

Senate Bill No. 857

CHAPTER 87

An act to amend, repeal, and add Section 12301.24 of the Welfare and Institutions Code, relating to public social services, and making an appropriation therefor, to take effect immediately, bill related to the budget.

[Approved by Governor July 9, 2018. Filed with Secretary of State July 9, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 857, Committee on Budget and Fiscal Review. In-home supportive services: provider orientation.

Existing law provides for the In-Home Supportive Services (IHSS) program, under which qualified aged, blind, and disabled persons receive services enabling them to remain in their own homes. Existing law authorizes a county board of supervisors to contract with a nonprofit consortium or to establish a public authority to provide in-home supportive services, and provides that the public authority or nonprofit consortium shall be deemed to be the employer of in-home supportive services personnel for the purposes of collective bargaining over wages, hours, and other terms and conditions of employment. Existing law requires prospective providers of in-home supportive services to complete a provider orientation at the time of enrollment, and requires representatives of the recognized employee organization in the county to be permitted to make a presentation of up to 30 minutes at that orientation.

Existing law requires each public employer, as defined, to provide the exclusive representative mandatory access to its new employee orientations, and requires the parties, upon request of the employer or the exclusive representative, to negotiate regarding the structure, time, and manner of that access.

This bill would provide that the above-described requirement to negotiate regarding the structure, time, and manner of the access of the exclusive representative to a new employee orientation applies to IHSS provider orientations in the Counties of Los Angeles, Merced, and Orange. The bill would, during the period between the effective date of this act and the date of expiration of an existing memorandum of understanding or collective bargaining agreement between the recognized employee organization and the county or the public authority or nonprofit consortium, provide that a request to meet and confer shall reopen the existing memorandum of understanding or collective bargaining agreement solely for the limited purpose of negotiating an agreement regarding access of the recognized employee organization to IHSS provider orientations, as specified. The bill would make these provisions inoperative on July 1, 2021, and would repeal

them as of January 1, 2022. To the extent that the bill imposes new requirements on counties, the bill would impose a state-mandated local program.

This bill would appropriate \$10,000 from the General Fund to the State Department of Social Services for purposes of implementing the bill.

This bill would make legislative findings and declarations as to the necessity of a special statute for the Counties of Los Angeles, Merced, and Orange.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

This bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 12301.24 of the Welfare and Institutions Code is amended to read:

12301.24. (a) Effective November 1, 2009, all prospective providers shall complete a 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 Web site 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) He or she will provide to a recipient the authorized services.
- (2) He or she has received a demonstration of, and understands, timesheet requirements, including content, signature, and fingerprinting, when implemented.

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

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

(5) He or she 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) Between November 1, 2009, and June 30, 2010, all current providers shall receive the information described in this section. Following receipt of this information, a provider shall submit a signed agreement, consistent with the requirements of this section, to the appropriate county office.

(d) 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.

(e) Beginning no later than April 1, 2015, all of the following shall apply:

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

(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) Representatives of the recognized employee organization in the county shall be permitted to make a presentation of up to 30 minutes at 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.

(f) (1) Section 3557 of the Government Code shall apply to provider orientations in the Counties of Los Angeles, Merced, and Orange.

(2) During the period between the effective date of the act that added this subdivision and the date of expiration of an existing memorandum of understanding or collective bargaining agreement between the recognized employee organization and the county or the public authority or nonprofit consortium established pursuant to Section 12301.6, a request to meet and confer pursuant to subdivision (a) of Section 3557 of the Government Code shall reopen the existing memorandum of understanding or collective bargaining agreement solely for the limited purpose of negotiating an agreement regarding access of the recognized employee organization to provider orientations. Either party may elect to negotiate a side letter or similar agreement in lieu of reopening the existing memorandum of understanding or collective bargaining agreement. This section, however, does not abrogate existing agreements between the recognized employee

organization and the county or the public authority or nonprofit consortium. Any agreement negotiated between the recognized employee organization and a public authority or nonprofit consortium established pursuant to Section 12301.6 regarding access of the recognized employee organization to provider orientations shall be binding on the county in which the orientation takes place.

(g) This section shall become inoperative on July 1, 2021, and, as of January 1, 2022, is repealed.

SEC. 2. Section 12301.24 is added to the Welfare and Institutions Code, to read:

12301.24. (a) Effective November 1, 2009, all prospective providers shall complete a 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 Web site 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) He or she will provide to a recipient the authorized services.
- (2) He or she has received a demonstration of, and understands, timesheet requirements, including content, signature, and fingerprinting, when implemented.
- (3) He or she shall cooperate with state or county staff to provide any information necessary for assessment or evaluation of a case.
- (4) He or she understands and agrees to program expectations and is aware of the measures that the state or county may take to enforce program integrity.
- (5) He or she 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) Between November 1, 2009, and June 30, 2010, all current providers shall receive the information described in this section. Following receipt of this information, a provider shall submit a signed agreement, consistent with the requirements of this section, to the appropriate county office.

(d) 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.

(e) Beginning no later than April 1, 2015, all of the following shall apply:

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

(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) Representatives of the recognized employee organization in the county shall be permitted to make a presentation of up to 30 minutes at 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.

(f) This section shall become operative on July 1, 2021.

SEC. 3. The amount of ten thousand dollars (\$10,000) is hereby appropriated from the General Fund to the State Department of Social Services for purposes of implementing this act.

SEC. 4. The Legislature finds and declares that a special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the need for employers and recognized employee organizations of IHSS providers in the Counties of Los Angeles, Merced, and Orange to meet and confer regarding recognized employee organization access to provider orientations.

SEC. 5. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 6. This act is a bill providing for appropriations related to the Budget Bill within the meaning of subdivision (e) of Section 12 of Article IV of the California Constitution, has been identified as related to the budget in the Budget Bill, and shall take effect immediately.