

Date of Hearing: April 23, 2024

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Alex Lee, Chair

AB 3079 (Ting) – As Introduced February 16, 2024

**SUBJECT:** In-Home Supportive Services program: undocumented related providers

**SUMMARY:** Requires, the California Department of Social Services (CDSS), to develop and issue guidance to ensure undocumented immigrants are afforded access to become in-home supportive services (IHSS) providers for family members of the fifth-degree. Specifically, **this bill:**

- 1) Requires, no later than March 1, 2025, or when the Case Management Information and Payrolling System can implement the necessary automation changes, whichever is later, CDSS to develop and issue guidance, in consultation with aging and disability advocates, provider representatives, immigration and employment law nonprofit organizations, such as the Center for Immigration Law and Policy at the University of California, Los Angeles, School of Law, and the National Employment Law Project, the California Association of Public Authorities, and the County Welfare Directors Association, to ensure that individuals without satisfactory immigration status, as described in 7) below, are afforded access to IHSS program benefits by a provider of their choice, including a person who meets the following criteria:
  - a) The person is related to the fifth degree to the IHSS recipient. For purposes of these provisions, “fifth degree” means any person by blood, adoption, or marriage that is a spouse, child, grandchild, great-grandchild, parent, grandparent, great-grandparent, great-great-grandparent, sibling, nephew or niece, grandnephew or grandniece, great-grandnephew or great-grandniece, uncle or aunt, great-uncle or great-aunt, great-granduncle or great-grandaunt, first cousin, or first cousin once removed of the IHSS recipient;
  - b) The person has obtained, or is in the process of obtaining, an Individual Taxpayer Identification Number (ITIN). Requires the guidance as described in 1) to include a process for enrollment of persons as a provider using an ITIN in lieu of a Social Security number, and a process of enrollment for prospective providers who are in the process of obtaining an ITIN.
  - c) Specifies that an individual who is unable to provide a Social Security number due to immigration status is eligible to provide services if all other requirements pursuant to these provisions are met.
- 2) Requires, no later than January 1, 2025, CDSS, in consultation with the stakeholders listed in 1) above, to develop recommendations to enable any recipient of services to select a related provider of their choice.
- 3) Provides that these provisions do not change the nature of any employment relationship between providers and recipients, the county, public authority, nonprofit consortium, or state.

- 4) Establishes that a person who meets the criteria specified in 1) above is exempt from a criminal background check, but shall attest to any convictions that violate the provisions of Welfare and Institutions Code Section 12305.81 as described below in existing law.
- 5) Specifies that any person who attests to a conviction, as specified, is prohibited from providing in-home supportive services.
- 6) Permits a family member to allow a person who meets the criteria specified in 1) above, and who attested to any conviction described in Welfare and Institutions Code Section 12305.81 and that would otherwise qualify for an exclusion.

**EXISTING LAW:**

- 1) Establishes the IHSS program to provide supportive services to individuals who are aged, blind, or living with disabilities, and who are unable to perform the services themselves or remain safely in their homes without receiving these services. (Welfare and Institutions Code Section [WIC] 12300 § et seq.)
- 2) Defines supportive services as 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 which make it possible for the recipient to establish and maintain an independent living arrangement. Personal care services shall mean all of the following:
  - a) Assistance with ambulation;
  - b) Bathing, oral hygiene, and grooming;
  - c) Dressing;
  - d) Care and assistance with prosthetic devices;
  - e) Bowel, bladder, and menstrual care;
  - f) Repositioning, skin care, range of motion exercises, and transfers;
  - g) Feeding and assurance of adequate fluid intake;
  - h) Respiration; and,
  - i) Assistance with self-administration of medications. (WIC § 12300 (b))
- 3) Restricts parents of children receiving IHSS benefits from being paid unless the provider leaves full-time employment or is prevented from obtaining full-time employment because no other suitable provider is available. (WIC § 12300(e))
- 4) Establishes a workweek 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, and restricts a provider from working more than 66 hours in a week. (WIC § 12300.4)

- 5) Prohibits a person from being eligible to provide or receive payment for providing IHSS services for 10 years following a conviction for, or incarceration following a conviction for, specified abuse of a child, abuse of an elder or dependent adult, or fraud against a government health care or supportive services program. (WIC § 12305.81)
- 6) Requires counties to perform a background check on individuals applying to become IHSS providers, and stipulates circumstances under which individuals shall be excluded from becoming an IHSS provider, as well as circumstances under which such an exclusion might be waived. (WIC §§ 12305.86 -87)
- 7) Requires an individual who is 25 years of age or younger, and who does not have satisfactory immigration status or is unable to establish satisfactory immigration status to be eligible for the full scope of Medi-Cal benefits, if they are otherwise eligible for benefits.

Federal law.

- 8) Prohibits employers from employing undocumented immigrants. (8 United States Code § 1324a.)

**FISCAL EFFECT:** Unknown, this bill has not been analyzed by a fiscal committee.

**COMMENTS:**

**Background:** *In-Home Supportive Services Program.* Eligible low-income individuals in California who are at least 65 years of age and older, living with a disability, and/or blind to live in the place of their choosing and avoid premature institutional care. IHSS can be used for services such as housecleaning, meal preparation, laundry, grocery shopping, personal care services (such as bowel and bladder care, bathing, grooming, and paramedical services), accompaniment to medical appointments, and protective supervision for the mentally impaired. This saves the state significant money by preventing these individuals from needing a hospital or a long-term care facility.

All eligible IHSS recipients must physically reside in the United States, be a California resident, Medi-Cal qualified, live at home or place of own choosing which can include a licensed community care facility, long-term care facility, and complete a Health Care Certification form. IHSS is administered through counties. IHSS clients self-direct their care, which allows them to choose and hire their own providers, including friends and family. About 70% of IHSS providers are related to their clients.

When an individual is determined eligible for IHSS services by a county social worker, they are authorized for a certain number of hours of care per week. IHSS recipients are responsible for hiring, firing, directing, and supervising their IHSS workers. These responsibilities include some administrative duties, such as scheduling and signing timesheets; however, the state handles payroll. Providers must complete an enrollment process, including submitting fingerprint images for a criminal background check and participating in a provider orientation prior to receiving payment for services.

The population needing to be served by IHSS is increasing and diversifying. According to how the Census Bureau defines baby boomers, the youngest cohort of baby boomers will be turning 66 years of age in 2030. Adding to the pool of potential IHSS recipients, in 2021, California

expanded Medi-Cal to qualified individuals regardless of immigration status. With this expansion, individuals with functional impairments who are undocumented and over 50 years of age are also newly eligible for IHSS.

According to a 2020 California State Auditor's report of the IHSS program: "From January 2015 through December 2019, the number of recipients statewide who lacked care grew on average from 33,000 to more than 40,000 each month." As a result of California's aging population, expanded criteria for eligible recipients of IHSS, and the existing caregiving workforce shortage, this issue will continue to worsen the shortage of IHSS workers to provide the necessary care.

*Master Plan for Aging.* In June 2019, Governor Newsom issued Executive Order N-14-19 that ordered the California Health and Human Services Agency to convene a Master Plan for Aging Stakeholder Committee to establish a 10-year plan with aging services based on data, stakeholder input, and research. The Executive Order also established a Long-Term Services and Supports (LTSS) Subcommittee that was required, by March 2020, to report:

- The growth and sustainability of long-term care programs and their infrastructure, including the IHSS program.
- Access to long-term care, financing for long-term care services, and the quality of long-term care provided in an array of settings.
- The impact of program sustainability and other factors, such as labor supply and retention of the workforce providing long-term services and supports.
- A recommendation to stabilize long-term care, including the IHSS program as a foundational source for implementing the Master Plan whereby our aging population can safely remain in their own homes within their own communities.

Following the Executive Order, the COVID-19 pandemic necessitated a major policymaking pause across many health and human services programs, and for the aging and disabled population particularly. As a result, the report was released in May 2020 and the contents were shaped by the immediate crisis to recipients of long-term care services. The pandemic highlighted the need for in-home options rather than institutional settings like community care facilities.

One of the five objectives offered in the LTSS report was: "Recognizing personal preferences and labor market challenges, the state must: 1) provide maximum support to family caregivers who have additional jobs outside the family caregiving setting through family leave policies, including job protections, that allow unpaid caregivers the flexibility to continue to earn while providing needed family support and; 2) accelerate the growth of the paid workforce to meet increasing demand for LTSS." The Master Plan for Aging estimates that California will face a caregiver shortage of up to 3.2 million paid direct care workers.

California is the most racially and ethnically diverse state in the nation. By 2030, White, non-Latino Californians over the age of 60 will no longer represent the majority of older adults in California and the majority will identify as Black; Latino/x; Asian, Native Hawaiian, or Pacific Islander; American Indian or Alaska Native; or multiracial. This shift will further necessitate adequate culturally competent and linguistically appropriate services and providers to better reflect the needs of the population they will be serving.

To accomplish the above objective, the LTSS subcommittee recommended ensuring a linguistically and culturally responsive workforce by identifying best practices in cultural responsiveness which could include implicit bias training. As described in the LTSS subcommittee report, person-centered care relies on understanding and accepting everyone's race, ethnicity, language, culture, faith tradition, sexual orientation, history, lived experience, and preferences.

The Department of Aging regularly offers a variety of training on such cultural inclusivity. As part of the objectives laid out in the LTSS Subcommittee Stakeholder Report, to ensure there is an easy-to-navigate LTSS system that includes home and community-based and residential options statewide, making sure that IHSS recipients receive timely, accurate information that is linguistically and culturally responsive is critical to consistency and accuracy.

*Caregiving Workforce.* California's direct care workers are largely women and women of color. National Partnership for Women & Families reports, 89% of paid caregivers are women. Of the 89% of women, 28% are Black, 21% are Hispanic or Latino, and 9% are other which equates to half of the direct care staff.

The Department of Labor statistics show that there are not enough direct care workers to meet population needs due to low wages, meager benefits, and low respect for demanding jobs requiring difficult physical and emotional work. In recent years, California increased hourly wages to help retain and recruit caregivers as well as offer a bonus for working through the difficulty of the pandemic. Each county determines hourly wages, and as of April 2023, the average is \$16.52/hour with Santa Clara County offering the highest rate of \$19.04/hour. The low wages make the field difficult to recruit, making family caregivers crucial to serving this vulnerable population.

California relies on family caregivers to take care of loved ones who are aging and/or living with disabilities. According to the Gallup-Healthways Well-Being Index in 2011, more than 1 in 6 Americans working full-time or part-time report assisting with the care of an elderly or disabled family member, relative, or friend. Family caregivers can be eligible for IHSS funding to supplement of their lost wages due to their caregiving duties. However, undocumented recipients are denied the right to select an undocumented family member to act as their provider due to immigration status. This bill will provide outreach to immigrant communities to encourage IHSS provider enrollment.

Paid caregivers often make it possible for family caregivers to remain in the workforce and provide valuable, loving care. At the same time, their wages are low, their jobs are insecure and they lack access to basic protections like paid family and medical leave and paid sick days to care for their own loved ones and personal health needs. According to an AARP report, *Valuing the Invaluable: 2015 Update*, the economic value of this work is staggering; family caregiving was recently estimated to be worth \$470 billion.

*Is This Bill Implementable?* CDSS and the County Welfare Directors Association both assert this bill is not implementable due to the 1986 Immigration Reform and Control Act (IRCA) which bars employers from hiring undocumented immigrants. However, legal experts from the UCLA Center for Immigration Law and Policy have offered a legal analysis of whether undocumented immigrants can be employed by a state entity. Their legal analysis makes the case that the United States Supreme Court has upheld in multiple different cases that Congress cannot regulate state governments without clear language of its intentions. IRCA does not mention

states which, according to this legal analysis, means IRCA does not apply to state government entities.

Their legal analysis was issued to the University of California (UC) Board of Regents to advocate for DACA student's right to work on campus. In the memo sent with the legal analysis, UCLA Center for Immigration Law and Policy writes,

*In short, when Congress passed IRCA, Congress did not curtail states' historic power to determine the employment qualifications of state employees. As a result, IRCA's prohibition on hiring undocumented persons does not bind state government entities. State entities can lawfully hire undocumented students irrespective of employment authorization status under federal law.*

Ultimately, the UC Regents in January 2024 rejected the proposal to allow undocumented immigrants to be employed on UC campuses. At the meeting, the UC president said: "We have concluded that the proposed legal pathway is not viable at this time," and the proposal is "inadvisable" and "carries significant risk for the institution and for those we serve." However, "as new information becomes available, we will evaluate that information, and if appropriate, move ahead."

*This bill* is applying this legal analysis to justify the legality of permitting undocumented IHSS providers.

**Author's Statement:** According to the Author, "In 2023, California took the groundbreaking step of expanding Medi-Cal eligibility to include undocumented people. As a result of that expansion, undocumented adults can now receive services through the state's In Home Supportive Services (IHSS) program. While this is a huge step forward, California must do more to address healthcare inequities and increase access to care. The state needs to take action to address our longstanding home healthcare worker shortage. The vast majority of IHSS recipients rely on a family member or loved one to serve as their IHSS provider; yet, despite the IHSS workforce crisis, undocumented recipients are unable to select an undocumented family member to act as their provider. To help address this provider shortage, AB 3079 authorizes undocumented IHSS recipients to select an undocumented family member to serve as their in home provider."

**Equity Implications:** Californians with Medi-Cal eligibility who demonstrate the need for support services due to age, disability, or blindness are eligible for IHSS. California's expansion of Medi-Cal ensured that nearly 286,000 undocumented older adults over the age of 50 could benefit from full-scope Medi-Cal services, including IHSS. The state's shortage of IHSS providers means that many of these newly eligible older adults will not be able to receive the supportive services they need, and are thus deprived of the care necessary to avoid hospitalization, nursing care, and poor health outcomes.

California's Master Plan for Aging notes that by 2030, the majority of Californians over 60 years old will identify as Black; Latino/x; Asian, Native Hawaiian, or Pacific Islander; American Indian or Alaska Native; or multiracial, necessitating more culturally competent and linguistically appropriate services and providers.

**Policy Considerations:** This bill makes criminal background check exemptions for undocumented immigrants providing care to their fifth-degree family members, but is silent for

other IHSS providers. Criminal background checks were put in place a decade ago to ensure providers were safe to provide care and were not going to abuse their patients or the IHSS payment system. Criminal background checks have posed a barrier to many to becoming providers for family members. As noted above, family caregivers are most common – especially in families of color. However, passing and paying for the criminal background check has been noted as difficult for many. If this Legislature determines that waiving a background check to give care to family members does not pose a significant risk, then this should be true for all IHSS providers who care for family members.

Expanding the IHSS provider pool is sensible given California has also expanded the recipient pool, but creating two separate background check rules is inequitable and inconsistent with the stated purpose of the bill – to allow recipients to choose who gives them care.

*Should this bill move forward, the author may wish to extend background check exemptions for fifth-degree family member recipients to all IHSS providers.*

**Proposed Committee Amendments:** The Committee proposes amendments to address policy considerations stated above to do the following:

- Expand the criminal background exemption for all IHSS providers providing care to fifth-degree family members.

#### **RELATED AND PRIOR LEGISLATION:**

**AB 133 (Committee on Budget), Chapter 143, Statutes of 2021**, expanded eligibility for full scope Medi-Cal to individuals who are 50 years of age or older, regardless of citizenship or immigration status, if otherwise eligible.

**AB 2641 (Patterson) of 2014**, would have repealed the provisions that authorize a waiver or exemption from the 10-year exclusion for a person who has committed a serious or violent felony, a felony for which registration as a sex offender is required, or a felony misuse of CalFresh funds. *AB 2641 was set for a hearing by this committee but was cancelled at the request of the author.*

**SB 1104 (Budget and Fiscal Review Committee), Chapter 229, Statutes of 2004**, Prohibited an individual convicted in the last ten years of health care fraud, child abuse, or elder abuse from providing IHSS services.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

City and County of San Francisco (Sponsor)  
Alzheimer's Association State Policy Office  
Alzheimer's Greater Los Angeles  
Alzheimer's Orange County  
Alzheimer's San Diego  
California Domestic Workers Coalition  
California Family Resource Association  
Caring Across Generations

Child Abuse Prevention Center  
County of Santa Clara  
Family Caregiver Alliance (FCA)  
Justice in Aging  
Latino Coalition for A Healthy California  
Vision Y Compromiso (UNREG)

**Opposition**

None on file.

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