A county may reassess a recipient's need for services at a time interval of less than 12 months from a recipient's initial intake or last assessment if the county social worker has information indicating that the recipient's need for services is expected to decrease in less than 12 months.

(d) A county shall assess a recipient's need for supportive services any time that the recipient notifies the county of a need to adjust the supportive services hours authorized, or if there are other indications or expectations of a change in circumstances affecting the recipient's need for supportive services.

(e) (1) Notwithstanding the rulemaking provisions of the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, until emergency regulations are filed with the Secretary of State, the department may implement this section through all-county letters or similar instructions from the director. The department shall adopt emergency regulations implementing this section no later than September 30, 2005, unless notification of a delay is made to the Chair of the Joint Legislative Budget Committee prior to that date. The notification shall include the reason for the delay, the current status of the emergency regulations, a date by which the emergency regulations shall be adopted, and a statement of need to continue use of all-county letters or similar instructions. The adoption of emergency regulations shall not be delayed, or the use of all-county letters or similar instructions be extended, beyond June 30, 2006.

(2) The adoption of regulations implementing this section shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare. The emergency regulations authorized by this section are exempt from review by the Office of Administrative Law. The emergency regulations authorized by this section shall be submitted to the Office of Administrative Law for filing with the Secretary of State and shall remain in effect for no more than 180 days by which time final regulations shall be adopted. The department shall seek input from the entities listed in Section 12305.72 when developing all-county letters or similar instructions and the regulations.

(Amended by Stats. 2018, Ch. 789, Sec. 4. (SB 1040) Effective January 1, 2019.)

12301.15. Effective January 1, 2010, the application for in-home supportive services shall contain a notice to the recipient that his or her provider or providers will be given written notice of the recipient's authorized services and full number of services hours allotted to the recipient. The application shall inform recipients of the Medi-Cal toll-free telephone fraud hotline and Internet Web site for reporting suspected fraud or abuse in the provision or receipt of supportive services.

(Added by Stats. 2009, 4th Ex. Sess., Ch. 17, Sec. 1. (AB 19 4x) Effective October 23, 2009.)

12301.16. Upon receipt of an application for in-home supportive services, the county shall provide the applicant with a confirmation number to serve as documentation that the applicant filed an application for in-home supportive services. The county may use the case number as the confirmation number.

(Added by Stats. 2016, Ch. 402, Sec. 1. (AB 1797) Effective January 1, 2017.)

12301.17. Each county human services agency shall accept applications for benefits under this article by telephone, through facsimile, or in person, or, if the county is capable of accepting online applications or applications via email for benefits under this article, by email or other electronic means.

(Added by Stats. 2017, Ch. 146, Sec. 1. (AB 1021) Effective January 1, 2018.)

12301.18. (a) A county welfare department may use materials provided by an electrical corporation that is serving the county to inform each applicant or recipient of benefits under this article that the applicant or recipient may be eligible to receive the additional higher energy allowance described in subdivision (c) of Section 739 of the Public Utilities Code and that they may also be eligible to register with their electrical corporation to receive any advanced notifications that are provided by a public utility when the public utility plans to deenergize portions of the electrical distribution system or in an emergency.

(b) For purposes of this section, “materials” means information that is on an internet website or printed, or both.

(c) Within 180 days of the enactment of this section, the department shall issue an all-county information notice informing counties of the enactment of this section and the importance of the dissemination of the information set forth in subdivision (a) to applicants for benefits under this article.

(Added by Stats. 2020, Ch. 304, Sec. 1. (SB 596) Effective January 1, 2021.)

12301.2. (a) (1) The department, in consultation and coordination with county welfare departments and in accordance with Section 12305.72, shall establish and implement statewide hourly task guidelines and instructions to provide counties with a standard tool for consistently and accurately assessing service needs and authorizing service hours to meet those needs.

(2) The guidelines shall specify a range of time normally required for each supportive service task necessary to ensure the health, safety, and independence of the recipient. The guidelines shall also provide criteria to assist county workers to determine when an individual’s service need falls outside the range of time provided in the guidelines.

(3) In establishing the guidelines the department shall consider, among other factors, adherence to universal precautions, existing utilization patterns and outcomes associated with different levels of utilization, and the need to avoid cost shifting to other government program services. During the development of the guidelines the department may seek advice from health professionals such as public health nurses or physical or occupational therapists.

(b) A county shall use the statewide hourly task guidelines when conducting an individual assessment or reassessment of an individual’s need for supportive services.

(c) Subject to the limits imposed by Section 12303.4, counties shall approve an amount of time different from the guideline amount whenever the individual assessment indicates that the recipient’s needs require an amount of time that is outside the range provided for in the guidelines. Whenever task times outside the range provided in the guidelines are authorized the county shall document the need for the authorized service level.

(d) The department shall adopt regulations to implement this section by June 30, 2006. The department shall seek input from the entities listed in Section 12305.72 when developing the regulations.

(Repealed and added by Stats. 2004, Ch. 229, Sec. 43. Effective August 16, 2004.)

12301.21. (a) The department shall, in consultation and coordination with the county welfare departments and in accordance with Section 12305.72, develop for statewide use a standard form on which to obtain certification by a physician or other appropriate medical professional as determined by the department of a person’s need for protective supervision.

(b) At the time of an initial assessment at which a recipient’s potential need for protective supervision has been identified, the county shall request that a person requesting protective supervision submit the certification to the county. The county shall use the certification in conjunction with other pertinent information to assess the person’s need for protective supervision. The certification submitted by the person shall be considered as one indicator of the need for protective supervision, but shall not be determinative. In the event that the person fails to submit the certification, the county shall make its determination of need based upon other available evidence.

(c) At the time of reassessment of a person receiving authorized protective supervision, the county shall determine the need to obtain a new certification. The county may request another certification from a recipient if determined necessary. The county shall document the basis for its determination in the recipient’s case file.

(d) (1) Notwithstanding the rulemaking provisions of the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, until emergency regulations are filed with the Secretary of State, the department may implement this section through all-county letters or similar instructions from the director. The department shall adopt emergency regulations implementing this chapter no later than September 30, 2005, unless notification of a delay is made to the Chair of the Joint Legislative Budget Committee prior to that date. The notification shall include the reason for the delay, the current status of the emergency regulations, a date by which the emergency regulations shall be adopted, and a statement of need to continue use of all-county letters or similar instructions. Under no circumstances shall the adoption of emergency regulations be delayed, or the use of all-county letters or similar instructions be extended, beyond June 30, 2006.

(2) The adoption of regulations implementing this section shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare. The emergency regulations authorized by this section shall be exempt from review by the Office of Administrative Law. The emergency regulations authorized by this section shall be submitted to the Office of Administrative Law for filing with the Secretary of State and shall remain in effect for no more than 180 days by which time final regulations shall be promulgated. The department shall seek input from the entities listed in Section 12305.72 when developing all-county letters or similar instructions and the regulations.

(Added by Stats. 2004, Ch. 229, Sec. 44. Effective August 16, 2004.)

12301.22. On or before December 31, 2011, the department, in consultation with county welfare departments and other stakeholders, shall develop a process to ensure that a provider of services under this article receives a list specifying the approved duties to be performed for each recipient under the provider's care and a complete list of supportive service tasks available under the IHSS program.

(Added by Stats. 2009, 4th Ex. Sess., Ch. 17, Sec. 2. (AB 19 4x) Effective October 23, 2009.)

12301.24. (a) All prospective providers shall complete an in-person provider orientation at the time of enrollment, as developed by the department, in consultation with counties, which shall include, but is not limited to, all of the following:

(1) The requirements to be an eligible IHSS provider.

(2) A description of the IHSS program.

(3) The rules, regulations, and provider-related processes and procedures, including timesheets.

(4) The consequences of committing fraud in the IHSS program.

(5) The Medi-Cal toll-free telephone fraud hotline and internet website for reporting suspected fraud or abuse in the provision or receipt of supportive services.

(6) The applicable federal and state requirements regarding minimum wage and overtime pay, including paid travel time and wait time, and the requirements of Section 12300.4.

(b) In order to complete provider enrollment, at the conclusion of the provider orientation, all applicants shall sign a statement specifying that the provider agrees to all of the following:

(1) The prospective provider will provide to a recipient the authorized services.

(2) The prospective provider has received a demonstration of, and understands, timesheet requirements, including content, signature, and fingerprinting, when implemented.

(3) The prospective provider shall cooperate with state or county staff to provide any information necessary for assessment or evaluation of a case.

(4) The prospective provider understands and agrees to program expectations and is aware of the measures that the state or county may take to enforce program integrity.

(5) The prospective provider has attended the provider orientation and understands that failure to comply with program rules and requirements may result in the provider being terminated from providing services through the IHSS program.

(c) The county shall indefinitely retain this statement in the provider's file. Refusal of the provider to sign the statement described in subdivision (b) shall result in the provider being ineligible to receive payment for the provision of services and participate as a provider in the IHSS program.

(d) All of the following shall apply to the provider orientation described in subdivision (a):

(1) (A) The orientation shall be an onsite orientation that all prospective providers shall attend in person.

(B) (i) If the state or local public health agency issues an order limiting the size of gatherings, a county may hold a series of smaller in-person orientations that meet the same criteria specified in this section. A county is not required to hold an orientation in which prospective providers attend in person if the state or local health agency issues an order that prevents the in-person orientation from occurring.

(ii) If an orientation is not required to be held in person pursuant to clause (i), the county shall hold an orientation that is in person within 30 calendar days of the date that the public health order restrictions are lifted. Counties or IHSS public authorities may provide a written attestation to the recognized employee organization if public health conditions cause staffing or facility challenges that cause delays, and such an attestation will result in a one-time extension of 15 calendar days for the return to in-person orientations.

(C) The requirement for the orientation to be held in person and prospective providers to attend the orientation in person shall not apply if parties to a collective bargaining agreement expressly agree to waive that requirement and have a negotiated alternative method for the provision of the orientation.

(2) Prospective providers may attend the onsite orientation only after completing the application for the IHSS provider enrollment process described in subdivision (a) of Section 12305.81.

(3) Any oral presentation and written materials presented at the orientation shall be translated into all IHSS threshold languages in the county.

(4) (A) Representatives of the recognized employee organization in the county shall be permitted to make a presentation of up to 30 minutes at the beginning of the orientation. Prior to implementing the orientation requirements set forth in this subdivision, counties shall provide at least the level of access to, and the ability to make presentations at, provider orientations that they allowed the recognized employee organization in the county as of September 1, 2014. Counties shall not discourage prospective providers from attending, participating, or listening to the orientation presentation of the recognized employee organization. Prospective providers may, by their own accord, choose not to participate in the recognized employee organization presentation.

(B) Prior to scheduling a provider orientation, the county shall provide the recognized employee organization in the county with not less than 10 days advance notice of the planned date, time, and location of the orientation. If, within 3 business days of receiving that notice, the recognized employee organization notifies the county of its unavailability for the planned orientation, the county shall make reasonable efforts to schedule the orientation so the recognized employee organization can attend, so long as rescheduling the orientation does not delay provider enrollment by more than 10 business days. The requirement to make reasonable efforts to reschedule may be waived, as necessary, due to a natural disaster or other declared state of emergency, or by mutual agreement between the county and the recognized employee organization.

(C) Prior to the orientation, the recognized employee organization shall be provided with the information described in subdivision (b) of Section 7926.300 of the Government Code for prospective providers.

(e) To the extent that the orientation is modified from an onsite and in-person orientation, as required by paragraph (1) of subdivision (d), the recognized employee organization in the county shall be provided with the same right to make a presentation, the same advance notice of scheduling, and the same information regarding the applicants, providers, or prospective providers who will attend the orientation, as the organization would receive for an onsite orientation.

(f) A claim may be brought before the Public Employment Relations Board for an alleged violation of Section 3550 of the Government Code if the county has not complied with the requirements of this section within 30 days of being notified by the recognized employee organization.

(g) This section shall become operative on January 1, 2023.

(Repealed (in Sec. 59) and amended (as amended by Stats. 2021, Ch. 615, Sec. 438) by Stats. 2022, Ch. 50, Sec. 60. (SB 187) Effective June 30, 2022. Operative January 1, 2023, by its own provisions.)

12301.25. (a) Notwithstanding any other provision of law, the standardized provider timesheet used to track the work performed by providers of services under this article shall contain both of the following:

(1) A certification to be signed by the provider and recipient, verifying that the information provided in the timesheet is true and correct.

(2) A statement that the provider or recipient may be subject to civil penalties if the information provided is found not to be true and correct.

(b) A person who is convicted of fraud, as defined in subdivision (a) of Section 12305.8, resulting from intentional deception or misrepresentation in the provision of timesheet information under this section shall, in addition to any criminal penalties imposed, be subject to a civil penalty of at least five hundred dollars ($500), but not to exceed one thousand dollars ($1,000), for each violation.

(Amended by Stats. 2011, Ch. 649, Sec. 1. (SB 930) Effective January 1, 2012.)

12301.3. (a) Each county may appoint an in-home supportive services advisory committee that shall be comprised of not more than 11 individuals. No less than 50 percent of the membership of the advisory committee shall be individuals who are current or past users of personal assistance services paid for through public or private funds or as recipients of services under this article.

(1) (A) In counties with fewer than 500 recipients of services provided pursuant to this article or Section 14132.95, at least one member of the advisory committee shall be a current or former provider of in-home supportive services.

(B) In counties with 500 or more recipients of services provided pursuant to this article or Section 14132.95, at least two members of the advisory committee shall be a current or former provider of in-home supportive services.

(2) Individuals who represent organizations that advocate for people with disabilities or seniors may be appointed to committees under this section.

(3) Individuals from community-based organizations that advocate on behalf of home care employees may be appointed to committees under this section.

(4) A county board of supervisors shall not appoint more than one county employee as a member of the advisory committee, but may designate any county employee to provide ongoing advice and support to the advisory committee.

(b) Prior to the appointment of members to a committee authorized by subdivision (a), the county board of supervisors shall solicit recommendations for qualified members through a fair and open process that includes the provision of reasonable written notice to, and reasonable response time by, members of the general public and interested persons and organizations.

(c) The advisory committee shall submit recommendations to the county board of supervisors on the preferred mode or modes of service to be utilized in the county for in-home supportive services.

(d) Any county that has established a governing body, as provided in subdivision (b) of Section 12301.6, prior to July 1, 2000, shall not be required to comply with the composition requirements of subdivision (a) and shall be deemed to be in compliance with this section.

(Amended by Stats. 2011, Ch. 8, Sec. 32. (SB 72) Effective March 24, 2011.)

12301.4. Each advisory committee established pursuant to Section 12301.3 or 12301.6 shall provide ongoing advice and recommendations regarding in-home supportive services to the county board of supervisors, any administrative body in the county that is related to the delivery and administration of in-home supportive services, and the governing body and administrative agency of the public authority, nonprofit consortium, contractor, and public employees.

(Amended by Stats. 2011, Ch. 8, Sec. 33. (SB 72) Effective March 24, 2011.)

12301.5. The department may secure to the extent feasible such in-home supportive and other health services for persons eligible under this article to which they are entitled under the Medi-Cal Act (Chapter 7 (commencing with Section 14000) of this part).

(Amended by Stats. 1977, Ch. 1252.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) A public authority established pursuant to this section or a nonprofit consortium contracting with a county pursuant to this section, when providing for the delivery of services under this article by contract in accordance with Sections 12302 and 12302.1, by direct payment to a provider chosen by a recipient in accordance with Sections 12302 and 12302.2, or by way of a provider of waiver personal care services provided pursuant to Section 14132.97, shall comply with and be subject to, all statutory and regulatory provisions applicable to the respective delivery mode.

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

(1) The provision of assistance to recipients in finding in-home supportive services personnel or waiver personal care services authorized pursuant to Section 14132.97 through the establishment of a registry.

(2) (A) (i) The investigation of the qualifications and background of potential personnel. Upon the effective date of the amendments to this section made during the 2009–10 Fourth Extraordinary Session of the Legislature, the investigation with respect to any provider in the registry or prospective registry applicant shall include criminal background checks requested by the nonprofit consortium or public authority and conducted by the Department of Justice pursuant to Section 15660, for those public authorities or nonprofit consortia using the agencies on the effective date of the amendments to this section made during the 2009–10 Fourth Extraordinary Session of the Legislature. Criminal background checks shall be performed no later than July 1, 2010, for any provider who is already on the registry on the effective date of amendments to this section made during the 2009–10 Fourth Extraordinary Session of the Legislature, for whom a criminal background check pursuant to this section has not previously been provided, as a condition of the provider’s continued enrollment in the IHSS program or the program authorizing waiver personal care services pursuant to Section 14132.97. Criminal background checks shall be conducted at the provider’s expense.

(ii) Upon notice from the Department of Justice notifying the public authority or nonprofit consortium that the prospective registry applicant has been convicted of a criminal offense specified in Section 12305.81, the public authority or nonprofit consortium shall deny the request to be placed on the registry for providing supportive services to any recipient of in-home supportive services or waiver personal care services authorized pursuant to Section 14132.97.

(iii) Commencing 90 days after the effective date of the act that adds Section 12305.87, and upon notice from the Department of Justice that an applicant who is subject to the provisions of that section has been convicted of, or incarcerated following conviction for, an offense described in subdivision (b) of that section, the public authority or nonprofit consortium shall deny the applicant's request to become a provider of supportive services to any recipient of in-home supportive services or waiver personal care services, subject to the individual waiver and exception processes described in that section. An applicant who is denied on the basis of Section 12305.87 shall be informed by the public authority or nonprofit consortium of the individual waiver and exception processes described in that section.

(B) (i) Notwithstanding any other law, the public authority or nonprofit consortium shall provide an individual with a copy of his or her state-level criminal offender record information search response as provided to the entity by the Department of Justice if the individual has been denied placement on the registry for providing supportive services to any recipient of the In-Home Supportive Services program or waiver personal care services based on this information. The copy of the state-level criminal offender record information search response shall be included with the individual's notice of denial. Along with the notice of denial, the public authority or public consortium shall also provide information in plain language on how an individual may contest the accuracy and completeness of, and refute any erroneous or inaccurate information in, his or her state-level criminal offender record information search response as provided by the Department of Justice as authorized by Section 11126 of the Penal Code. The state-level criminal offender record information search response shall not be modified or altered from its form or content as provided by the Department of Justice.

(ii) The department shall develop a written appeal process for the current and prospective providers who are determined ineligible to receive payment for the provision of services in the In-Home Supportive Services program or waiver personal care services. Notwithstanding any other law, the public authority or nonprofit consortium shall provide the department with a copy of the state-level criminal offender record information search response as provided to the entity by the Department of Justice for any individual who has requested an appeal of a denial of placement on the registry for providing supportive services to any recipient of in-home supportive services or waiver personal care services based on clause (ii) or (iii) of subparagraph (A). The state-level criminal offender record information search response shall not be modified or altered from its form or content as provided by the Department of Justice and shall be provided to the address specified by the department in its written request.

(C) This paragraph does not prohibit the Department of Justice from assessing a fee pursuant to Section 11105 or 11123 of the Penal Code to cover the cost of furnishing summary criminal history information.

(D) As used in this section, "nonprofit consortium" means a nonprofit public benefit corporation that has all powers necessary to carry out the delivery of in-home supportive services or waiver personal care services under the delegated authority of a government entity.

(E) A nonprofit consortium or a public authority authorized to secure a criminal background check clearance pursuant to this section shall accept a clearance for an applicant described in clause (i) of subparagraph (A) who has been deemed eligible by another nonprofit consortium, public authority, or county with criminal background check authority pursuant to either Section 12305.86 or this section, to receive payment for providing services pursuant to this article. Existence of a clearance shall be determined by verification through the case management, information, and payrolling system, that another county, nonprofit consortium, or public authority with criminal background check authority pursuant to Section 12305.86 or this section has deemed the current or prospective provider to be eligible to receive payment for providing services pursuant to this article.

(3) Establishment of a referral system under which in-home supportive services personnel or waiver personal care services personnel shall be referred to recipients.

(4) Providing for training for providers and recipients.

(5) (A) Performing any other functions related to the delivery of in-home supportive services or waiver personal care 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 or waiver personal care 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 or waiver personal care services personnel.

(2) A nonprofit consortium contracting with a county pursuant to this section or any public authority created pursuant to this section is not liable for the action or omission of any in-home supportive services personnel or waiver personal care 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 or in the administration of waiver personal care services authorized under Section 14132.97. 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.

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

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

(i) (1) This section does not affect the state's responsibility with respect to the state payroll system, unemployment insurance, or workers' compensation and other provisions of Section 12302.2 for providers of in-home supportive services or for individuals who are employed by a recipient of waiver personal care services authorized under Section 14132.97.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(Amended by Stats. 2018, Ch. 35, Sec. 32. (AB 1811) Effective June 27, 2018.)

12301.61. (a) On or after October 1, 2023, if a public authority or nonprofit consortium established pursuant to Section 12301.6, acting as the employer of record, and the employee organization have not reached an agreement on a bargaining contract with in-home supportive services workers, either party may request mediation, pursuant to Section 3505.2 of the Government Code, which shall be mandatory. If the parties fail to agree on a mediator, the Public Employment Relations Board shall appoint one from the pool described in subdivision (c). The mediation shall be held no more than 15 business days from the date requested by either party.

(b) If the parties are unable to effect settlement through mediation, as described in subdivision (a), the parties shall submit their differences to factfinding, pursuant to Sections 3505 and 3505.4 of the Government Code. Alternatively, if both parties agree, the parties may bypass the mediation process in subdivision (a) and move directly to factfinding.

(1) The factfinding panel shall make findings of fact and recommend terms of settlement, which shall be advisory only, within 30 days after the panel is appointed by the Public Employment Relations Board.

(2) Within 15 days after the factfinding panel has released its findings of fact and recommended settlement terms, either party may request postfactfinding mediation consistent with Section 3505.2 of the Government Code, which shall be mandatory. If the parties fail to agree on a mediator, the Public Employment Relations Board shall appoint one from the pool described in subdivision (c).

(3) If either party elects postfactfinding mediation, the findings of fact and recommended settlement terms shall not be made public until the mediation has concluded.

(4) Mediation shall be held no more than 15 days from the date requested, and may include, at the mediator's discretion, the factfinding panel and representatives of both parties. The director, or the director's designee, shall be available to provide information and expertise, as necessary.

(5) The county board of supervisors shall hold a public hearing within 30 days of the factfinding panel's public release of its findings of fact and recommended settlement terms.

(c) The Public Employment Relations Board shall designate a pool of no more than five qualified individuals to serve as mediators or on a factfinding panel. The pool shall consist of individuals with relevant subject matter expertise. The board shall select individuals for the pool in consultation with the department and the affected employers and employee organizations. Priority shall be given to individuals with knowledge of the In-Home Supportive Services program. The board may designate the mediator to serve as the neutral member of the factfinding panel.

(d) The costs for the services of the factfinding panel and the mediator shall be equally divided between the parties, and shall include per diem fees, if any, and actual and necessary travel and subsistence expenses.

(e) If no individual is available to serve as a mediator or factfinder within the timelines specified in this section, the timelines shall be extended until the next mediator or factfinder is available.

(f) A county shall be subject to a withholding of 1991 Realignment funds as described in subdivision (h) pursuant to a schedule developed by the Department of Finance and provided to the Controller if all of the following conditions are met:

(1) The parties have completed the process described in subdivisions (a) to (c), inclusive.

(2) The factfinding panel has issued findings of fact and recommended settlement terms that are more favorable to the employee organization than those proposed by the employer of record described in subdivision (a).

(3) The parties do not reach a collective bargaining agreement within 90 days after the release of the factfinding panel's recommended settlement terms described in paragraph (2). The parties shall make every good faith effort to reach an alternative mutually accepted agreement within this timeframe.

(4) The collective bargaining agreement for IHSS providers in the county has expired.

(g) The Public Employment Relations Board shall provide written notification to the county and the employee organization within 15 days of determining that the county is subject to a withholding pursuant to subdivision (f). The board shall also notify the Department of Finance and the State Controller of the withholding assessment.

(h) The amount of the 1991 Realignment funding withholding pursuant to subdivision (f) shall be equivalent to 10 percent of the county's prior fiscal year IHSS Maintenance of Effort requirement, as reported by the department, prior to applying any offsets pursuant to Section 12306.17. This withholding shall continue once per fiscal year, each fiscal year, until the county enters into a collective bargaining agreement with the employee organization.

(i) This section shall become operative on October 1, 2023.

(Repealed (in Sec. 56) and added by Stats. 2023, Ch. 43, Sec. 57. (AB 120) Effective July 10, 2023. Operative October 1, 2023, by its own provisions.)

12301.7. The annual administrative cost for any public authority or nonprofit consortium created pursuant to Section 12301.6, exclusive of any increase in provider wages or benefits or employer taxes when negotiated or agreed to by the public authority or nonprofit consortium, shall be shared by the state and the counties as prescribed in Section 12306.

(Added by Stats. 1997, Ch. 606, Sec. 27. Effective October 3, 1997.)

12301.8. (a) (1) A public authority or nonprofit consortium established pursuant to Section 12301.6, upon the request of an aged or disabled adult or that individual's authorized representative, may assist an employer, as defined in paragraph (2), in obtaining a criminal background check conducted by the Department of Justice, as authorized pursuant to Section 15660, of a provider, as described in paragraph (3).

(2) For purposes of this section, an "employer" means an aged or disabled adult, or that individual's authorized representative, who is ineligible for benefits under this chapter and who receives care by a provider as described in paragraph (3).

(3) For purposes of this section, a "provider" means a person who is unlicensed and provides nonmedical domestic or personal care to an aged or disabled adult who is ineligible to receive benefits under this chapter, in the adult's own home.

(b) A public authority or nonprofit consortium may recover the costs of administering this section, including the cost to the Department of Justice for processing the criminal background check, from the individual making the request, as described in subdivision (a).

(c) No General Fund moneys shall be used to implement this section.

(Added by Stats. 2008, Ch. 2, Sec. 1. Effective January 1, 2009.)

12302. Each county is obligated to ensure that services are provided to all eligible recipients during each month of the year in accordance with the county plan.

In order to implement such a plan, an individual county may hire homemakers and other in-home supportive personnel in accordance with established county civil service requirements or merit system requirements for those counties not having civil service, or may contract with a city, county, or city and county agency, a local health district, a voluntary nonprofit agency, a proprietary agency, or an individual or make direct payment to a recipient for the purchase of services.

County plans are effective upon submission to the department. In reviewing county plans the department shall assure that plans are in compliance with provisions of this article including compliance with Section 12301. In the event the department finds a county plan is not in compliance it shall take appropriate action to assure compliance.

The department shall monitor the actual monthly expenditures where available for services to assure compliance with the county plans. If the county's expenditure pattern is not consistent with the plan, the department shall require the county to amend the plan.

(Amended by Stats. 1987, Ch. 1438, Sec. 3. Operative July 1, 1988, by Sec. 7 of Ch. 1438.)

12302.1. (a) Contracts entered into by a county under Section 12302 shall be for terms not exceeding three years. In the event of a three-year contract, the county, at the end of the first contract term, may renew the contract for a second term not exceeding one year. The rate of reimbursement shall be negotiated consistent with regulations promulgated by the State Department of Social Services. For any extended contract, the rate shall reflect, but is not limited to, the following financial considerations:

(1) Actual expenditures by the contractor as documented during the first contract term and approved by the state.

(2) Changes in federal, state, or county program requirements.

(3) Federal and state minimum wage and contractual step merit increases.

(4) Statutory taxes.

(5) Insurance costs.

(6) Reasonable costs which have been approved by the county department of social services, as long as those costs do not increase unreimbursed county expenditures or lead to a reduction in client services, and those costs can be funded within the maximum allowable rates set by the department for in-home supportive services contracts and the county's state allocation for in-home supportive services.

(7) Other reasonable costs over which the contracting parties have no control.

(b) (1) Except as provided in paragraph (2), the purchase of services regulations adopted by the department that govern county welfare departments shall also govern acceptable in-home supportive services contracting, including the methods used to advertise, procure, select, and award the contracts, and the procedures used to amend, renew, or extend an existing contract with the same contractor, including, in addition to rate changes, any other change in other terms of the contract. In no case shall the department's regulations governing in-home supportive services contracting procedures differ from the contract procedures specified in the department's purchase of service regulations for other services purchased by county welfare departments, except as required by federal law.

(2) The department may, through regulation, require until July 1, 2000, the prior review of all bid and contract documents for managed care contracts under Section 12302.7.

(Amended by Stats. 1996, Ch. 206, Sec. 23. Effective July 22, 1996.)

12302.2. (a) (1) If the state or a county makes or provides for direct payment to a provider chosen by a recipient or to the recipient for the purchase of in-home supportive services, the department shall perform or ensure the performance of all rights, duties, and obligations of the recipient relating to those services as required for purposes of unemployment compensation, unemployment compensation disability benefits, workers' compensation, retirement savings accounts, including payroll deduction IRA arrangements

offered pursuant to the CalSavers Retirement Savings Program (Title 21 (commencing with Section 100000) of the Government Code), federal and state income tax, and federal old-age, survivors, and disability insurance benefits. Those rights, duties, and obligations include, but are not limited to, registration and obtaining employer account numbers, providing information, notices, and reports, making applications and returns, and withholding in trust from the payments made to or on behalf of a recipient amounts to be withheld from the wages of the provider by the recipient as an employer, including the sales tax extended to support services by Article 4 (commencing with Section 6150) of Chapter 2 of Part 1 of Division 2 of the Revenue and Taxation Code, and transmitting those amounts along with amounts required for all contributions, premiums, and taxes payable by the recipient as the employer to the appropriate person or state or federal agency. The department may ensure the performance of any or all of these rights, duties, and obligations by contract with any person, or any public or private agency.

(2) Contributions, premiums, and taxes shall be paid or transmitted on the recipient's behalf as the employer for any period commencing on or after January 1, 1978, except that contributions, premiums, and taxes for federal and state income taxes and federal old-age, survivors, and disability insurance contributions shall be paid or transmitted pursuant to this section commencing with the first full month that begins 90 days after the effective date of this section.

(3) Contributions, premiums, and taxes paid or transmitted on the recipient's behalf for unemployment compensation, workers' compensation, and the employer's share of federal old-age, survivors, and disability insurance benefits shall be payable in addition to the maximum monthly amount established pursuant to Section 12303.5 or subdivision (a) of Section 12304 or other amount payable to or on behalf of a recipient. Contributions, premiums, or taxes resulting from liability incurred by the recipient as employer for unemployment compensation, workers' compensation, and federal old-age, survivors, and disability insurance benefits with respect to any period commencing on or after January 1, 1978, and ending on or before the effective date of this section shall also be payable in addition to the maximum monthly amount established pursuant to Section 12303.5 or subdivision (a) of Section 12304 or other amount payable to or on behalf of the recipient. Nothing in this section shall be construed to permit any interference with the recipient's right to select the provider of services or to authorize a charge for administrative costs against any amount payable to or on behalf of a recipient.

(b) If the state makes or provides for direct payment to a provider chosen by a recipient, the Controller shall make any deductions from the wages of in-home supportive services personnel that are authorized by Sections 1152 and 1153 of the Government Code, as limited by Section 3515.6 of the Government Code, and for the sales tax extended to support services by Article 4 (commencing with Section 6150) of Chapter 2 of Part 1 of Division 2 of the Revenue and Taxation Code.

(c) Funding for the costs of administering this section and for contributions, premiums, and taxes paid or transmitted on the recipient's behalf as an employer pursuant to this section shall qualify, where possible, for the maximum federal reimbursement. To the extent that federal funds are inadequate, notwithstanding Section 12306, the state shall provide funding for the purposes of this section.

(Amended by Stats. 2018, Ch. 37, Sec. 62. (AB 1817) Effective June 27, 2018.)

12302.21. (a) For purposes of providing cost-efficient workers' compensation coverage for in-home supportive services providers under this article, the department shall assume responsibility for providing workers' compensation coverage for employees of nonprofit agencies and proprietary agencies who provide in-home supportive services pursuant to contracts with counties. The workers' compensation coverage provided for these employees shall be provided on the same terms as provided to providers under Section 12302.2 and 12302.5.

(b) A county that has existing contracts with nonprofit agencies or proprietary agencies whose employees will be provided workers' compensation coverage by the department pursuant to subdivision (a), shall reduce the contract hourly rate by fifty cents ($0.50) per hour, effective on the date that the department implements this section.

(Added by Stats. 2003, Ch. 209, Sec. 1. Effective August 11, 2003. This version became inoperative on September 22, 2012, upon operation of the amendment by Stats. 2012, Ch. 439, and resumed operation on June 27, 2017, when Stats. 2017, Ch. 25, repealed that amended version.)

12302.25. (a) On or before January 1, 2003, each county shall act as, or establish, an employer for in-home supportive service providers under Section 12302.2 for the purposes of Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code and other applicable state or federal laws. Each county may utilize a public authority or nonprofit consortium as authorized under Section 12301.6, the contract mode as authorized under Sections 12302 and 12302.1, county administration of the individual provider mode as authorized under Sections 12302 and 12302.2 for purposes of acting as, or providing, an employer under Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code, county civil service personnel as authorized under Section 12302, or mixed modes of service authorized pursuant to this article and may establish regional agreements in establishing an employer for purposes of this subdivision for providers of in-home supportive services. Within 30 days of the effective date of this section, the department shall develop a timetable for implementation of this subdivision to ensure orderly compliance by counties. Recipients of in-home supportive services shall retain the right to choose the individuals that provide their care and to recruit, select, train, reject, or change any provider under the contract mode or to hire, fire, train, and supervise any provider under any other mode of service. Upon request of a recipient, and in addition to a county's selected method of establishing

an employer for in-home supportive service providers pursuant to this subdivision, counties with an IHSS caseload of more than 500 shall be required to offer an individual provider employer option.

(b) Nothing in this section shall prohibit any negotiations or agreement regarding collective bargaining or any wage and benefit enhancements.

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

(d) Prior to implementing subdivision (a), a county may establish an advisory committee as authorized by Section 12301.3 and solicit recommendations from the advisory committee on the preferred mode or modes of service to be utilized in the county for in-home supportive services.

(e) If a county establishes an in-home supportive services advisory committee pursuant to Section 12301.3, the county shall take into account the advice and recommendations of the committee prior to making policy and funding decisions about the program on an ongoing basis.

(f) In implementing and administering this section, no county, public authority, nonprofit consortium, contractor, or a combination thereof, that delivers in-home supportive services shall reduce the hours of service for any recipient below the amount determined to be necessary under the uniform assessment guidelines established by the department.

(g) Any agreement between a county and an entity acting as an employer under subdivision (a) shall include a provision that requires that funds appropriated by the state for wage increases for in-home supportive services providers be used exclusively for that purpose. Counties or the state may undertake audits of the entities acting as employers under the terms of subdivision (a) to verify compliance with this subdivision.

(h) On or before January 15, 2003, each county shall provide the department with documentation that demonstrates compliance with the January 1, 2003, deadline specified in subdivision (a). The documentation shall include, but is not limited to, any of the following:

(1) The public authority ordinance and employee relations procedures.

(2) The invitations to bid and requests for proposal for contract services for the contract mode.

(3) An invitation to bid and request for proposal for the operation of a nonprofit consortium.

(4) A county board of supervisors' resolution resolving that the county has chosen to act as the employer required by subdivision (a) either by utilizing county employees, as authorized by Section 12302, to provide in-home supportive services or through county administration of individual providers.

(5) Any combination of the documentation required under paragraphs (1) to (4), inclusive, that reflects the decision of a county to provide mixed modes of service as authorized under subdivision (a).

(i) Any county that is unable to provide the documentation required by subdivision (h) by January 15, 2003, may provide, on or before that date, a written notice to the department that does all of the following:

(1) Explains the county's failure to provide the required documentation.

(2) Describes the county's plan for coming into compliance with the requirements of this section.

(3) Includes a timetable for the county to come into compliance with this section, but in no case shall the timetable extend beyond March 31, 2003.

(j) Any county that fails to provide the documentation required by subdivision (h) and also fails to provide the written notice as allowed under subdivision (i), shall be deemed by operation of law to be the employer of IHSS individual providers for purposes of Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code as of January 15, 2003.

(k) Any county that provides a written notice as allowed under subdivision (i), but fails to provide the documentation required under subdivision (h) by March 31, 2003, shall be deemed by operation of law to be the employer of IHSS individual providers for purposes of Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code as of April 1, 2003.

(l) Any county deemed by operation of law, pursuant to subdivision (j) or (k), to be the employer of IHSS individual providers for purposes of Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code shall continue to act in that capacity until the county notifies the department that it has established another employer as permitted by this section, and has provided the department with the documentation required under subdivision (h) demonstrating the change.

(Amended by Stats. 2011, Ch. 8, Sec. 34. (SB 72) Effective March 24, 2011. This version became inoperative on September 22, 2012, upon operation of the amendment by Stats. 2012, Ch. 439, and resumed operation on June 27, 2017, when Stats. 2017, Ch. 25, repealed that amended version.)

12302.3. (a) Notwithstanding any other provision of this article, and in a manner consistent with the powers available to public authorities created under this article, the City and County of San Francisco may do any of the following:

(1) Increase the wages of all in-home supportive services providers.

(2) Subject to the requirements of federal law, use county-only funds to fund county and state shares to meet federal financial participation requirements necessary to obtain any available personal care services reimbursement under Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.) (Medicaid).

(3) Provide in-home supportive services workers with any wage increase the city and county may appropriate, as long as this amount is in accordance with the provisions of the Medi-Cal State Plan Amendment 94-006, as approved by the federal Health Care Financing Administration. The county-only funds shall be used exclusively to increase workers' wages and to pay any proportionate share of employer taxes and current benefits, and to pay for the cost of state and county administration of these activities as provided for in paragraph (5). Notwithstanding Section 12302.1, any wage increase for those workers employed under contract shall be passed through by the contractor to the workers, subject to the limitations specified in this paragraph. The state shall continue to provide payroll functions for all workers who are currently individual providers unless and until the in-home supportive services public authority is operational.

(4) Claim the administrative costs of the wage passthrough in accordance with the department's claiming requirements.

(5) If that federal financial participation is available for county-only payroll moneys, the following shall apply:

(A) If additional payroll costs will be incurred by the state due to the receipt and payment of federal funds, the department shall provide the city and county with a detailed estimate of the additional costs of the provision of payroll functions associated with the processing of federal funds. If the city and county elects to pay the additional costs, the department will provide these payroll functions. If the city and county does not elect to pay the additional costs, the department and the city and county may seek another, mutually satisfactory arrangement.

(B) If that federal financial participation is not available, the department shall continue to perform the existing payroll functions provided on July 28, 1995, at no additional cost to the city and county.

(b) (1) This section shall not be implemented with respect to any particular wage increase pursuant to subdivision (a) unless the department has obtained the approval of the State Department of Health Services for that wage increase prior to its execution to determine that it is consistent with federal law and to ensure federal financial participation for the services under Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.).

(2) The Director of Health Services shall seek any federal waivers or approvals necessary for implementation of this section under Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.).

(Amended by Stats. 1999, Ch. 83, Sec. 206. Effective January 1, 2000.)

12302.4. A county, in receiving bids for a contract pursuant to Sections 12302, 12302.1, and 12303, may evaluate all or any bidders to determine their responsibility, and their responsiveness to the requirements of the bidding document. The county may take all of the following into account:

(a) Whether the bidder possesses adequate financial resources, or the ability to obtain those resources as required before the beginning of the performance of the contract.

(b) Whether the bidder has the ability to comply with the proposed delivery and performance schedule, taking into consideration available expertise and any other existing business commitments.

(c) Whether the bidder has any record of unsatisfactory performance. In determining if a bidder has a record of unsatisfactory performance, the bidder shall submit a list to the county of all prior in-home supportive services contracts awarded, if any. A county may review past contracts, if any, to determine if the bidder's past in-home supportive services contract performance has been unsatisfactory.

(d) Whether the bidder has any record of lack of integrity or poor business ethics.

(e) Whether the bidder is otherwise qualified and eligible to receive an award under applicable statutes and regulations.

(f) Whether the bid substantially and materially complies with all requirements of the county's bidding document.

(Added by renumbering Section 12302.2 (as added by Stats. 1986, Ch. 1085) by Stats. 1988, Ch. 160, Sec. 192.)

12302.5. (a) Counties may establish entities or agents to act on behalf of the employers for those recipients who are designated as the employer of the in-home supportive services worker and who elect not to, or who are unable to, ensure compliance with all applicable federal, state, and county wage, hour, and workplace laws.

(b) Any entity or agent established pursuant to this section shall not restrict or interfere with the right of a recipient to select, replace, and terminate the employment of his or her own provider of in-home supportive services and to set his or her own service schedule.

(Added by Stats. 1994, Ch. 1006, Sec. 1. Effective January 1, 1995.)

12303. A contract pursuant to Section 12302 shall include the following provisions:

(a) The cost of the service shall not exceed by more than 10 percent the allowable cost of the service as determined by the State Department of Social Services.

(b) The provider agency shall agree to give preference to the training and employment of recipients of public assistance or other low-income persons who would qualify for public assistance in the absence of such employment.

(c) The cost of the purchase of such service will qualify, where possible, for the maximum federal reimbursement.

(d) A bond may be obtained to secure payment of wages in the event that bankruptcy, liquidation, embezzlement, fraud, or other factors prevent payment of wage claims to homemakers, homemaker chore workers, or other in-home supportive service personnel.

The provisions of this section shall not restrict the right of a chartered county from providing a civil service classification for in-home supportive service personnel.

(Amended by Stats. 1978, Ch. 1399, Sec. 2.)

12303.4. (a) Any aged, blind, or disabled individual who is eligible for assistance under this chapter or Chapter 4 (commencing with Section 12500), and who is not described in Section 12304, shall receive services under this article which do not exceed the maximum of 195 hours per month.

(b) Any aged, blind, or disabled individual who is eligible for assistance under this chapter or Chapter 4 (commencing with Section 12500), who is in need, as determined by the county welfare department, of at least 20 hours per week of the services defined in Section 12304, shall be eligible to receive services under this article, the total of which shall not exceed a maximum of 283 hours per month.

(Amended by Stats. 1999, Ch. 90, Sec. 8. Effective July 12, 1999.)

12303.6. (a) No adjustment shall be made under this article for the 1990–91 fiscal year to reflect any change in the cost of living.

(b) Any cost-of-living adjustment under this article for the 1991–92 fiscal year and any fiscal year thereafter pursuant to Section 12303.5 shall not include any adjustment to reflect increases for the cost of living for the 1990–91 fiscal year.

(Added by Stats. 1990, Ch. 457, Sec. 3. Effective July 31, 1990.)

12303.7. Any aged, or disabled applicant or recipient who is eligible for assistance under this article, whose disabilities prevent the use of cooking facilities at home, shall be given the option to receive an allowance of forty-nine dollars ($49) per month for an individual and ninety-eight dollars ($98) per month for a married couple in lieu of the appropriate in-home food preparation and consumption services. The allowance under this section shall be in addition to any amount that the applicant or recipient is entitled to under this chapter. This allowance shall not have the effect of exceeding the total cost maximum of Sections 12303.5 and 12304. Nothing in this section shall be construed to limit the applicant's or recipient's right to receive the allowance under this section and all other homemaker and chore services.

The State Department of Social Services shall adjust the amount of the allowance under this section on July 1, 1984, and each year thereafter to reflect cost-of-living changes subsequent to January 1, 1983, as provided under Section 12303. 5.

(Amended by Stats. 1983, Ch. 323, Sec. 118. Effective July 1, 1983.)

12304. (a) An individual who is eligible for services subject to the maximum amount specified in subdivision (b) of Section 12303.4 and who is capable of handling his or her own financial and legal affairs shall be given the option of hiring and paying his or her own provider of in-home supportive services. For this purpose the individual shall be entitled to receive a monthly cash payment in advance not to exceed an amount to reimburse providers for the maximum amount of hours specified in subdivision (b) of Section 12303.4, which is in addition to his or her grant, if any. An individual who is not capable of handling his or her own financial and legal affairs shall be entitled to receive the cash payment through his or her guardian, conservator, or protective payee.

(b) In no event shall the maximum total cost for services and advance cash payment for one individual recipient under subdivision (b) of Section 12303.4 and subdivision (a) exceed an amount to reimburse providers for the maximum hours specified in subdivision (b) of Section 12303.4.

(c) The county welfare department shall inform in writing any individual who is potentially eligible for services under this section of his or her right to the services.

(d) For purposes of subdivision (b) of Section 12303.4, a recipient who is eligible for services subject to the maximum amount specified in subdivision (b) of Section 12303.4 is one who requires in-home supportive care of at least 20 hours per week to carry out any or all of the following:

(1) Routine bodily functions, such as bowel and bladder care and respiration assistance.

(2) Dressing, oral hygiene, and grooming.

(3) Preparation and consumption of food and meal cleanup for individuals who require assistance with the preparation and consumption of food.

(4) Moving into and out of bed, other assistance in transferring, turning in bed, and other repositioning.

(5) Bathing, routine bed baths, and washing.

(6) Ambulation and care and assistance with prostheses.

(7) Rubbing of skin to promote circulation.

(8) Paramedical services.

(9) Any other function of daily living as determined by the director.

This determination of need shall be supported by a medical report when requested and shall be prepared at the expense of the State Department of Social Services.

(Amended (as amended by Stats. 1991, Ch. 96, Sec. 6) by Stats. 1992, Ch. 722, Sec. 57. Effective September 15, 1992.)

12304.1. In the selection of providers to perform services pursuant to this article, preference shall be given to any qualified individual provider who is chosen by any recipient of personal care services as defined in subdivision (c) of Section 12300.

(Amended by Stats. 1992, Ch. 939, Sec. 3. Effective September 28, 1992.)

12304.2. (a) A recipient who receives services under this article through either a contract or managed care provider may, subject to program requirements, select any qualified person to provide care under this article.

(b) For purposes of this section, “qualified person” means any employee of the contract or managed care provider through which the recipient may receive services under this article who is available and eligible to provide the services.

(Added by Stats. 1994, Ch. 349, Sec. 1. Effective January 1, 1995.)

12304.3. Any recipient of services under this article who has received benefits under this article for at least one year, and who hires and pays his or her own service providers, as permitted under subdivision (b) of Section 12304, may receive his or her grant under this article through an electronic transfer. The Controller shall offer electronic transfer services to these recipients as soon as the option of electronic transfer is available to state employees for the receipt of wages.

(Added by Stats. 1986, Ch. 1141, Sec. 1.)

12304.4. (a) The department shall establish a program of direct deposit by electronic transfer for payments to in-home supportive services providers. A provider may choose to receive payments via direct deposit at the provider’s option. The department, the Controller, and the California Health and Human Services Agency shall make all necessary automation changes to allow for payment by direct deposit.

(b) On or before March 31, 2008, the department shall complete those items pertaining to the implementation of direct deposit over which they have independent control, or those items that do not depend on ongoing coordination with the office of the Controller in order to be completed. Examples of these items include, but are not limited to, rulemaking Case Management Information and Payroll Systems (CMIPS) modifications, provider notifications, and all-county letters. The department and the office of the Controller shall cooperate fully on coordination, implementation, and testing, on a timeframe that shall not delay implementation of the project. Notwithstanding any other law, direct deposit for in-home supportive services providers shall be implemented on or before June 30, 2008.

(c) Notwithstanding any other law, a person entitled to the receipt of direct payment as an individual provider pursuant to Section 12302.2 for providing in-home supportive services may authorize payment to be directly deposited by electronic fund transfer into the person’s account at the financial institution of the person’s choice under a program for direct deposit by electronic transfer established by the department.

(d) (1) (A) Notwithstanding Sections 212 and 213 of the Labor Code, providers entitled to the receipt of direct wage payment as an individual provider pursuant to Section 12302.2 for providing in-home supportive services, or providers who provide waiver personal care services pursuant to Section 14132.97, shall receive payment of wages only by direct deposit or provider card, with either method chosen at the preference of each provider.

(B) Subparagraph (A) becomes effective by the later of the following dates:

(i) July 1, 2021.

(ii) An alternative date identified by the department, with notification provided to the Legislature, relative to the completion of statewide implementation of the federal electronic visit verification requirement.

(2) (A) The department shall encourage providers to enroll in either direct deposit or a provider card in preparation for, and in advance of, the effective date of the requirement in subparagraph (A) of paragraph (1).

(B) Each provider shall identify a bank account into which wages can be direct deposited, select a prepaid account available in the private market that complies with applicable federal and state laws through which the provider can receive wages, or a provider card made available through the process described in subdivision (e) through which the provider can receive wages.

(e) (1) The State Department of Social Services shall issue a request for proposal for one or more provider card issuers to offer to providers so the provider may enroll in a provider card service in order to access the provider's wages.

(2) A provider card issuer selected by the department pursuant to this subdivision shall comply with all of the following:

(A) Comply with all of the requirements, and provide a provider with all of the consumer protections, that apply to a provider card under the rules implementing the federal Electronic Fund Transfer Act (EFTA) (15 U.S.C. Sec. 1693 et seq.), or other rules subsequently adopted under the EFTA that apply to payroll cards, except that the disclosures required under federal law to provide notice of the ban on compulsory use under Section 1693k(2) of Title 15 of the United States Code may be modified, as appropriate, to reflect the relationship of the provider to the department.

(B) Satisfy the requirements for passthrough deposit or share insurance so that the funds available on the provider card are eligible for insurance for the benefit of the provider provided by the Federal Deposit Insurance Corporation in accordance with Part 330 (commencing with Section 330.1) of Title 12 of the Code of Federal Regulations or by the National Credit Union Share Insurance Fund in accordance with Part 745 (commencing with Section 745.0) of Title 12 of the Code of Federal Regulations.

(C) Minimize charges and fees for providers using the card and not impose any of the following fees, or any other fee that may be specified by the department in the request for proposals:

(i) An application, initiation, loading, participation, or other fee to receive wages or to obtain the provider card.

(ii) A fee for a point-of-sale transaction, unless the fee is charged by a person that accepts credit or debit cards for the transaction and the provider initiated the transaction.

(iii) A fee to withdraw funds from a teller or an automated teller machine at any financial institution that is in the provider card issuer's network.

(iv) An overdraft, shortage, or low-balance fee or charge, or any fee or finance charge for any form of credit or overdraft that is automatically repaid from the provider card after delivery of the payment, including, but not limited to, a loan against future payments or a cash advance on future payments.

(v) A fee for a declined transaction.

(vi) A fee for inactivity.

(vii) A fee for the first three telephone calls to a live customer service representative per pay period.

(viii) A fee to the access balance or other provider card information online, by an interactive voice response system, or by any other automated system offered in conjunction with the provider card, or at an automated teller machine at any financial institution that is in the provider card issuer's network.

(ix) A fee to close the provider card or disburse the remaining provider card balance.

(x) A fee to provide one replacement card each year.

(3) The provider card issuer selected by the department pursuant to this subdivision shall, at no cost to the provider, do all the following:

(A) Disclose in writing, or electronically via email, to each provider choosing to use one, the entire terms and conditions of the provider card. The provider shall select the method of disclosure at the time the provider enrolls for payment of wages by provider card.

(B) Provide the ability to withdraw the entire amount of wages for each pay period at an automated teller machine at any financial institution or at any financial institution that is in the provider card issuer's network. This does not preclude additional methods by which a provider can access wages deposited on the provider card.

(C) An annual notice, sent either by mail or electronically, at the choice of the provider, informing the provider of the right to request periodic statements, 12-month transaction histories, and the balance of available funds.

(f) This section does not inhibit the ability of a recognized labor organization representing providers from offering a particular provider card to the providers represented by that organization.

(g) Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the State Department of Social Services and the State Department of Health Care Services may implement, interpret, or make specific this section by means of all-county letters or similar instructions, without taking any regulatory action.

(h) For the purposes of this section, the following terms have the following meanings:

(1) "Issuer" means a provider card issuer, and includes a person acting as an agent of an issuer, directly or indirectly.

(2) "Provider card" means an access mechanism, including a prepaid account or prepaid card, as those terms are defined under the EFTA or other rules subsequently adopted under the EFTA, a code, or another device, through which the provider can access the provider's wages.

(Amended by Stats. 2020, Ch. 370, Sec. 278. (SB 1371) Effective January 1, 2021.)

12304.41. If a natural disaster has resulted in a declared state of emergency, affected counties shall use a void and reissue warrant process for any provider who lost or had damaged an uncashed warrant because of the natural disaster. When reissuing the uncashed warrant, a county shall verify the provider's current mailing address and update the mailing address in the Case Management Information and Payroll System to ensure that the reissued warrant will be mailed to the provider's current address.

(Added by Stats. 2018, Ch. 789, Sec. 5. (SB 1040) Effective January 1, 2019.)

12304.5. Any aged, blind, or disabled individual who would be eligible for assistance under this chapter or under Chapter 4 (commencing with Section 12500), except for his excess income, is eligible to receive a payment under this article to purchase in-home supportive services if his income is insufficient to provide for the cost of such care, and he is otherwise qualified under this article.

(Added by Stats. 1974, Ch. 75.)

12304.6. The county welfare department shall provide to each visually impaired applicant or recipient of benefits under this article, upon determination or redetermination of eligibility for benefits under this article, information on, and referral services to, community public and nonprofit entities that provide reading services to visually impaired persons.

(Added by Stats. 1998, Ch. 275, Sec. 1. Effective January 1, 1999.)

12304.7. Between January 1 and April 15 of each year, the Controller shall include a notice on, and insert an informational flyer which shall be prepared by the department, with, all payroll warrants issued to providers of services under this chapter informing those providers that they may qualify for the federal earned income tax credit, as provided for in Section 32 of the Internal Revenue Code.

(Added by Stats. 2007, Ch. 397, Sec. 1. Effective January 1, 2008.)

12305. Any aged, blind, or disabled individual who would be eligible for assistance under this chapter or Chapter 4 (commencing with Section 12500), except for his excess income, and who receives services under this article, shall be eligible for Medi-Cal benefits as a categorically needy recipient under Section 14005.1, provided that his nonexempt income in excess of the sum in the applicable subdivision of Section 12200 is used toward the purchase of such services.

(Added by Stats. 1973, Ch. 1216.)

12305.1. (a) (1) Any aged, blind, or disabled individual who received Medi-Cal personal care services pursuant to subdivision (p) of Section 14132.95 before July 1, 2009, and who continues to receive those services, and who would otherwise be deemed a categorically needy recipient pursuant to Section 12305, is eligible to receive a supplementary payment under this article to be used

towards the purchase of personal care services. Additionally, any aged, blind, or disabled individual who received services pursuant to Section 14132.951 before July 1, 2009, and who continues to receive those services, and who would otherwise be deemed a categorically needy recipient pursuant to Section 12305 is eligible to receive a supplementary payment under this article to be used towards the purchase of services under Section 14132.951. Supplementary payments shall be available only to those individuals who meet the criteria set forth in this subdivision, and were eligible to receive a supplementary payment as of June 30, 2009.

(2) An individual who meets the above criteria for supplementary payments shall have his or her supplementary payment eliminated as of October 1, 2009.

(b) A supplementary payment pursuant to this section shall be the difference between the following amounts:

(1) A beneficiary's excess income as determined under Section 12304.5.

(2) The beneficiary's nonexempt income as determined pursuant to Section 14005.7, in excess of the income levels for maintenance need pursuant to Section 14005.12.

(c) Notwithstanding subdivisions (a) and (b), no supplementary payment shall be made pursuant to this section unless the amount specified in paragraph (2) of subdivision (b) is larger than the amount specified in paragraph (1) of subdivision (b).

(d) In the event of a final judicial determination by any court of appellate jurisdiction or a final determination by the Administrator of the federal Centers for Medicare and Medicaid Services that supplemental payments to medically needy persons not receiving services pursuant to subdivision (p) of Section 14132.95 or Section 14132.951 must be made, then this section and subdivision (p) of Section 14132.95 shall cease to be operative on the first day of the month that begins after the expiration of a period of 30 days subsequent to a notification in writing by the Director of Finance to the chairperson of the committee in each house that considers appropriations, the chairpersons of the committees and the appropriate subcommittees in each house that consider the State Budget, and the Chairperson of the Joint Legislative Budget Committee.

(Amended by Stats. 2009, 4th Ex. Sess., Ch. 4, Sec. 26. Effective July 28, 2009. Section conditionally inoperative as provided in subd. (d).)

12305.5. (a) Notwithstanding any other provision of this chapter, any person who:

(1) Was once determined to be disabled in accordance with Section 1614 of Part A of Title XVI of the Social Security Act (Section 1382c, Title 42, United States Code), and

(2) Became ineligible for benefits under this chapter because the person engaged in substantial gainful activity, and

(3) Continues to suffer from the physical or mental impairments which were the basis of the disability determination required under paragraph (1), and

(4) Requires in-home supportive care to carry out any or all of the following:

(A) Routine bodily functions, such as bowel or bladder care.

(B) Dressing.

(C) Preparation and consumption of food.

(D) Moving into and out of bed.

(E) Routine bed bath.

(F) Ambulation.

(G) Any other function of daily living as determined by the director;
shall be considered to be disabled, for the purposes of this article only, even though such person is engaged in substantial gainful activity. Regardless of whether such person has excess income, such person shall be eligible to receive payment under this article to purchase in-home supportive services if his income is insufficient to provide for the cost of such care, and he is otherwise qualified under this article.

(b) For purposes of this section, "substantial gainful activity" means work activity considered to be substantial gainful activity under applicable federal regulations adopted pursuant to Section 1614 of Part A of Title XVI of the Social Security Act.

(c) The determination of continued impairments and the need for in-home supportive care shall be supported by medical reports when requested. Such reports shall be provided at the expense of the department.

(d) This section shall not be construed as creating any entitlement to state supplementation pursuant to Section 12150.

(Amended by Stats. 1978, Ch. 1362.)

12305.6. (a) Notwithstanding any other provision of law, any person specified in subdivision (b) shall be eligible for in-home supportive services under this chapter.

(b) Subdivision (a) shall apply to any person who meets all of the following requirements:

(1) He or she is not eligible for benefits under this chapter because of the provisions of federal Public Law 104-193 affecting eligibility under Title XVI of the Social Security Act.

(2) He or she would be eligible for benefits under this chapter but for the provisions of federal Public Law 104-193 affecting eligibility under Title XVI of the Social Security Act. Eligibility under this chapter shall include the same deeming provisions pursuant to Title XVI of the Social Security Act (Subchapter 16 (commencing with Section 1381) of Chapter 7 of Title 42, United States Code).

(3) He or she continues to meet all other applicable eligibility criteria for receiving benefits under this chapter.

(Added by Stats. 1997, Ch. 606, Sec. 28. Effective October 3, 1997.)

12305.7. The department shall perform all of the following activities:

(a) Beginning in the 2004–05 fiscal year, and in each subsequent fiscal year, the department in consultation with the State Department of Health Care Services and the county welfare departments shall design and conduct an error rate study to estimate the extent of payment and service authorization errors and fraud in the provision of supportive services. The error rate study findings shall be used to prioritize and direct state and county fraud detection and quality improvement efforts. The State Department of Health Care Services shall provide technical assistance and guidance for the error rate studies as requested by the department.

(b) (1) The department and the State Department of Health Care Services shall conduct automated data matches to compare Medi-Cal paid claims and third-party liability data with supportive services paid service hours data to identify potential overpayments, duplicate payments, alternative payment sources for supportive services, and other potential supportive services delivery discrepancies, including but not limited to, receipt of supportive services by a recipient on the same day that other potentially duplicative Medi-Cal services are received. Relevant data match findings shall be transmitted to the counties, or to the appropriate state entity, for action.

(2) The department, in consultation with the county welfare departments and the State Department of Health Care Services, shall determine, define, and issue instructions to the counties describing the roles and responsibilities of the department, the State Department of Health Care Services, and counties for resolving data match discrepancies requiring followup, defining the necessary actions that will be taken to resolve them, and the process for exchange of information pertaining to the findings and disposition of data match discrepancies.

(c) The department shall develop methods for verifying the receipt of supportive services by program recipients. In developing the specified methods the department shall obtain input from program stakeholders as provided in Section 12305.72. The department shall, in consultation with the county welfare departments, also determine, define, and issue instructions describing the roles and responsibilities of the department and the county welfare departments for evaluating and responding to identified problems and discrepancies.

(d) The department shall make available on its internet website the regulations, all-county letters, approved forms, and training curricula developed and officially issued by the department to implement the items described in Section 12305.72. The department shall inform supportive services providers, recipients, and the general public about the availability of these items and of the Medi-Cal toll-free fraud hotline and internet website for reporting suspected fraud or abuse in the provision or receipt of supportive services.

(e) (1) (A) The department, in consultation with counties and in accordance with Section 12305.72, shall develop a standardized curriculum, training materials, and work aids, and operate an ongoing, statewide training program on the supportive services uniformity system. The training shall address, at a minimum, statutes, regulations, and policies related to in-home supportive services and service assessment and authorization, including the functional index ranks and statewide hourly task guidelines.

(B) The department shall develop a one-day refresher training program on service assessment and authorization, including the functional index ranks and statewide hourly task guidelines.

(2) (A) In-Home Supportive Services program case workers, case worker supervisors, program managers, quality assurance staff, and program integrity staff hired after the effective date of the act that added this paragraph shall complete the training developed pursuant to subparagraph (A) of paragraph (1) within six months of being hired.

(B) In-Home Supportive Services program case workers, case worker supervisors, program managers, quality assurance staff, and program integrity staff hired prior to the effective date of the act that added this paragraph who have not taken the training developed pursuant to subparagraph (A) of paragraph (1), or who took the training prior to July 1, 2019, shall take the refresher training program developed pursuant to subparagraph (B) of paragraph (1) by December 31, 2021.

(C) State hearing officers and public authority or nonprofit consortium staff may, but are not required to, attend the training or refresher training developed pursuant to paragraph (1).

(3) Training shall be scheduled and provided at sites throughout the state. The department may obtain a qualified vendor to assist in the development of the training and to conduct the training program. The design of the training program shall provide reasonable flexibility to allow counties to use their preferred training modalities to educate their supportive services staff in this subject matter.

(f) The department shall, in conjunction with the counties, develop protocols and procedures for monitoring county quality assurance programs. The monitoring may include onsite reviews of county quality assurance activities. The focus of the established monitoring protocols and procedures shall include determining the extent to which counties are fulfilling their quality assurance responsibilities and county quality assurance staff are correctly applying the uniformity system in reviewing supportive services cases for consistent, appropriate, and accurate service need assessments. The department and the county welfare departments shall also develop the protocols and procedures under which the department will report its monitoring findings to a county, disagreements over the findings are resolved, to the extent possible, and the county, the State Department of Health Care Services, and the department will follow up on the findings.

(g) The department shall conduct a review of program regulations in effect on the date of enactment of this section and shall revise the regulations as necessary to conform to the statutory changes that have occurred since the regulations were initially promulgated and to conform to federally authorized program changes.

(h) The department, in consultation with the county welfare departments and other stakeholders, as appropriate, shall develop protocols for the implementation of targeted mailings to providers, to convey program integrity concerns.

(Amended by Stats. 2020, Ch. 11, Sec. 72. (AB 79) Effective June 29, 2020.)

12305.71. (a) Counties shall perform the following quality assurance activities:

(1) Establish a dedicated, specialized unit or function to ensure quality assurance and program integrity, including fraud detection and prevention, in the provision of supportive services.

(2) Perform routine, scheduled reviews of supportive services cases, to ensure that caseworkers appropriately apply the supportive services uniformity system and other supportive services rules and policies for assessing recipients' need for services to the end that there are accurate assessments of needs and hours. Counties may consult with state quality assurance staff for technical assistance and shall cooperate with state monitoring of the county's quality assurance activities and findings.

(3) The department and the county welfare departments shall develop policies, procedures, implementation timelines, and instructions under which county quality assurance programs will perform the following activities:

(A) Receiving, resolving, and responding appropriately to claims data match discrepancies or other state level quality assurance and program integrity information that indicates potential overpayments to providers or recipients or third-party liability for supportive services.

(B) Implementing procedures to identify potential sources of third-party liability for supportive services.

(C) Monitoring the delivery of supportive services in the county to detect and prevent potential fraud by providers, recipients, and others and maximize the recovery of overpayments from providers or recipients.

(i) As appropriate, in targeted cases, to protect program integrity, this monitoring may include a visit to the recipient's home to verify the receipt of services.

(ii) The exact date and time of a home visit shall not be announced to the supportive services recipient or provider.

(iii) The department, in consultation with the county welfare departments, shall develop protocols for followup home visits and other actions, if the provider and recipient are not at the recipient's home at the time of the initial home visit. The protocols shall include, at a minimum, all of the following:

(I) Information sent to the recipient's home regarding the goals of the home visit, including the county's objective to maintain program integrity by verifying the receipt of services, the quality of services and consumer well-being, and the potential loss of services if fraud is substantiated.

(II) Additional attempted visits to the recipient's home, pursuant to clause (i).

(III) Followup phone calls to both the recipient and the provider, if necessary.

(D) Informing supportive services providers and recipients, and the public that suspected fraud in the provision or receipt of supportive services can be reported by using the toll-free Medi-Cal fraud telephone hotline and internet website.

(E) In accordance with protocols developed pursuant to subdivision (h) of Section 12305.7, distribute targeted program integrity mailings to providers. The purpose of the targeted program integrity mailings is to inform providers of appropriate program rules and requirements and consequences for failure to adhere to them.

(4) Develop a schedule, beginning July 1, 2005, under which county quality assurance staff shall periodically perform targeted quality assurance studies.

(5) In accordance with protocols developed by the department and county welfare departments, conduct joint case review activities with state quality assurance staff, including random postpayment paid claim reviews to ensure that payments to providers were valid and were associated with existing program recipients; identify, refer to, and work with appropriate agencies in investigation, administrative action, or prosecution of instances of fraud in the provision of supportive services. The protocols shall consider the relative priorities of the activities required pursuant to this section and available resources.

(b) (1) Until December 31, 2020, a county may request, and the department may approve, a reduction of quality assurance and program integrity activities pursuant to this section and Section 12305.7 to address staffing shortages and enable the county to repurpose staff to support critical In-Home Supportive Services administrative functions, including intakes and reassessments. Any reduction pursuant to this subdivision shall be in effect for a period of no more than 12 months, to be determined by the department on a case-by-case basis.

(2) Until December 31, 2020, a county may perform required quality assurance and program integrity activities pursuant to this section and Section 12305.7 remotely using telehealth, including by video conference or telephone, subject to continuing federal approval.

(Amended by Stats. 2020, Ch. 11, Sec. 73. (AB 79) Effective June 29, 2020.)

12305.72. The department shall convene periodic meetings in which supportive services recipients, providers, advocates, IHSS provider representatives, organizations representing recipients, counties, public authorities, nonprofit consortia, and other interested stakeholders may receive information and have the opportunity to provide input to the department regarding the quality assurance, program integrity, and program consistency efforts required by Sections 12305.7 and 12305.71. The program development activities that shall be covered in these meetings shall include, but are not limited to:

(a) Implementation of variable assessment intervals as provided in Section 12301.1.

(b) Development and implementation of statewide hourly supportive services task guidelines as provided in Section 12301.2.

(c) Development and implementation of a standardized medical certification form for protective supervision, as provided for in Section 12301.21.

(d) The development and implementation of statewide training for county staff, as specified in subdivision (e) of Section 12305.7, on various subjects relating to the provision of supportive services including, but not limited to, the uniformity system, variable assessment intervals, statewide hourly task guidelines, and the standardized medical certification form for protective supervision services.

(e) The development and implementation of approaches to verifying receipt of program services by program recipients.

(f) Alternatives to requiring that a full reassessment be completed in order to authorize a temporary increase in supportive services hours following the discharge of a recipient from a medical facility.

(Added by Stats. 2004, Ch. 229, Sec. 47. Effective August 16, 2004.)

12305.8. The following definitions apply for purposes of this article:

(a) "Fraud" means the intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or herself or some other person. Fraud also includes any act that constitutes fraud under applicable federal or state law.

(b) “Overpayment” means the amount paid by the department or the State Department of Health Services to a provider or recipient, which is in excess of the amount for services authorized or furnished pursuant to this article.

(c) Notwithstanding any other provision of law, “health care benefits” includes supportive services, for purposes of subdivision (a) of Section 550 of the Penal Code.

(Added by Stats. 2004, Ch. 229, Sec. 48. Effective August 16, 2004.)

12305.81. (a) Notwithstanding any other law, a person shall not be eligible to provide or receive payment for providing supportive services for 10 years following a conviction for, or incarceration following a conviction for, fraud against a government health care or supportive services program, including Medicare, Medicaid, or services provided under Title V, Title XX, or Title XXI of the federal Social Security Act or a violation of subdivision (a) of Section 273a of the Penal Code, or Section 368 of the Penal Code, or similar violations in another jurisdiction. The department and the State Department of Health Care Services shall develop a provider enrollment form that each person seeking to provide supportive services shall complete, sign under penalty of perjury, and submit to the county. Submission of the form shall include the photocopying by the county of original documentation verifying the provider’s identity, and shall be considered as an application to render services under the Medi-Cal program consistent with subdivision (c) of Section 14043.1. A provider shall submit the form to the county in person, and the county shall retain the form and a copy of the identification documentation in the file of the provider. The form shall contain statements to the following effect:

(1) A person who, in the last 10 years, has been convicted for, or incarcerated following conviction for, fraud against a government health care or supportive services program is not eligible to be enrolled as a provider or to receive payment for providing supportive services.

(2) An individual who, in the last 10 years, has been convicted for, or incarcerated following conviction for, a violation of subdivision (a) of Section 273a of the Penal Code or Section 368 of the Penal Code, or similar violations in another jurisdiction, is not eligible to be enrolled as a provider or to receive payment for providing supportive services.

(3) A statement declaring that the person has not, in the last 10 years, been convicted or incarcerated following conviction for a crime involving fraud against a government health care or supportive services program.

(4) A statement declaring that he or she has not, in the last 10 years, been convicted for, or incarcerated following conviction for, a violation of subdivision (a) of Section 273a of the Penal Code or Section 368 of the Penal Code, or similar violations in another jurisdiction.

(5) The person agrees to reimburse the state for any overpayment paid to the person as determined in accordance with Section 12305.83, and that the amount of any overpayment, individually or in the aggregate, may be deducted from any future warrant to that person for services provided to any recipient of supportive services, as authorized in Section 12305.83.

(b) The department shall include the text of subdivision (a) of Section 273a of the Penal Code and Section 368 of the Penal Code on the provider enrollment form.

(c) A public authority or nonprofit consortium that is notified by the department or the State Department of Health Care Services that a supportive services provider is ineligible to receive payments under this chapter or under Medi-Cal law shall exclude that provider from its registry.

(d) A public authority or nonprofit consortium that determines that a registry provider is not eligible to provide supportive services based on the requirements of subdivision (a) shall report that finding to the department.

(Amended by Stats. 2009, 4th Ex. Sess., Ch. 4, Sec. 27. Effective July 28, 2009.)

12305.82. (a) In addition to its existing authority under the Medi-Cal program, the State Department of Health Care Services shall have the authority to investigate fraud in the provision or receipt of in-home supportive services. Counties shall also have the authority to investigate fraud in the provision or receipt of in-home supportive services pursuant to the protocols developed in subdivision (b). The department, the State Department of Health Care Services, and counties, including county quality assurance staff, shall work together as appropriate to coordinate activities to detect and prevent fraud by in-home supportive services providers and recipients in accordance with federal and state laws and regulations, including applicable due process requirements, to take appropriate administrative action relating to suspected fraud in the provision or receipt of in-home supportive services, and to refer suspected criminal offenses to appropriate law enforcement agencies for prosecution.

(b) (1) The department, in consultation with county welfare directors and other stakeholders, as appropriate, shall develop uniform statewide protocols for acceptable activities to be performed and acceptable measures to be taken by the department, the State Department of Health Care Services, and the counties for purposes of fraud prevention.

(2) The State Department of Health Care Services, the department, and the county may share data with each other as necessary to prevent fraud and investigate suspected fraud pursuant to this section. The information shall only be used for purposes of preventing and investigating suspected fraud in the In-Home Supportive Services program, and shall otherwise remain confidential.

(c) If the State Department of Health Care Services concludes that there is reliable evidence that a provider or recipient of supportive services has engaged in fraud in connection with the provision or receipt of in-home supportive services, the State Department of Health Care Services shall notify the department, the county, and the county's public authority or nonprofit consortium, if any, of that conclusion.

(d) If a county concludes that there is reliable evidence that a supportive services provider or recipient has engaged in fraud in connection with the provision or receipt of in-home supportive services, the county shall notify the department and the State Department of Health Care Services of that conclusion.

(e) Notwithstanding any other provision of law, a county may investigate suspected fraud in connection with the provision or receipt of supportive services, with respect to an overpayment of five hundred dollars ($500) or less.

(f) The failure of a provider or a recipient to comply with program requirements may result in termination of his or her participation in the In-Home Supportive Services program, subject to all applicable federal and state due process requirements.

(Amended by Stats. 2009, 4th Ex. Sess., Ch. 17, Sec. 9. (AB 19 4x) Effective October 23, 2009.)

12305.83. (a) When it has been determined that a provider of supportive services participating under this chapter has received an overpayment that is a debt due and owing, as defined in subdivision (g) of Section 14043.1, the director or the county may, to the extent permissible under existing labor laws, recover the overpayment by offset against any amount currently due to a provider under the provisions of this chapter, Chapter 7 (commencing with Section 14000) or Chapter 8 (commencing with Section 14200) or by means of a repayment agreement executed between the provider and the director or the county, or by filing a civil action.

(b) The department, in consultation with the entities listed in Section 12305.72, shall identify, define, and develop policies, procedures, and applicable due process requirements under which overpayments to supportive services providers will be identified and recovered.

(c) If it is determined that an overpayment to a supportive services provider has occurred the county shall:

(1) Take all appropriate actions to recover the full amount of the overpayment by any combination of the following actions:

(A) Offsetting the overpayment from any future warrants to that provider for services provided to any recipient of services pursuant to subdivision (d).

(B) Entering into a negotiated repayment agreement.

(C) Filing a civil court action.

(2) If the overpayment was determined to have occurred as a result of fraud on the part of the supportive services provider, take all appropriate actions to suspend or exclude the provider as an enrolled provider and to prevent in the future any further payment of state or federal funds to the provider for up to 10 years following the conviction or the term of incarceration following the conviction for fraud.

(d) If the overpayment described in this section was determined to be the result of fraud, the full amount of the overpayment may be offset, in total, from any future warrants, as described in paragraph (1) of subdivision (c). If the overpayment is not determined to be the result of fraud the offset shall be limited to either of the following:

(1) The amounts provided for in a repayment agreement negotiated with the provider.

(2) No more than 5 percent of each warrant, for errors caused by the government and no more than 10 percent of each warrant, for errors resulting for any other reason, until the full or negotiated amount is recovered.

(Added by Stats. 2004, Ch. 229, Sec. 51. Effective August 16, 2004.)

12305.84. (a) Upon enactment of this section, the department shall convene a stakeholder group and begin a process with this group to develop and issue a report evaluating the implementation of the quality assurance and fraud prevention and detection activities enacted from 2004 to the present. The department shall include and collaborate with the State Department of Health Care Services, the California State Association of Counties, the County Welfare Directors Association, and stakeholders representing consumers and providers.

(b) The department shall provide this report to the Legislature on or before December 31, 2010.

(c) The stakeholder group shall:

(1) Review the annual error reports issued and state-level quality assurance activities to date required by Section 12305.7 and review and evaluate the implementation of county quality assurance activities required by Section 12305.71, including a review of the number of instances, amounts, and causes of overpayments and underpayments identified by quality assurance activity at the state and county level from enactment to date.

(2) Review information available regarding prevention and early detection of fraud, the latter as defined by Section 12305.81.

(3) Collect and review information regarding referrals of suspected fraud to the State Department of Health Care Services pursuant to Section 12305.82, and subsequent investigative efforts, including cost-benefit information regarding these efforts, as well as the number of fraud cases handled locally.

(4) Collect and review information regarding final convictions for fraud, including all of the following:

(A) The amount of funds involved in the conviction.

(B) The basis of the fraud conviction, including whether it involved services not provided or falsified consumers or providers, or both.

(C) Aggregate information regarding the number and source of individuals responsible, including, but not limited to, state employees, IHSS providers, consumers, county workers, or others.

(5) Provide recommendations on options for preventing errors and fraud for both the state and county levels, and recommendations for early detection strategies to combat fraud in the program.

(Added by Stats. 2009, 4th Ex. Sess., Ch. 4, Sec. 28. Effective July 28, 2009.)

12305.86. (a) Effective October 1, 2009, a county shall investigate the background of a person who seeks to become a supportive services provider and who is not listed on the registry of a public authority or nonprofit consortium pursuant to Section 12301.6. This investigation shall include criminal background checks conducted by the Department of Justice pursuant to Section 15660.

(b) No later than July 1, 2010, the county shall complete a criminal background check pursuant to subdivision (a) for a provider who is providing in-home supportive services prior to October 1, 2009, and who is not listed on a public authority or nonprofit consortium registry, as a condition of the provider's continued enrollment in the IHSS program. Criminal background checks shall be conducted at the provider's expense.

(c) (1) Upon notice from the Department of Justice that a prospective or current provider has been convicted of a criminal offense specified in Section 12305.81, the county shall deny or terminate the applicant's request to become a provider of supportive services to any recipient of the In-Home Supportive Services program.

(2) Commencing 90 days after the effective date of the act that adds Section 12305.87, and upon notice from the Department of Justice that an applicant who is subject to the provisions of that section has been convicted of, or incarcerated following conviction for, an offense described in subdivision (b) of that section, the county shall deny the applicant's request to become a provider of supportive services to any recipient of in-home supportive services, subject to the individual waiver and exception processes described in that section. An applicant who is denied on the basis of Section 12305.87 shall be informed by the county of the individual waiver and exception processes described in that section.

(3) Notwithstanding any other law, the county shall provide an individual with a copy of his or her state-level criminal offender record information search response as provided to the county by the Department of Justice if the individual has been denied eligibility to provide supportive services to any recipient of the In-Home Supportive Services program based on this information. The copy of the state-level criminal offender record information search response shall be included with the individual's notice of denial. Along with the notice of denial, the county shall also provide information in plain language on how an individual may contest the accuracy and completeness of, and refute any erroneous or inaccurate information in, his or her state-level criminal offender record information search response as provided by the Department of Justice as authorized by Section 11126 of the Penal Code. The state-level criminal offender record information search response shall not be modified or altered from its form or content as provided by the Department of Justice.

(4) The department shall develop a written appeal process for the current and prospective providers who are determined ineligible to receive payment for the provision of services under the In-Home Supportive Services program. Notwithstanding any other law, the county shall provide the department with a copy of the state-level criminal offender record information search response as provided to the county by the Department of Justice for any individual who has requested an appeal based upon a denial of eligibility to provide supportive services to any recipient of the In-Home Supportive Services program pursuant to Sections

12305.81 and 12305.87. The state-level criminal offender record information search response shall not be modified or altered from its form or content as provided by the Department of Justice.

(d) This section shall not be construed to prohibit the Department of Justice from assessing a fee pursuant to Section 11105 or 11123 of the Penal Code to cover the cost of furnishing summary criminal history information.

(e) A county authorized to secure a criminal background check clearance pursuant to this section shall accept a clearance for an individual described in subdivision (a) or (b) who has been deemed eligible by another nonprofit consortium, public authority, or county with criminal background check authority pursuant to either Section 12301.6 or this section, to receive payment for providing services pursuant to this article. Existence of a clearance shall be determined by verification through the case management, information, and payrolling system, that another county, nonprofit consortium, or public authority with criminal background check authority pursuant to Section 12301.6 or this section has deemed the current or prospective provider to be eligible to receive payment for providing services pursuant to this article.

(f) The department shall seek federal financial participation, to the extent possible, to cover any costs associated with this section.

(Amended by Stats. 2011, Ch. 649, Sec. 5. (SB 930) Effective January 1, 2012.)

12305.87. (a) (1) Commencing 90 days following the effective date of the act that adds this section, a person specified in paragraph (2) shall be subject to the criminal conviction exclusions provided for in this section, in addition to the exclusions required under Section 12305.81.

(2) This section shall apply to a person who satisfies either of the following conditions:

(A) He or she is a new applicant to provide services under this article.

(B) He or she is an applicant to provide services under this article whose application has been denied on the basis of a conviction and for whom an appeal of that denial is pending.

(b) Subject to subdivisions (c), (d), and (e), an applicant subject to this section shall not be eligible to provide or receive payment for providing supportive services for 10 years following a conviction for, or incarceration following a conviction for, any of the following:

(1) A violent or serious felony, as specified in subdivision (c) of Section 667.5 of the Penal Code and subdivision (c) of Section 1192.7 of the Penal Code.

(2) A felony offense for which a person is required to register under subdivision (c) of Section 290 of the Penal Code. For purposes of this paragraph, the 10-year time period specified in this section shall commence with the date of conviction for, or incarceration following a conviction for, the underlying offense, and not the date of registration.

(3) A felony offense described in paragraph (2) of subdivision (c) or paragraph (2) of subdivision (g) of Section 10980.

(c) Notwithstanding subdivision (b), an application shall not be denied under this section if the applicant has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or if the information or accusation against him or her has been dismissed pursuant to Section 1203.4 of the Penal Code.

(d) (1) Notwithstanding subdivision (b), a recipient of services under this article who wishes to employ a provider applicant who has been convicted of an offense specified in subdivision (b) may submit to the county an individual waiver of the exclusion provided for in this section. This paragraph shall not be construed to allow a recipient to submit an individual waiver with respect to a conviction or convictions for offenses specified in Section 12305.81.

(2) The county shall notify a recipient who wishes to hire a person who is applying to be a provider and who has been convicted of an offense subject to exclusion under this section of that applicant's relevant criminal offense convictions that are covered by subdivision (b). The notice shall include both of the following:

(A) A summary explanation of the exclusions created by subdivision (b), as well as the applicable waiver process described in this subdivision and the process for an applicant to seek a general exception, as described in subdivision (e). This summary explanation shall be developed by the department for use by all counties.

(B) An individual waiver form, which shall also be developed by the department and used by all counties. The waiver form shall include both of the following:

(i) A space for the county to include a reference to any Penal Code sections and corresponding offense names or descriptions that describe the relevant conviction or convictions that are covered by subdivision (b) and that the provider applicant has in his or her background.

(ii) A statement that the service recipient, or his or her authorized representative, if applicable, is aware of the applicant's conviction or convictions and agrees to waive application of this section and employ the applicant as a provider of services under this article.

(3) To ensure that the initial summary explanation referenced in this subdivision is comprehensible for recipients and provider applicants, the department shall consult with representatives of county welfare departments and advocates for, or representatives of, recipients and providers in developing the summary explanation and offense descriptions.

(4) The individual waiver form shall be signed by the recipient, or by the recipient's authorized representative, if applicable, and returned to the county welfare department by mail or in person. Except for a parent, guardian, or person having legal custody of a minor recipient, a conservator of an adult recipient, or a spouse or registered domestic partner of a recipient, a provider applicant shall not sign his or her own individual waiver form as the recipient's authorized representative. The county shall retain the waiver form and a copy of the provider applicant's criminal offense record information search response until the date that the convictions that are the subject of the waiver request are no longer within the 10-year period specified in subdivision (b).

(5) An individual waiver submitted pursuant to this subdivision shall entitle a recipient to hire a provider applicant who otherwise meets all applicable enrollment requirements for the In-Home Supportive Services program. A provider hired pursuant to an individual waiver may be employed only by the recipient who requested that waiver, and the waiver shall only be valid with respect to convictions that are specified in that waiver. A new waiver shall be required if the provider is subsequently convicted of an offense to which this section otherwise would apply. A provider who wishes to be listed on a provider registry or to provide supportive services to a recipient who has not requested an individual waiver shall be required to apply for a general exception, as provided for in subdivision (e).

(6) Nothing in this section shall preclude a provider who is eligible to receive payment for services provided pursuant to an individual waiver under this subdivision from being eligible to receive payment for services provided to one or more additional recipients who obtain waivers pursuant to this same subdivision.

(7) The state and a county shall be immune from any liability resulting from granting an individual waiver under this subdivision.

(e) (1) Notwithstanding subdivision (b), an applicant who has been convicted of an offense identified in subdivision (b) may seek from the department a general exception to the exclusion provided for in this section.

(2) Upon receipt of a general exception request, the department shall request a copy of the applicant's criminal offender record information search response from the applicable county welfare department, public authority, or nonprofit consortium. Notwithstanding any other provision of law, the county, public authority, or nonprofit consortium shall provide a copy of the criminal offender record information search response, as provided to the county, public authority, or nonprofit consortium by the Department of Justice, to the department. The county, public authority, or nonprofit consortium shall provide this information in a manner that protects the confidentiality and privacy of the criminal offender record information search response. The state or federal criminal history record information search response shall not be modified or altered from its form or content as provided by the Department of Justice.

(3) The department shall consider the following factors when determining whether to grant a general exception under this subdivision:

(A) The nature and seriousness of the conduct or crime under consideration and its relationship to employment duties and responsibilities.

(B) The person's activities since conviction, including, but not limited to, employment or participation in therapy education, or community service, that would indicate changed behavior.

(C) The number of convictions and the time that has elapsed since the conviction or convictions.

(D) The extent to which the person has complied with any terms of parole, probation, restitution, or any other sanction lawfully imposed against the person.

(E) Any evidence of rehabilitation, including character references, submitted by the person, or by others on the person's behalf.

(F) Employment history and current or former employer recommendations. Additional consideration shall be given to employer recommendations provided by a person who has received or has indicated a desire to receive supportive or personal care services from the applicant, including, but not limited to, those services, specified in Section 12300.

(G) Circumstances surrounding the commission of the offense that would demonstrate the unlikelihood of repetition.

(H) The granting by the Governor of a full and unconditional pardon.

(f) If the department makes a determination to deny an application to provide services pursuant to a request for a general exception, the department shall notify the applicant of this determination by either personal service or registered mail. The notice shall include the following information:

(1) A statement of the department's reasons for the denial that evaluates evidence of rehabilitation submitted by the applicant, if any, and that specifically addresses any evidence submitted relating to the factors in paragraph (3) of subdivision (e).

(2) A copy of the applicant's criminal offender record information search response, even if the applicant already has received a copy pursuant to Section 12301.6 or 12305.86. The department shall provide this information in a manner that protects the confidentiality and privacy of the criminal offender record information search response.

(A) The state or federal criminal history record shall not be modified or altered from its form or content as provided by the Department of Justice.

(B) The department shall retain a copy of each individual's criminal offender record information search response until the date that the convictions that are the subject of the exception are no longer within the 10-year period specified in subdivision (b), and shall record the date the copy of the response was provided to the individual and the department.

(C) The criminal offender record information search response shall not be made available by the department to any individual other than the provider applicant.

(g) (1) Upon written notification that the department has determined that a request for exception shall be denied, the applicant may request an administrative hearing by submitting a written request to the department within 15 business days of receipt of the written notification. Upon receipt of a written request, the department shall hold an administrative hearing consistent with the procedures specified in Section 100171 of the Health and Safety Code, except where those procedures are inconsistent with this section.

(2) A hearing under this subdivision shall be conducted by a hearing officer or administrative law judge designated by the director. A written decision shall be sent by certified mail to the applicant.

(h) The department shall revise the provider enrollment form developed pursuant to Section 12305.81 to include both of the following:

(1) The text of subdivision (c) of Section 290 of the Penal Code, subdivision (c) of Section 667.5 of the Penal Code, subdivision (c) of Section 1192.7 of the Penal Code, and paragraph (2) of subdivisions (c) and (g) of Section 10980.

(2) A statement that the provider understands that if he or she has been convicted, or incarcerated following conviction for, any of the crimes specified in the provisions identified in paragraph (b) in the last 10 years, and has not received a certificate of rehabilitation or had the information or accusation dismissed, as provided in subdivision (c), he or she shall only be authorized to receive payment for providing in-home supportive services under an individual waiver or general exception as described in this section, and upon meeting all other applicable criteria for enrollment as a provider in the program.

(i) (1) Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the department may implement and administer this section through all-county letters or similar instructions from the department until regulations are adopted. The department shall adopt emergency regulations implementing these provisions no later than July 1, 2011. The department may readopt any emergency regulation authorized by this section that is the same as or substantially equivalent to an emergency regulation previously adopted under this section.

(2) The initial adoption of emergency regulations pursuant to this section and one readoption of emergency regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare. Initial emergency regulations and the one readoption of emergency regulations authorized by this section shall be exempt from review by the Office of Administrative Law. The initial emergency regulations and the one readoption of emergency regulations authorized by this section shall be submitted to the Office of Administrative Law for filing with the Secretary of State and each shall remain in effect for no more than 180 days, by which time final regulations may be adopted.

(j) In developing the individual waiver form and all-county letters or information notices or similar instructions, the department shall consult with stakeholders, including, but not limited to, representatives of the county welfare departments, and representatives of consumers and providers. The consultation shall include at least one in-person meeting prior to the finalization of the individual waiver form and all-county letters or information notices or similar instructions.

(Amended by Stats. 2012, Ch. 47, Sec. 35. (SB 1041) Effective June 27, 2012.)

12306. (a) When enacted, 1991 Realignment Legislation implemented changes to the state and county cost-sharing ratios for services provided under this article. These provisions established the counties' share of costs for the nonfederal portion of these services at 35 percent, with the state responsible for the remaining 65 percent of these costs. This cost-sharing ratio was the basis for determining the counties' and the state's share of costs for these services in the 2017–18 fiscal year.

(b) Beginning in the 2017–18 fiscal year and each fiscal year thereafter, the state and counties shall share the annual cost of providing services under this article as specified in this section.

(c) The county share of cost of providing these services shall be the County IHSS Maintenance of Effort pursuant to Section 12306.16.

(d) (1) Except as provided in paragraph (2), the state shall pay to each county, from the General Fund and any federal funds received under Title XX of the federal Social Security Act available for that purpose, the difference between the actual total cost of providing services under this article that exceeds the county share as specified in subdivision (c).

(2) For services eligible for federal funding pursuant to Title XIX of the federal Social Security Act under the Medi-Cal program, the state shall pay to each county, from the General Fund and any funds available for that purpose the difference between the actual nonfederal cost of providing services under this article that exceeds the county share as specified in subdivision (c).

(Repealed and added by Stats. 2017, Ch. 25, Sec. 21. (SB 90) Effective June 27, 2017.)

12306.1. (a) When any increase in provider wages or benefits is locally negotiated, mediated, or imposed by a county, public authority, or nonprofit consortium, or any increase in provider wages or benefits is adopted by ordinance pursuant to Article 1 (commencing with Section 9100) of Chapter 2 of Division 9 of the Elections Code, then the county shall use county-only funds to fund both the county share and the state share, including employment taxes, of any increase in the cost of the program, unless otherwise provided for in the annual Budget Act or appropriated by statute. No increase in wages or benefits locally negotiated, mediated, imposed, or adopted by ordinance pursuant to this section, and no increase in the public authority administrative rate, shall take effect unless and until, prior to its implementation, the increase is reviewed and determined to be in compliance with state law and the department has obtained the approval of the State Department of Health Care Services for the increase pursuant to a determination that it is consistent with federal law and to ensure federal financial participation for the services under Title XIX of the federal Social Security Act, and unless and until all of the following conditions have been met:

(1) Each county has provided the department with documentation of the approval of the county board of supervisors of the proposed public authority or nonprofit consortium rate, including wages and related expenditures. The documentation shall be received by the department before the department and the State Department of Health Care Services may approve the rate increase.

(2) Each county has met department guidelines and regulatory requirements as a condition of receiving state participation in the rate.

(b) Any rate approved pursuant to subdivision (a) shall take effect commencing on the first day of the month subsequent to the month in which final approval is received from the department. The department may grant approval on a conditional basis, subject to the availability of funding.

(c) The state shall pay 65 percent, and each county shall pay 35 percent, of the nonfederal share of wage and benefit increases pursuant to subdivision (a) and associated employment taxes, only in accordance with subdivision (d).

(d) (1) The state shall participate in a total of wages and individual health benefits up to twelve dollars and ten cents ($12.10) per hour until the amount specified in paragraph (1) of subdivision (b) of Section 1182.12 of the Labor Code reaches twelve dollars ($12) per hour at which point the state shall participate as provided in paragraph (2).

(2) For any increase in wages or individual health benefits locally negotiated, mediated, or imposed by a county, public authority, or nonprofit consortium, and the rate increase is approved by the department, or any increase in provider wages or benefits adopted by ordinance pursuant to Article 1 (commencing with Section 9100) of Chapter 2 of Division 9 of the Elections Code, the state shall participate as provided in subdivision (c) in a total of wages and individual health benefits up to one dollar and ten cents ($1.10) per hour above the amount per hour specified for the corresponding year in paragraph (1) of subdivision (b) of, subdivision (c) of, and subdivision (d) of, Section 1182.12 of the Labor Code.

(3) (A) For a county that is at or above twelve dollars and ten cents ($12.10) per hour in combined wages and individual health benefits, the state shall participate as provided in subdivision (c) in a cumulative total of up to 10 percent within a three-year period in the sum of the combined total of changes in wages or individual health benefits, or both.

(B) The state shall participate as provided in subparagraph (A) for no more than two three-year periods that commence prior to the date that the minimum wage reaches the amount specified in subparagraph (F) of paragraph (1) of subdivision (b) of Section 1182.12 of the Labor Code, and no more than two three-year periods that commence on or after the date that the minimum wage reaches the amount specified in subparagraph (F) of paragraph (1) of subdivision (b) of Section 1182.12 of the Labor Code, after which point the county shall pay the entire nonfederal share of any future increases in wages and individual health benefits that exceed the amount specified in paragraphs (1) and (2).

(C) A three-year period is defined as three consecutive years. A new three-year period can only begin after the last year of the previous three-year period.

(4) Paragraphs (2) and (3) do not apply to contracts executed, or to increases in wages or individual health benefits, locally negotiated, mediated, imposed, or adopted by ordinance, prior to July 1, 2017.

(Amended by Stats. 2021, Ch. 85, Sec. 56. (AB 135) Effective July 16, 2021.)

12306.16. (a) Commencing July 1, 2017, all counties shall have a County IHSS Maintenance of Effort (MOE).

(b) (1) (A) The statewide total County IHSS MOE base for the 2017–18 fiscal year shall be established at one billion seven hundred sixty-nine million four hundred forty-three thousand dollars ($1,769,443,000). This amount reflects the estimated county share of IHSS program base costs calculated pursuant to Sections 10101.1 and 12306, as those sections read on June 1, 2017, and reflected in the department's 2017 May Revision local assistance subvention table for the 2017–18 fiscal year.

(B) If actual IHSS program base costs, as determined by the Department of Finance on or before May 14, 2018, attributable to the 2017–18 fiscal year are lower than the costs assumed in the 2017 May Revision local assistance subvention table, the statewide total County IHSS MOE base for the 2017–18 fiscal year shall be adjusted accordingly pursuant to Sections 10101.1 and 12306, as those sections read on June 1, 2017.

(2) The Department of Finance shall consult with the California State Association of Counties to determine each county's share of the statewide total County IHSS MOE base amount. The County IHSS MOE base shall be unique to each individual county.

(3) (A) Administration expenditures are included in the County IHSS MOE and shall include both county administration, including costs associated with the IHSS case management, information, and payrolling system, and public authority administration.

(B) The amount of General Fund moneys available for county administration and public authority administration is limited to the amount of General Fund moneys appropriated for those specific purposes in the annual Budget Act, and increases to this amount do not impact the County IHSS MOE.

(C) To be eligible to receive its share of General Fund moneys appropriated in a fiscal year for county administration and public authority administration costs, the county is only required to expend the full amount of its County IHSS MOE that is attributable to county and public authority administration for that fiscal year and no additional county share of cost shall be required. The department shall consult with the California State Association of Counties to determine the county-by-county distribution of the amount of General Fund moneys appropriated in the annual Budget Act for county administration and public authority administration.

(D) Amounts expended by a county or public authority on administration in excess of the amount described in subparagraphs (A) and (B) shall not be attributed towards the county meeting its County IHSS MOE requirement.

(E) As part of the preparation of the 2018–19 Governor's Budget, the department shall work with the California State Association of Counties, County Welfare Directors Association of California, and the Department of Finance to examine the workload and budget assumptions related to administration of the IHSS program for the 2017–18 and 2018–19 fiscal years.

(c) (1) On July 1, 2018, the County IHSS MOE base as specified in subdivision (b) shall be adjusted by an inflation factor of 5 percent.

(2) Beginning on July 1, 2019, and annually thereafter, the County IHSS MOE from the previous year shall be adjusted by an inflation factor of 7 percent.

(3) (A) Notwithstanding paragraphs (1) and (2), in fiscal years in which the total of 1991 realignment revenues received pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code for the prior fiscal year is less than the total received for the next prior fiscal year, the inflation factor shall be zero.

(B) Notwithstanding paragraphs (1) and (2), in fiscal years in which the total of 1991 realignment revenues received pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code for the prior fiscal year is equal to or up to 2 percent greater than the total received for the next prior fiscal year, the inflation factor shall be one-half of the amount specified in either paragraph (1) or (2).

(C) The Department of Finance shall provide notification to the appropriate fiscal committees of the Legislature and the California State Association of Counties by May 14 of each year of the inflation factor that will apply for the following fiscal year, based on the calculation in subparagraph (A) and (B).

(d) In addition to the adjustment in subdivision (c), the County IHSS MOE shall be adjusted for the annualized cost of increases in provider wages or health benefits that are locally negotiated, mediated, or imposed, on or after July 1, 2017, including any increases in provider wages or health benefits adopted by ordinance pursuant to Article 1 (commencing with Section 9100) of Chapter 2 of Division 9 of the Elections Code.

(1) (A) If the department approves an increase in provider wages or health benefits that are locally negotiated, mediated, imposed, or adopted by ordinance pursuant to Section 12306.1, the state shall pay 65 percent, and the affected county shall pay 35 percent, of the nonfederal share of the cost increase in accordance with subparagraph (B).

(B) With respect to any increase in provider wages or health benefits approved on or after July 1, 2017, pursuant to subparagraph (A), the state shall participate in that increase as provided in subparagraph (A) up to the amount specified in paragraphs (1), (2), and (3) of subdivision (d) of Section 12306.1. The county shall pay the entire nonfederal share of any cost increase exceeding the amount specified in paragraphs (1), (2), and (3) of subdivision (d) of Section 12306.1.

(C) With respect to an increase in benefits, other than individual health benefits, locally negotiated, mediated, or imposed by a county, public authority, or nonprofit consortium, or adopted by ordinance, the county's County IHSS MOE shall include a one-time adjustment equal to 35 percent of the nonfederal share of the increased benefit costs.

(D) The county share of increased expenditures pursuant to subparagraphs (A) to (C), inclusive, shall be included in the County IHSS MOE, in addition to the amount established under subdivisions (b) and (c). For any increase in provider wages or health benefits, or increase in other benefits pursuant to subparagraph (C), that becomes effective on a date other than July 1, the Department of Finance shall adjust the county's County IHSS MOE to reflect the annualized cost of the county's share of the nonfederal cost of the wage or health benefit increase. This adjustment shall be calculated based on the county's 2017–18 paid IHSS hours and the appropriate cost-sharing ratio as grown by the applicable number of inflation factors pursuant to subdivision (c) that have occurred up to and including the fiscal year in which the increase becomes effective.

(2) (A) If the department does not approve the increase in provider wages or health benefits, or increase in other benefits pursuant to subparagraph (C) of paragraph (1), that are locally negotiated, mediated, imposed, or adopted by ordinance pursuant to Section 12306.1 or paragraph (3), the county shall pay the entire nonfederal share of the cost increases.

(B) The county share of increased expenditures pursuant to subparagraph (A) shall be included in the County IHSS MOE, in addition to the amount established under subdivisions (b) and (c). For any increase in provider wages or health benefits that becomes effective on a date other than July 1, the Department of Finance shall adjust the county's County IHSS MOE to reflect the annualized cost of the county's share of the nonfederal cost of the wage or health benefit increase. This adjustment shall be calculated based on the county's 2017–18 paid IHSS hours and the appropriate county sharing ratio as grown by the appropriate number of applicable inflation factors pursuant to subdivision (c) that have occurred up to and including the fiscal year in which the increase becomes effective.

(3) In addition to the rate approval requirements specified in subdivisions (a) to (c), inclusive, of Section 12306.1, it shall be presumed by the department that rates and other economic terms that are locally negotiated, mediated, imposed, or adopted by ordinance are approved.

(4) (A) With respect to any rate increases to existing contracts that a county has already entered into pursuant to Section 12302, the state shall pay 65 percent, and the affected county shall pay 35 percent, of the nonfederal share of the amount of the rate increase up to the maximum amounts established pursuant to Sections 12302.1 and 12303. The county shall pay the entire nonfederal share of any portion of the rate increase exceeding the maximum amount established pursuant to Sections 12302.1 and 12303. This adjustment shall be calculated based on the county's 2017–18 paid IHSS contract hours, or the paid contract hours in the fiscal year in which the contract becomes effective if the contract becomes effective on or after July 1, 2017, using the appropriate cost-sharing ratio as grown by the applicable number of inflation factors pursuant to subdivision (c) that have occurred up to and including the fiscal year in which the increase becomes effective.

(B) With respect to rates for new contracts entered into by a county pursuant to Section 12302 on or after July 1, 2017, the state shall pay 65 percent, and the affected county shall pay 35 percent, of the nonfederal share of the difference between the locally negotiated, mediated, imposed, or adopted by ordinance, provider wage and the contract rate for all of the hours of service to IHSS recipients to be provided under the contract up to the maximum amounts established pursuant to Sections 12302.1 and 12303. The county shall pay the entire nonfederal share of any portion of the contract rate exceeding the maximum amount established pursuant to Sections 12302.1 and 12303. This adjustment shall be calculated based on the county's paid contract hours in the fiscal year in which the contract becomes effective using the appropriate cost-sharing ratio.

(C) The county share of these expenditures shall be included in the County IHSS MOE, in addition to the amounts established under subdivisions (b) and (c). For any rate increases for existing contracts or rates for new contracts, entered into by a county pursuant to Section 12302 on or after July 1, 2017, that become effective on a date other than July 1, the Department of

Finance shall adjust the county's County IHSS MOE to reflect the annualized cost of the county's share of the nonfederal cost of the increase or rate for new contracts. This adjustment shall be calculated as follows:

(i) For a contract described in subparagraph (A), the first-year cost of the amount of the rate increase calculated using the pro rata share of the number of hours of service provided in the contract for the fiscal year in which the increase became effective.

(ii) For a contract described in subparagraph (B), the first-year cost of the difference between the locally negotiated, mediated, imposed, or adopted by ordinance, provider wage and the contract rate for all of the hours of service to IHSS recipients calculated using the pro rata share of the number of hours of service provided in the contract for the fiscal year in which the contract became effective.

(5) In the event the state ceases to receive enhanced federal financial participation for the provision of services pursuant to Section 1915(k) of the federal Social Security Act (42 U.S.C. Sec. 1396n(k)), the County IHSS MOE shall be adjusted one time to reflect a 35-percent share of the enhanced federal financial participation that would have been received pursuant to Section 1915(k) of the federal Social Security Act (42 U.S.C. Sec. 1396n(k)) for the fiscal year in which the state ceases to receive the enhanced federal financial participation.

(6) The County IHSS MOE shall not be adjusted for increases in individual provider wages that are locally negotiated pursuant to subdivision (a) of, and paragraphs (1) and (2) of subdivision (d) of, Section 12306.1 when the increase has been specifically negotiated to take effect at the same time as, and to be the same amount as, state minimum wage increases.

(7) (A) A county may negotiate a wage supplement.

(i) The wage supplement shall be in addition to the highest wage rate paid in the county since June 30, 2017.

(ii) The first time the wage supplement is applied, the county's County IHSS MOE shall include a one-time adjustment by the amount of the increased cost resulting from the supplement, as specified in paragraph (1).

(B) A wage supplement negotiated pursuant to subparagraph (A) shall subsequently be applied to the minimum wage when the minimum wage increase is equal to or exceeds the county wage paid without inclusion of the wage supplement and the increase to the county wage paid takes effect at the same time as the minimum wage increase.

(C) For any changes to provider wages or health benefits locally negotiated, mediated, or imposed by a county, public authority, or nonprofit consortium, for which a rate change request was submitted to the department prior to January 1, 2018, for review, clause (i) of subparagraph (A) and subparagraph (B) shall not apply. A wage supplement subject to this subparagraph shall subsequently be applied to the minimum wage when the minimum wage is equal to or exceeds the county individual provider wage including the wage supplement.

(8) The Department of Finance shall consult with the California State Association of Counties to develop the computations for the annualized amounts pursuant to this subdivision.

(e) The County IHSS MOE shall only be adjusted pursuant to subdivisions (c) and (d).

(f) A county's County IHSS MOE costs paid to the state shall be reduced by the amount of any General Fund offset provided to the county pursuant to Section 12306.17.

(g) This section shall become inoperative on July 1, 2019.

(Amended by Stats. 2019, Ch. 27, Sec. 78. (SB 80) Effective June 27, 2019. Section inoperative as of July 1, 2019, by its own provisions. See later operative version amended by Stats. 2025, Ch. 7.)

12306.16. (a) Commencing July 1, 2019, all counties shall have a rebased County IHSS Maintenance of Effort (MOE).

(b) (1) The statewide total rebased County IHSS MOE base for the 2019–20 fiscal year shall be established at one billion five hundred sixty-three million two hundred eighty-two thousand dollars ($1,563,282,000).

(2) The Department of Finance shall consult with the department and the California State Association of Counties to determine each county's share of the statewide total rebased County IHSS MOE base amount. The rebased County IHSS MOE base shall be unique to each individual county.

(3) (A) The amount of General Fund moneys available for county administration and public authority administration is limited to the amount of General Fund moneys appropriated for those specific purposes in the annual Budget Act, and increases to this amount do not impact the rebased County IHSS MOE.

(B) The state shall pay 100 percent of the allowable nonfederal share of county administration and public authority administration costs for each county. Once the county's share of the appropriated General Fund moneys is exhausted, the county shall pay 100 percent of the remaining nonfederal share of county administration and public authority administration costs. Each county shall pay 100 percent of any costs for public authority administration that are in excess of the county's approved rate approved pursuant to subdivision (a) of Section 12306.1. At the end of the fiscal year, any remaining unspent General Fund moneys allocated for IHSS county administration or public authority administration shall be redistributed through a methodology determined in conjunction with the County Welfare Directors Association of California or the California Association of Public Authorities.

(C) Amounts expended by a county or public authority on administration in excess of the amount described in subparagraphs (A) and (B) shall not be attributed towards the county meeting its rebased County IHSS MOE requirement.

(D) The department shall consult with the California State Association of Counties, the County Welfare Directors Association of California, and the California Association of Public Authorities to determine the county-by-county distribution of the amount of General Fund moneys appropriated in the annual Budget Act for county administration and public authority administration.

(c) Beginning on July 1, 2020, and annually thereafter, the rebased County IHSS MOE from the previous year shall be adjusted by an inflation factor of 4 percent.

(d) In addition to the adjustment in subdivision (c), the rebased County IHSS MOE shall be adjusted for the annualized cost of increases in provider wages, health benefits, or other benefits that are locally negotiated, mediated, or imposed, on or after July 1, 2019, including any increases in provider wages, health benefits, or other benefits adopted by ordinance pursuant to Article 1 (commencing with Section 9100) of Chapter 2 of Division 9 of the Elections Code or any future increases resulting from the same, including increases to health benefit premiums. For health benefit premium increases only, for any memorandum of understanding or collective bargaining agreement between the recognized employee organization and the county, public authority, or nonprofit consortium, executed or extended and submitted to the department for approval prior to July 1, 2019, through the end date, as specified in the memorandum of understanding or collective bargaining agreement described in this subdivision, the state shall cover 100 percent of the nonfederal share of health benefit premium increases, and there shall not be an adjustment to the rebased County IHSS MOE.

(1) (A) If the department approves the rate for an increase in provider wages or health benefits that are locally negotiated, mediated, imposed, or adopted by ordinance pursuant to Section 12306.1, the state shall pay 65 percent, and the affected county shall pay 35 percent, of the nonfederal share of the cost increase, in accordance with subparagraph (B).

(B) With respect to any increase in provider wages or health benefits approved on or after July 1, 2019, pursuant to subparagraph (A), the state shall participate in that increase as provided in subparagraph (A) up to the amount specified in paragraphs (1), (2), and (3) of subdivision (d) of Section 12306.1. The county shall pay the entire nonfederal share of any cost increase exceeding the amount specified in paragraphs (1), (2), and (3) of subdivision (d) of Section 12306.1.

(C) With respect to an increase in benefits, other than individual health benefits, locally negotiated, mediated, or imposed by a county, public authority, or nonprofit consortium, or adopted by ordinance, the county's County IHSS MOE shall include a one-time adjustment equal to 35 percent of the nonfederal share of the increased benefit costs. If the department, in consultation with the California State Association of Counties, determines that the increase is one in which the state does not participate, the county's County IHSS MOE shall include a one-time adjustment for the entire nonfederal share.

(2) If the department does not approve the rate for an increase in provider wages or health benefits, or increase in other benefits pursuant to subparagraph (C) of paragraph (1), that are locally negotiated, mediated, imposed, or adopted by ordinance pursuant to Section 12306.1, or increase to the public authority administrative rate, the county shall pay the entire cost of the increase.

(3) The county share of increased expenditures pursuant to subparagraphs (A) to (C), inclusive, of paragraph (1), shall be included in the rebased County IHSS MOE, in addition to the amount established under subdivision (c). For any increase in provider wages or health benefits, or increase in other benefits pursuant to subparagraph (C) of paragraph (1), that becomes effective on a date other than July 1, the department shall adjust the county's rebased County IHSS MOE to reflect the annualized cost of the county's share of the nonfederal cost of the wage or health benefit increase. This adjustment shall be calculated based on the county's 2019–20 paid IHSS hours and the appropriate cost-sharing ratio as grown by the applicable number of inflation factors pursuant to subdivision (c) that have occurred up to and including the fiscal year in which the increase becomes effective.

(4) (A) With respect to any rate increases to existing contracts that a county has already entered into pursuant to Section 12302, the state shall pay 65 percent, and the affected county shall pay 35 percent, of the nonfederal share of the amount of the rate increase up to the maximum amounts established pursuant to Sections 12302.1 and 12303. The county shall pay the entire nonfederal share of any portion of the rate increase exceeding the maximum amount established pursuant to Sections 12302.1 and 12303. This adjustment shall be calculated based on the county's 2019–20 paid IHSS contract hours, or the paid contract hours in the fiscal year in which the contract becomes effective if the contract becomes effective on or after July 1, 2019, using the

appropriate cost-sharing ratio as grown by the applicable number of inflation factors pursuant to subdivision (c) that have occurred up to and including the fiscal year in which the increase becomes effective.

(B) With respect to rates for new contracts entered into by a county pursuant to Section 12302 on or after July 1, 2019, the state shall pay 65 percent, and the affected county shall pay 35 percent, of the nonfederal share of the difference between the locally negotiated, mediated, imposed, or adopted by ordinance provider wage and the contract rate for all of the hours of service to IHSS recipients to be provided under the contract up to the maximum amounts established pursuant to Sections 12302.1 and 12303. The county shall pay the entire nonfederal share of any portion of the contract rate exceeding the maximum amount established pursuant to Sections 12302.1 and 12303. This adjustment shall be calculated based on the county's paid contract hours in the fiscal year in which the contract becomes effective using the appropriate cost-sharing ratio.

(5) The county share of the expenditures described in paragraph (4) shall be included in the rebased County IHSS MOE, in addition to the amounts established under subdivision (c). For any rate increases for existing contracts or rates for new contracts, entered into by a county pursuant to Section 12302 on or after July 1, 2019, that become effective on a date other than July 1, the department shall adjust the county's rebased County IHSS MOE to reflect the annualized cost of the county's share of the nonfederal cost of the increase or rate for new contracts. This adjustment shall be calculated as follows:

(A) For a contract described in subparagraph (A) of paragraph (4), the first-year cost of the amount of the rate increase calculated using the pro rata share of the number of hours of service provided in the contract for the fiscal year in which the increase became effective.

(B) For a contract described in subparagraph (B) of paragraph (4), the first-year cost of the difference between the locally negotiated, mediated, imposed, or adopted by ordinance provider wage and the contract rate for all of the hours of service to IHSS recipients calculated using the pro rata share of the number of hours of service provided in the contract for the fiscal year in which the contract became effective.

(6) If the state ceases to receive enhanced federal financial participation for the provision of services pursuant to Section 1915(k) of the federal Social Security Act (42 U.S.C. Sec. 1396n(k)), the rebased County IHSS MOE shall be adjusted one time to reflect a 35-percent share of the enhanced federal financial participation that would have been received pursuant to Section 1915(k) of the federal Social Security Act (42 U.S.C. Sec. 1396n(k)) for the fiscal year in which the state ceases to receive the enhanced federal financial participation.

(7) Beginning July 1, 2026, if the state ceases to receive enhanced federal financial participation for the provision of services pursuant to Section 1915(k) of the federal Social Security Act (42 U.S.C. Sec. 1396n(k)) due to noncompliance of timely case reassessment for the Community First Choice Option program, the county shall pay, separate from the rebased County IHSS MOE payment, a 100-percent share of the enhanced federal financial participation that would have been received pursuant to Section 1915(k) of the federal Social Security Act (42 U.S.C. Sec. 1396n(k)) for the months in which the state did not receive the enhanced federal financial participation. For the 2025–26 fiscal year, the state and county shall each pay 50 percent of the amount of lost enhanced federal financial participation described in this paragraph. The department shall develop guidance, in consultation with the County Welfare Directors Association of California, to implement this paragraph.

(8) The rebased County IHSS MOE shall not be adjusted for increases in individual provider wages that are locally negotiated pursuant to subdivision (a) of, and paragraphs (1) and (2) of subdivision (d) of, Section 12306.1 when the increase has been specifically negotiated to take effect at the same time as, and to be the same amount as, state minimum wage increases.

(9) (A) A county may negotiate a wage supplement.

(i) The wage supplement shall be in addition to the highest wage rate paid in the county.

(ii) The first time the wage supplement is applied, the county's rebased County IHSS MOE shall include a one-time adjustment by the amount of the increased cost resulting from the supplement, as specified in paragraph (1).

(B) A wage supplement negotiated pursuant to subparagraph (A) shall subsequently be applied to the minimum wage when the minimum wage increase is equal to or exceeds the county wage paid without inclusion of the wage supplement and the increase to the county wage paid takes effect at the same time as the minimum wage increase.

(10) The Department of Finance shall consult with the California State Association of Counties to develop the computations for the annualized amounts pursuant to this subdivision.

(e) The rebased County IHSS MOE shall only be adjusted pursuant to subdivisions (c) and (d).

(Amended (as amended by Stats. 2023, Ch. 43, Sec. 58) by Stats. 2025, Ch. 7, Sec. 5. (AB 118) Effective June 27, 2025.)

12306.17. (a) A portion of IHSS costs that are the counties' responsibility shall be offset using a combination of General Fund moneys appropriated in the annual Budget Act and redirected 1991 Realignment Vehicle License Fee growth revenues pursuant to subdivision (c) of Section 17606.20, as follows:

(1) (A) There is hereby appropriated three hundred sixty-three million nine hundred ninety-eight thousand dollars ($363,998,000) from the General Fund for the 2017–18 fiscal year to offset a portion of IHSS costs incurred by counties. This amount reflects the difference between the combined estimated amounts of 2016–17 and 2017–18 Vehicle License Fee growth revenues that would have been deposited into the Family Support Subaccount of the Vehicle License Fee Account of the Local Revenue Fund pursuant to Section 17600.50 and four hundred million dollars ($400,000,000).

(B) The amount of General Fund moneys appropriated in the 2017–18 fiscal year pursuant to subparagraph (A) shall be increased or decreased by the Department of Finance based on revised 2016–17 and 2017–18 Vehicle License Fee growth revenue estimates included in the 2018–19 Governor's Budget and subsequent May Revision, such that the total offset equals four hundred million dollars ($400,000,000).

(C) The amount of General Fund moneys appropriated in the 2017–18 fiscal year for the In-Home Supportive Services program pursuant to subparagraphs (A) and (B) shall be available for encumbrance or expenditure until June 30, 2018.

(2) For the 2018–19 fiscal year, the amount of the General Fund offset provided shall be the difference between the amount of 2018–19 Vehicle License Fee growth revenues that would have been deposited into the Family Support Subaccount of the Vehicle License Fee Account of the Local Revenue Fund pursuant to Section 17600.50 and three hundred thirty million dollars ($330,000,000).

(b) The Department of Finance shall consult with the California State Association of Counties to determine the distribution of General Fund moneys available for offset of each county's IHSS costs in each fiscal year as specified in subdivision (a).

(Amended by Stats. 2019, Ch. 27, Sec. 80. (SB 80) Effective June 27, 2019.)

12306.18. (a) Notwithstanding any other law, the Director of Finance may authorize a loan from the General Fund to any county in an amount not to exceed the net cost to the county resulting from the County's IHSS MOE pursuant to Sections 12306.16, 12306.17, and 17606.20.

(b) To be considered for a loan, the county shall submit a request, after approval by the county board of supervisors, to the Director of Finance that includes all of the following:

(1) Information that demonstrates that the county is experiencing significant financial hardship.

(2) The amount of funding requested.

(3) The duration of the loan, not to exceed three years.

(c) The Director of Finance shall respond to a request in writing within 45 days. If approved, the written notice shall include the repayment schedule as determined by the Director of Finance, in consultation with the county, and the interest rate, which shall not exceed the rate earned by the Pooled Money Investment Account at the time of the loan. The Director of Finance may waive interest charges at any time.

(d) The Director of Finance, in consultation with the county, shall provide a schedule to the Controller for the disbursement of the loan amount for each county that receives a loan under this section. The Controller shall pay the county per the schedule within 14 days of receipt.

(e) Loans shall be available in the 2017–18, 2018–19, and 2019–20 fiscal years. The sum of all loans approved during any fiscal year pursuant to this section shall not exceed twenty-five million dollars ($25,000,000).

(f) The county shall submit loan installment payments to the Controller as specified in subdivision (c) and notify the Director of Finance when each payment is made.

(Added by Stats. 2017, Ch. 25, Sec. 28. (SB 90) Effective June 27, 2017.)

12306.19. (a) The department shall review the budgeting methodology used to determine the annual funding for county administration of the IHSS program and examine the ongoing workload and administrative costs to counties as part of the review beginning with the 2025–26 fiscal year and every third fiscal year thereafter.

(b) The department shall provide information to the appropriate legislative budget committees regarding this review and how it may impact county administrative costs, as part of the budget proposed by either January 10 or May 14 of any year prior to the fiscal year for which this subdivision applies.

(c) In implementing this section, the department shall consult legislative staff, representatives of county human services agencies, the County Welfare Directors Association of California, advocate representatives, and labor organizations that represent county workers.

(Added by Stats. 2024, Ch. 46, Sec. 42. (AB 161) Effective July 2, 2024.)

12306.2. (a) Notwithstanding any other provision of law, for the 2000–01 fiscal year, the state shall pay 65 percent and each county shall pay 35 percent of the nonfederal share of any increase to individual provider wages a county chooses to grant, up to 3 percent above the statewide minimum wage.

(b) This section shall not apply to providers who are employees of a public authority or nonprofit consortium pursuant to Section 12301.6.

(c) This section shall be operative on January 1, 2001.

(Added by Stats. 2000, Ch. 108, Sec. 44.8. Effective July 10, 2000. Section operative January 1, 2001, by its own provisions.)

12306.21. (a) Notwithstanding any other provision of law, for the 2001–02 fiscal year, the state shall pay 65 percent and each county shall pay 35 percent of the nonfederal share of any increase to individual provider wages a county chooses to grant, up to 5.31 percent above the statewide minimum wage.

(b) This section shall not apply to providers who are employees of a public authority or nonprofit consortium pursuant to Section 12301.6.

(c) This section shall become operative on July 1, 2001.

(Added by Stats. 2001, Ch. 111, Sec. 37. Effective July 30, 2001. Applicable from July 1, 2001, by its own provisions.)

12306.3. In consultation with stakeholder organizations, including, but not limited to, the California State Association of Counties and employee organizations representing in-home supportive service workers, the department shall develop and evaluate various options for providing health care benefits for uninsured individual in-home supportive services providers who are not employees of a public authority or nonprofit consortium under Section 12301.6. The department shall report its findings and recommendations to the Legislature by January 15, 2001.

(Added by Stats. 2000, Ch. 108, Sec. 45. Effective July 10, 2000.)

12306.5. (a) Any public or private agency, including a contractor under Section 12302.1, who maintains a list or registry of prospective in-home supportive services providers shall require proof of identification from a prospective provider. This identification shall be provided prior to placing the prospective provider on a list or registry or supplying a name from the list or registry to an applicant for, or recipient of, in-home supportive services.

(b) For purposes of this section, proof of identification includes, but is not limited to, a positive photograph identification from a government source.

(Added by Stats. 1986, Ch. 795, Sec. 1.)

12306.6. (a) (1) Notwithstanding any other provision of law, beginning on the date for which the federal Centers for Medicare and Medicaid Services authorizes commencement of the implementation of this section, but no earlier than January 1, 2012, and concurrent with the collection of the sales tax extended to support services pursuant to Article 4 (commencing with Section 6150) of Chapter 2 of Part 1 of Division 2 of the Revenue and Taxation Code, a provider of in-home supportive services shall receive a supplementary payment under this article equal to a percentage, as set forth in paragraph (2), of the gross receipts, as defined in subdivision (b) of Section 6150 of the Revenue and Taxation Code, of the provider for the sale of in-home supportive services, plus an amount described in paragraph (3) if applicable. If the underlying payment for in-home supportive services that is being supplemented is a Medi-Cal payment, then the supplementary payment shall also be a Medi-Cal payment. Supplementary payments shall be made only to those providers from whom the tax imposed pursuant to Section 6151 of the Revenue and Taxation Code has been collected.

(2) The percentage applicable to the supplementary payment required by paragraph (1) shall equal the rate described in subdivision (b) of Section 6151 of the Revenue and Taxation Code and shall only be applied to services provided under this article, including personal care option services reimbursable under the Medi-Cal program.

(3) The supplementary payment of an individual provider whose payroll withholding required for federal income tax purposes and for purposes of taxation for the Social Security and Medicare programs is increased due to the supplementary payment, in comparison to the amounts for those purposes that would be withheld without the supplementary payment, shall be increased by an additional amount that is equal to the amount of this additional federal withholding.

(b) (1) All revenues deposited in the Personal Care IHSS Quality Assurance Revenue Fund established pursuant to Section 6168 of the Revenue and Taxation Code shall be used solely for purposes of the In-Home Supportive Services program, including, but not limited to, those services provided under the Medi-Cal program. All supplementary payments required by this section shall be paid from the Personal Care IHSS Quality Assurance Revenue Fund.

(2) The Director of Finance shall determine the sum required to be deposited in the Personal Care IHSS Quality Assurance Revenue Fund to fund the initial supplementary payments from the fund. As soon thereafter as reasonably possible, this sum shall be transferred, in the form of a loan, from the General Fund to the Personal Care IHSS Quality Assurance Revenue Fund. At the time sufficient revenues have been deposited in the Personal Care IHSS Quality Assurance Revenue Fund pursuant to Section 6168 of the Revenue and Taxation Code to sustain the continued operation of the fund for that portion of the supplementary payment described in paragraph (2) of subdivision (a) plus an additional amount equal to the General Fund loan made pursuant to this paragraph, plus interest, the sum transferred from the General Fund, including interest, shall be repaid to the General Fund. Subsequent supplementary payments pursuant to this section shall be made from revenue deposited in the Personal Care IHSS Quality Assurance Revenue Fund pursuant to Section 6168 of the Revenue and Taxation Code.

(3) The Department of Finance, on an ongoing basis, shall determine the amount necessary to implement paragraph (3) of subdivision (a), and subdivision (c) of Section 12302.2, and immediately transfer this amount from the General Fund to the Personal Care IHSS Quality Assurance Revenue Fund.

(c) (1) The Director of Health Care Services shall seek all federal Medicaid approvals necessary to implement this section, including using the revenues obtained pursuant to Article 4 (commencing with Section 6150) of Chapter 2 of Part 1 of Division 2 of the Revenue and Taxation Code as the nonfederal share for supplementary payments. As part of that request for approval, the director shall seek to make the supplementary payments effective as of January 1, 2012.

(2) This section shall become operative only if the federal Centers for Medicare and Medicaid Services grants Medicaid approvals sought pursuant to paragraph (1).

(3) If Medicaid approval is granted pursuant to paragraph (2), within 10 days of that approval the Director of Health Care Services shall notify the State Board of Equalization and the appropriate fiscal and policy committees of the Legislature of the approval.

(d) If Article 4 (commencing with Section 6150) of Chapter 2 of Part 1 of Division 2 of the Revenue and Taxation Code becomes inoperative pursuant to subdivision (b) of Section 6170 of the Revenue and Taxation Code, supplementary payments shall cease to be made pursuant to subdivision (a) when all moneys in the fund have been expended.

(e) (1) Notwithstanding the rulemaking provisions of the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department and the State Department of Health Care Services may implement and administer this section through all-county letters or similar instruction from the department and the State Department of Health Care Services until regulations are adopted. The department and the State Department of Health Care Services shall adopt emergency regulations implementing this section no later than 12 months following the initial effective date of the supplementary payments. The department and the State Department of Health Care Services may readopt any emergency regulation authorized by this section that is the same as or substantially equivalent to an emergency regulation previously adopted under this section.

(2) The initial adoption of emergency regulations implementing this section and the one readoption of emergency regulations authorized by this subdivision shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare. Initial emergency regulations and the one readoption of emergency regulations authorized by this section shall be exempt from review and approval by the Office of Administrative Law. The initial emergency regulations and the one readoption of emergency regulations authorized by this section shall be submitted to the Office of Administrative Law for filing with the Secretary of State and each shall remain in effect for no more than 180 days, by which time final regulations may be adopted.

(f) This section shall remain in effect only until the January 1 following the date supplementary payments cease to be made pursuant to subdivision (d), and as of that date is repealed.

(Amended by Stats. 2012, Ch. 47, Sec. 36. (SB 1041) Effective June 27, 2012. Section conditionally operative as provided in subd. (c). Repealed conditionally as prescribed by its own provisions.)

12307. The amendments to Sections 12302, 12303 and 12304 of, and the addition of Sections 12303.5 and 12304.5 to, the Welfare and Institutions Code made by Chapter 75 of the Statutes of 1974 do not constitute a change in, but are declaratory of, the preexisting law.

(Added by Stats. 1976, Ch. 504.)

12308. Funding of this article is subject to the provisions of Part 1.5 (commencing with Section 10100) of this division.

(Added by Stats. 1978, Ch. 1235. Note: Repeal conditions in Sec. 14 of Ch. 1235 failed.)

12309. (a) In order to assure that in-home supportive services are delivered in all counties in a uniform manner, the department shall develop a uniform needs assessment tool.

(b) (1) Each county shall, in administering this article, use the uniform needs assessment tool developed pursuant to subdivision (a) in collecting and evaluating information.

(2) For purposes of paragraph (1), “information” includes, but is not limited to, all of the following:

(A) The recipient’s living environment.

(B) Alternative resources.

(C) The recipient’s functional abilities.

(c) (1) The uniform needs assessment tool developed pursuant to subdivision (a) shall evaluate the recipient’s functioning in activities of daily living and instrumental activities of daily living.

(2) The recipient’s functioning shall be quantified, using the general hierarchical five-point scale for ranking each function, as specified in subdivision (d).

(d) The recipient’s functioning ranks shall be as follows:

(1) Rank one. A recipient’s functioning shall be classified as rank one if his or her functioning is independent, and he or she is able to perform the function without human assistance, although the recipient may have difficulty in performing the function, but the completion of the function, with or without a device or mobility aid, poses no substantial risk to his or her safety.

(2) Rank two. A recipient’s functioning shall be classified as rank two if he or she is able to perform a function, but needs verbal assistance, such as reminding, guidance, or encouragement.

(3) Rank three. A recipient’s functioning shall be classified as rank three if he or she can perform the function with some human assistance, including, but not limited to, direct physical assistance from a provider.

(4) Rank four. A recipient’s functioning shall be classified as rank four if he or she can perform a function, but only with substantial human assistance.

(5) Rank five. A recipient’s functioning shall be classified as rank five if he or she cannot perform the function, with or without human assistance.

(Amended by Stats. 2013, Ch. 4, Sec. 9. (SB 67) Effective May 30, 2013.)

12309.1. (a) As a condition of receiving services under this article, or Section 14132.95 or 14132.952, an applicant for or recipient of services shall obtain a certification from a licensed health care professional, including, but not limited to, a physician, physician assistant, regional center clinician or clinician supervisor, occupational therapist, physical therapist, psychiatrist, psychologist, optometrist, ophthalmologist, or public health nurse, declaring that the applicant or recipient is unable to perform some activities of daily living independently, and that without services to assist the applicant or recipient with activities of daily living, the applicant or recipient is at risk of placement in out-of-home care.

(1) For purposes of this section, a licensed health care professional means an individual licensed in California by the appropriate California regulatory agency, acting within the scope of their license or certificate as defined in the Business and Professions Code.

(2) Except as provided in subparagraph (A) or (B), or subdivision (c), the certification shall be received prior to service authorization, and services shall not be authorized in the absence of the certification.

(A) Services may be authorized prior to receipt of the certification when the services have been requested on behalf of an individual being discharged from a hospital or nursing home and services are needed to enable the individual to return safely to their home or into the community.

(B) Services may be authorized temporarily pending receipt of the certification when the county determines that there is a risk of out-of-home placement.

(3) The county shall consider the certification as one indicator of the need for in-home supportive services, but the certification shall not be the sole determining factor.

(4) The health care professional's certification shall include, at a minimum, both of the following:

(A) A statement by the professional, as defined in subdivision (a), that the individual is unable to independently perform one or more activities of daily living, and that one or more of the services available under the IHSS program is recommended for the applicant or recipient, in order to prevent the need for out-of-home care.

(B) A description of any condition or functional limitation that has resulted in, or contributed to, the applicant's or recipient's need for assistance.

(b) The department, in consultation with the State Department of Health Care Services and with stakeholders, including, but not limited to, representatives of program recipients, providers, and counties, shall develop a standard certification form for use in all counties that includes, but is not limited to, all of the conditions in paragraph (4) of subdivision (a). The form shall include a description of the In-Home Supportive Services program and the services the program can provide when authorized after a social worker's assessment of eligibility. The form shall not, however, require health care professionals to certify the applicant's or recipient's need for each individual service.

(c) The department, in consultation with the State Department of Health Care Services and stakeholders, as defined in subdivision (b), shall identify alternative documentation that shall be accepted by counties to meet the requirements of this section, including, but not limited to, hospital or nursing facility discharge plans, minimum data set forms, individual program plans, or other documentation that contains the necessary information, consistent with the requirements specified in subdivision (a).

(d) The department shall develop a letter for use by counties to inform recipients of the requirements of subdivision (a). The letter shall be understandable to the recipient, and shall be translated into all languages spoken by a substantial number of the public served by the In-Home Supportive Services program, in accordance with Section 7295.2 of the Government Code.

(e) This section does not apply to a recipient who is receiving services in accordance with this article or Section 14132.95 or 14132.952 on the operative date of this section until the date of the recipient's first reassessment following the operative date of this section, as provided in subdivision (g).

(1) The recipient shall be notified of the certification requirement before or at the time of the reassessment, and shall submit the certification within 45 days following the reassessment in order to continue to be authorized for receipt of services.

(2) A county may extend the 45-day period for a recipient to submit the medical certification on a case-by-case basis, if the county determines that good cause for the delay exists.

(f) A licensed health care professional shall not charge a fee for the completion of the certification form.

(g) This section shall become operative on the first day of the first month following 90 days after the effective date of Chapter 8 of the Statutes of 2011, or July 1, 2011, whichever is later.

(h) The State Department of Health Care Services shall provide notice to all Medi-Cal managed care plans, directing the plans to assess all Medi-Cal recipients applying for or receiving in-home supportive services, in order to make the certifications required by this section.

(i) If the Director of Health Care Services determines that a Medicaid State Plan amendment is necessary to implement subdivision (b) of Section 14132.95, this section shall not be implemented until federal approval is received.

(Amended by Stats. 2020, Ch. 370, Sec. 281. (SB 1371) Effective January 1, 2021.)

12310. It is the intent of the Legislature that the department conduct special pilot projects to test appropriate methods for assuring equity and efficiency in reducing program costs necessary to remain within budget appropriations pursuant to Sections 12301 and 12306, and which use the experience gained and the techniques developed by the in-home supportive services demonstration projects conducted by the University of California in Alameda, Contra Costa, and Marin Counties. The department may establish pilot projects in Alameda and Marin Counties for the purpose of assessing methods which allow for all of the following:

(a) Greater equity in decisions regarding eligibility and level of service as a means of reducing program costs.

(b) Administrative reforms that promote greater economy in program administration.

(c) Less costly processes for periodic redetermination of eligibility and service awards.

(Added by Stats. 1981, Ch. 69, Sec. 22.2. Effective June 17, 1981. Operative July 1, 1981, by Sec. 35 of Ch. 69.)

12311. The director is authorized to grant such waivers from the provisions of this article as are necessary to carry out the purposes and intent of this section, however, the county must provide services within its allocation. The department shall evaluate the results

of these pilot studies which shall include a comparison of results obtained by nonpilot counties in their efforts to maintain a budget-managed in-home supportive services program.

(Added by Stats. 1981, Ch. 69, Sec. 22.4. Effective June 17, 1981. Operative July 1, 1981, by Sec. 35 of Ch. 69.)

12312. A county, including a city and county, shall, upon the next update to its emergency plan, integrate and require the assessment and provision of supportive services to in-home supportive services (IHSS) recipients, including, but not limited to, the following requirements:

(a) Protocols and authorization for county social workers to make expedited assessments of the needs of current and potential IHSS recipients during times of a natural disaster.

(b) Protocols to ensure that authorized services will continue to be provided to recipients during times of displacement resulting from a natural disaster.

(c) Protocols to address any specific and unique needs of IHSS recipients that have not previously been addressed in the county's or the city and county's emergency plan pursuant to Section 8593.3 of the Government Code.

(Added by Stats. 2018, Ch. 789, Sec. 6. (SB 1040) Effective January 1, 2019.)

12314. It is the intent of the Legislature that the department conduct a pilot program, of not less than three years' duration, to comprehensively assess the comparative cost effectiveness and quality of care of both contract and individual provider modes of service.

The pilot project will test alternative methods to maximize delivery of services under this article within budget appropriations. The project may also investigate the feasibility of the "capitation" method of payment in any or all of the counties participating in the project. County participation shall be on a voluntary basis.

The department shall have the authority, if necessary, to reallocate available funds as necessary to ensure the success of the project within the overall state budget.

The director may issue waivers, as necessary, pursuant to Section 18204.

(Added by Stats. 1982, Ch. 852, Sec. 2.)

12315. (a) (1) Commencing January 1, 2009, a pilot project shall be established in five consenting counties that provides severely impaired recipients who receive in-home supportive services under this article through the public authority, as described in Section 12301.6, with a choice of receiving services through the public authority or receiving services through a voluntary nonprofit or proprietary agency pursuant to Section 12302. The pilot project shall be developed to provide services to severely impaired recipients, as described in Section 12303.4.

(2) To accomplish this end, the five consenting counties shall administer the In-Home Supportive Services (IHSS) program through a public authority pursuant to Section 12301.6.

(3) (A) Following the submission of input and recommendations of the IHSS advisory committee for the county, each participating county, with the consent of the public authority in that county, or the public authority, with the consent of the participating county, shall contract with a voluntary nonprofit or proprietary agency, pursuant to Section 12302.

(B) Severely impaired recipients in each participating county may continue to receive supportive services through the county's public authority, or may choose to receive services through the voluntary nonprofit or proprietary agency, pursuant to paragraph (1). Recipients who choose to receive services through the voluntary nonprofit or proprietary agency shall be compensated only for those services described in the recipients' then-existing care plan, as approved by the county social worker.

(4) Administrative costs of the pilot project, including the cost of developing guidelines other than the guidelines in this section and the cost of administering the project and providing oversight, shall not be paid by the state. Instead, an estimate of administrative costs shall be included in the county request for proposal for each contract with the voluntary nonprofit or proprietary agency and administrative costs shall then be paid by the agency up to the amount estimated unless the county and agency reach an alternative cost-sharing agreement in the contract that does not involve state participation.

(b) (1) (A) For purposes of this section, to the extent possible, all providers employed by the voluntary nonprofit or proprietary agency shall be persons previously listed on the public authority's registry. The agency shall, pursuant to the contract, continually recruit and provide the public authority with names of new workers for the registry.

(B) The voluntary nonprofit or proprietary agency in each participating county shall provide for training for all providers recruited pursuant to this paragraph. A public authority may retain the voluntary nonprofit or proprietary agency to provide these services

for and under the direction of the public authority. A public authority shall not be eligible to receive reimbursement for any costs associated with administering the pilot project. This shall not prohibit any public authority from using the funding it receives pursuant to paragraph (4) of subdivision (a) for newsletters and other means of communication about training opportunities available through the voluntary nonprofit or proprietary agency.

(C) All providers employed by the voluntary nonprofit or proprietary agency shall be paid no less than the wages and benefits provided for in the public authority's collective bargaining agreement, provided that this provision shall not obligate the state to participate in a contract rate higher than the maximum allowable contract rate. However, providers employed by the voluntary nonprofit or proprietary agency are not covered by any existing collective bargaining agreements with the public authority.

(2) A voluntary nonprofit or proprietary agency that contracts with a participating county pursuant to subdivision (a) shall perform all of the following duties:

(A) Maintain a live, on-call emergency service response system that is available 24 hours a day, seven days a week.

(B) Replace or supplement providers for a recipient who needs immediate service for the sake of preserving his or her health or safety within two hours of notification.

(C) To the extent possible, employ the recipient's preferred provider or providers.

(D) If required by the county, provide emergency backup services to severely impaired IHSS recipients when there is an unexpected interruption in services.

(E) Maintain a list of its providers with the public authority.

(F) Establish and maintain an upskilling program, based on practices in existing agency contracts, wherein employees may have the opportunity to use work experience and training toward upward movement on a long-term care career ladder. Any costs associated with the development and maintenance of the upskilling program shall be paid solely by the voluntary nonprofit or proprietary agency.

(G) Be liable for any fraud, waste, or abuse for which it is responsible.

(3) For the duration of the pilot project, supportive services not provided in any month due to hospitalization, illness, refusal, or other cause not within the control of the provider shall not be made up in a subsequent period without caseworker approval.

(c) (1) In each participating county, the IHSS advisory committee, as described in Section 12301.3, shall monitor the pilot program.

(2) Each participating county shall not be eligible to receive state reimbursement of administrative costs associated with monitoring the pilot program. Any administrative costs incurred by a public authority for monitoring the pilot project shall be paid to the public authority pursuant to paragraph (4) of subdivision (a). Any advisory committee expenses incurred as a result of this pilot project, if determined to be reimbursable to the county, shall be reimbursed with the current advisory committee allocation.

(3) Each county pilot project shall continue for four years, provided that if a county takes action to terminate a contract for cause, as defined in the contract, it may then terminate its participation in the pilot project. By the end of the third year, each participating county shall provide for an independent evaluation to assess the success of the pilot program, based on all of the following criteria:

(A) Consumer satisfaction.

(B) Cost-effectiveness.

(C) Average turnover of providers.

(D) The effect of the pilot project on non-IHSS vendors, workers, and referral agencies.

(E) Worker satisfaction.

(F) The extent to which counties identify, refer to, and work with appropriate agencies in investigation, administrative action, or prosecution of instances of fraud, as defined in subdivision (a) of Section 12305.8, in the provision of supportive services.

(d) All costs associated with the independent evaluation shall be paid solely by the voluntary nonprofit or proprietary agency.

(e) The independent evaluation shall be sent directly to the appropriate policy and fiscal committees of the Legislature.

(f) County social workers shall continue to establish eligibility, needs, and frequency of service and serve as recipient advocates, as appropriate.

(Amended by Stats. 2009, Ch. 140, Sec. 196. (AB 1164) Effective January 1, 2010.)

12316. (a) The City and County of San Francisco may implement a pilot project of not less than three years' duration to implement the provision of pooled services under this article through a modified delivery system in no more than five HUD-subsidized senior housing facilities owned by nonprofit organizations. If the department deems that a waiver of statutes or regulations is necessary, the pilot project shall be operated in accordance with that waiver. The purpose of the pilot project shall be to improve consumer satisfaction with in-home supportive services.

(b) (1) A pool of providers shall be selected by consumers, site staff, and the county to provide in-home supportive services under the pilot project consistent with the county's uniform assessment of needs as specified in Section 12309.

(2) Authorized nonmedical personal services shall be provided under the pilot project by providers in the pool at the times and frequency appropriate to meet each consumer's need intermittently throughout the course of the day.

(3) A memorandum of understanding between the county and the specific sites shall be signed before the project begins.

(c) (1) Consumers shall sign a disclosure form that explains the consumer's rights and responsibilities as an indication of their election to participate in the pilot project.

(2) Consumers who live in designated senior housing projects shall be offered the option of being serviced by the pilot project. These consumers shall have the option to change that decision at any time.

(d) As a separate consumer option under the pilot project, designated related services shall be provided for several consumers simultaneously.

(e) The county shall monitor the provision of services under the pilot project to ensure that the level and quality of services provided through the pilot project is at least at the same level that would have been provided under the nonpilot project individual provider service delivery as provided in Section 12302.

(f) (1) The department shall, in conjunction with the county, develop a provider timesheet and daily log to track the work performed by providers under the pilot project to ensure appropriate provider payment and to track the work provided for each consumer back to the consumer's authorization.

(2) It is the intent of the Legislature that provider payment be issued by the state's Case Management Information and Payroll System (CMIPS) to each provider who provides services pursuant to the pilot project.

(g) At the end of three years, the county shall evaluate the success of the pilot project implemented under this section. If the pilot project is successful, the department shall, at the county's request, extend the pilot project for an additional two years. The success of the pilot project shall be evaluated based on the following factors:

(1) Consumer satisfaction.

(2) Cost effectiveness.

(3) Average turnover of providers.

(h) In evaluating the project, the county shall ensure all of the following:

(1) An independent, impartial, outside evaluator or a county employee independent of the project shall be used.

(2) If the county decides to employ an outside evaluator, the county shall be responsible for all costs associated with the evaluation.

(3) The department shall approve the evaluation design and plan.

(4) Quarterly progress reports shall be completed.

(5) If a federal waiver is required, the county shall follow federal waiver evaluation criteria requirements.

(i) The department may waive the enforcement of specific statutory requirements, regulations, and standards in the county by formal order of the director pursuant to Section 18204.

(j) The department, in coordination with the Director of Health Services, shall seek any federal waivers or approvals necessary for continued funding of the Personal Care Services Program (PCSP) pursuant to Section 14132.95 of the Welfare and Institutions Code. The State Department of Health Services shall have 30 days from the date of request by the county to make a determination

of the need to seek federal approval and, if the department deems the approval to be necessary, to formally request the approval. The implementation of the pilot project shall occur after any necessary federal waivers or approvals are obtained.

(k) The pilot project shall be cost-neutral to the state.

(Added by Stats. 1998, Ch. 479, Sec. 1. Effective January 1, 1999.)

12316.1. (a) (1) The department shall administer the Career Pathways Program for providers of in-home supportive services under this article, or Section 14132.95, 14132.952, or 14132.956, or waiver personal care services under Section 14132.97, to increase the quality of care, recruitment and retention of providers for recipients and to provide training opportunities for career advancement in the home care and health care industries. Providers who have completed provider enrollment but who may not currently be providing services to a recipient, and are eligible to work for a recipient, including registry and emergency backup providers, may participate in the Career Pathways Program.

(2) The objectives of the career pathways include, but are not limited to, all of the following:

(A) Promotion of recipient self-determination principles.

(B) Dignity in providing and receiving care through meaningful collaboration between the recipient and provider.

(C) Advancement of health and service equity, including the quality of care, care outcomes, and life.

(D) Promotion of a culturally and linguistically competent workforce to serve the growing racial, ethnic, and linguistic diversity of an aging population.

(E) Increase in both provider employment retention and recruitment of new providers to maintain a stable workforce for recipients.

(3) Each career pathway shall include multiple courses of related curriculum on a given topic. Five career pathways shall be offered, including all of the following:

(A) The basic skills career pathways are (i) general health and safety and (ii) adult education topics.

(B) The specialized skills career pathways are (i) cognitive impairments and behavioral health, (ii) complex physical care needs, and (iii) transitioning to home and community-based living from out-of-home care or homelessness.

(b) In administering this section, the department shall do all of the following:

(1) Review and approve proposed training curriculum that is consistent with the requirements of subdivision (a).

(2) Upon completion of a competitive process, enter into agreements with multiple qualified third-party entities that the department deems qualified to provide training as approved pursuant to subparagraph (1).

(3) Determine the methodology and distribution of appropriated funds pursuant to this section.

(c) (1) For purposes of this section, “qualified third-party entity” means a county, public authority, or nonprofit consortium as defined in Section 12301.6, a nonprofit entity that is tax exempt pursuant to Section 501(c)(3) of the Internal Revenue Code, or a Taft-Hartley Labor Management Partnership. For-profit entities are strictly excluded from this definition.

(2) A qualified third-party entity shall have both of the following:

(A) Experience in training in person or online, using live instructor-led sessions or self-paced learning modules, which include a competency-based curriculum that is grounded in adult educational principles and that supports multiple languages wherever possible.

(B) The capacity to recruit and enroll providers electronically, in person, or both.

(d) Provider participation in the training described in subdivision (a) shall be voluntary, and the training shall be offered at no cost to providers. Providers shall be compensated for each hour of training at a rate equivalent to the county’s hourly negotiated wage rate for in-home supportive services providers. Counties and public authorities shall not be required to provide any funding for compensation to providers for training provided pursuant to this section.

(e) To the extent possible, career pathways may include curriculum that promotes retention of providers or that meets licensing and certification course requirements to assist providers in achieving their identified career advancement in the home care and health care industries.

(f) A provider shall be eligible to receive an incentive payment or multiple incentive payments, with an incentive payment available for each of the individual activities specified in paragraphs (1) to (3), inclusive. The amounts of the incentive payments shall be determined by the department, in collaboration with the employer representative unions, county human services agencies and their representatives, public authorities or nonprofit consortia as defined in Section 12301.6, and other relevant stakeholders. The individual activities eligible for incentive payments pursuant to this subdivision include all of the following:

(1) Successfully completing 15 hours of coursework for a specific career pathway.

(2) Successfully completing 15 hours of coursework for a specialized skills career pathway, subsequently beginning work for a recipient who needs that type of specialized care, and providing 40 authorized hours of care to one or more recipients in the first month of service.

(3) Successfully completing 15 hours of coursework for a specialized skills career pathway, subsequently beginning work for a recipient who needs that type of specialized care, and providing 40 authorized hours of care to one or more recipients per month for at least six months.

(g) A qualified third-party entity that has entered into an agreement with the department pursuant to subdivision (b) shall inform providers of the availability of career pathways training described in this section. The qualified third-party entity or entities, pursuant to the aforementioned agreement or agreements, shall assist interested providers in registering for offered courses for desired career pathways identified by the provider and track the successful completion of the coursework by a provider.

(h) Incentive payments set forth in subdivision (f), when applicable, shall be issued by the department through the Case Management Information and Payrolling System (CMIPS).

(i) The recipient, as the provider’s employer, shall continue to have the right to hire, fire, train, and direct services provided by their provider.

(j) This section shall be implemented as a pilot project no later than September 1, 2022, or as soon as the necessary automation occurs to implement this section. Except for subdivision (l) to accommodate the September 30, 2025, reporting deadline, this section shall remain operative until March 31, 2025, or until a later date, subject to an appropriation.

(k) The department shall contract with an entity, separate from the participating qualified third-party entities, to complete an evaluation of the pilot project that shall include all of the following criteria:

(1) The number of new and existing providers who enrolled in courses to pursue a career pathway.

(2) The number of providers that successfully completed a career pathway and identification of the career pathways completed.

(3) Pursuant to provider surveys, focus groups, and interviews, the effectiveness of the training and whether the successful completion of a career pathway resulted in a related license or certificate as well as new or retained employment in the home care and health care industries.

(4) The number of providers who were subsequently employed by a recipient with specialized care needs after completing a specialized career pathway and were retained in that employment for a period of at least six months.

(5) The number of providers who were subsequently employed by a recipient with specialized care needs after completing a specialized career pathway and were retained in that employment for a period of at least 12 months.

(6) The incentive payment amount administered to in-home supportive services providers and waiver personal care services providers for each incentive payment category, pursuant to this section.

(l) An interim report containing updated information on the components specified in subdivision (k) shall be submitted to the Legislature, in compliance with Section 9795 of the Government Code, by no later than May 1, 2023, with a final report of the evaluation of the pilot project submitted to the Legislature by September 30, 2025.

(m) Agreements entered into pursuant to this section shall be exempt from the personal services contracting requirements of Article 4 (commencing with Section 19130) of Chapter 5 of Part 2 of Division 5 of Title 2 of the Government Code, the Public Contract Code, and the State Contracting Manual, and shall not be subject to the approval of the Department of General Services.

(n) Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the department may implement, interpret, or make specific this section by means of all-county letters or similar instructions.

(o) If funding is provided for purposes of this section pursuant to Section 11.95 of the Budget Act of 2021 (Chapter 69 of the Statutes of 2021), that funding shall only be used to implement the activities set forth in this section for which the State Department of Health

Care Services obtains the necessary federal approval for the Career Pathways Program pursuant to paragraph (1) of subdivision (g) of Section 14124.12.

(Amended by Stats. 2023, Ch. 43, Sec. 59. (AB 120) Effective July 10, 2023. Inoperative March 31, 2025, or a later date, as prescribed by its own provisions. Note: Subdivision (l) to remain operative through September 30, 2025.)

12317. (a) The State Department of Social Services shall be responsible for procuring and implementing a new Case Management Information and Payroll System (CMIPS) for the In-Home Supportive Services Program and Personal Care Services Program (IHSS/PCSP). This section shall not be interpreted to transfer any of the IHSS/PCSP policy responsibilities from the State Department of Social Services or the State Department of Health Care Services.

(b) At a minimum, the new system shall provide case management, payroll, and management information in order to support the IHSS/PCSP, and shall do all of the following:

(1) Provide current and accurate information in order to manage the IHSS/PCSP caseload.

(2) Calculate accurate wage and benefit deductions.

(3) Provide management information to monitor and evaluate the IHSS/PCSP.

(4) Coordinate benefits information and processing with the California Medicaid Management Information System.

(c) The new system shall be consistent with current state and federal laws, shall incorporate technology that can be readily enhanced and modernized for the expected life of the system, and, to the extent possible, shall employ open architectures and standards.

(d) By August 31, 2004, the State Department of Social Services shall begin a fair and open competitive procurement for the new CMIPS. All state agencies shall cooperate with the State Department of Social Services and the California Health and Human Services Agency Data Center to expedite the procurement, design, development, implementation, and operation of the new CMIPS.

(e) The State Department of Social Services, with any necessary assistance from the State Department of Health Care Services, shall seek all federal approvals and waivers necessary to secure federal financial participation and system design approval of the new system.

(f) The new CMIPS shall include features to strengthen fraud prevention and detection, as well as to reduce overpayments. Program requirements shall include, but shall not be limited to, the ability to readily identify out-of-state providers, recipient hospital stays that are five days or longer, and excessive hours paid to a single provider, and to match recipient information with death reports. This functionality shall be available by April 1, 2010, and implemented statewide by July 1, 2011.

(Amended by Stats. 2008, Ch. 759, Sec. 33. Effective September 30, 2008.)

12317.1. The department may enter into interagency agreements with the State Department of Health Services to administer approved federal waivers authorized pursuant to Section 14132.951 or services provided under Section 14132.95, and to deliver waiver services in the same manner as services delivered pursuant to this article, and as authorized by Section 1396a(a)(11)(A) of Title 42 of the United States Code, which provides that California's state plan for medical assistance under the Medicaid program allows the State Department of Health Services, as the single state Medicaid agency, to "enter into cooperative arrangements with the State agencies responsible for administering or supervising the administration of health services and vocational rehabilitation services in the State looking toward maximum utilization of such services in the provision of medical assistance under the plan." If an interagency agreement is entered into pursuant to this section, it shall come within the provisions of Section 14000.03.

(Added by Stats. 2004, Ch. 229, Sec. 53. Effective August 16, 2004.)

12317.2. (a) Except as set forth in subdivision (b), in the event of a conflict between the terms of the waiver approved pursuant to Section 14132.951 and any provision of this part or any regulation adopted for the purpose of implementing this part, the terms of the waiver shall control to the extent that the services are covered under the waiver. If the department determines that a conflict exists, the department shall issue updated instructions to counties for purposes of implementing necessary program changes. The department shall post a copy of, or a link to, the instructions on its Web site.

(b) The authority to waive or modify provisions of this part pursuant to this section does not include the authority to waive or modify the provisions of Section 12301.2, 12301.6, 12302.25, 12306.1, or 12309.

(Added by Stats. 2004, Ch. 229, Sec. 54. Effective August 16, 2004.)

12318. (a) The State Department of Social Services shall, in consultation with interested stakeholders, develop, or otherwise identify, both of the following:

(1) Standard educational material about sexual harassment and the prevention thereof to be made available to providers and recipients of in-home supportive services.

(2) A proposed method for uniform data collection to identify the prevalence of sexual harassment in the In-Home Supportive Services program.

(b) The department shall convene its first meeting with the interested stakeholders no later than February 1, 2019, and shall meet regularly thereafter.

(c) The department shall, on or before September 30, 2019, provide a copy of the educational material and a description of the proposed method for uniform data collection to the relevant budget and policy committees of the Legislature.

(d) This section does not change the nature of any employment relationship between providers and the county, public authority, nonprofit consortium, or state.

(Added by Stats. 2018, Ch. 948, Sec. 1. (AB 3082) Effective January 1, 2019.)