

Date of Hearing: April 18, 2023

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Corey A. Jackson, Chair

AB 1457 (Ortega) – As Introduced February 17, 2023

SUBJECT: Public social services: merit or civil service employee

SUMMARY: Adds the In-Home Supportive Services (IHSS) program, California Food Assistance Program (CFAP), Cash Assistance Program for Immigrants (CAPI), and Adult Protective Services (APS) program to the social services programs requiring decisions governing eligibility to be made exclusively by a merit or civil service employee.

EXISTING LAW:

- 1) Requires any decisions governing eligibility for Medi-Cal, CalWORKs, or CalFresh that, in California, are made by a county pursuant to this division to be made exclusively by a merit or civil service employee of the county. (Welfare and Institutions Code Section [WIC] 10503)
- 2) Establishes the IHSS program to provide supportive services, including domestic, protective supervision, personal care, and paramedical services as specified, 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. (WIC 12300 *et seq.*)
- 3) Establishes under federal law the “Supplemental Nutrition Assistance Program” (SNAP) pursuant to the Food Stamp Act of 1964 and establishes, in California statute, the “CalFresh” program to administer the provision of federal SNAP benefits to families and individuals meeting certain criteria, as specified. (7 United States Code [U.S.C.] 2011 *et seq.*, WIC 18900 *et seq.*)
- 4) Establishes under federal law the “Temporary Assistance for Needy Families” (TANF) program to provide aid and welfare-to-work services to eligible families and, in California, provides that TANF funds for welfare-to-work services are administered through the California Work Opportunity and Responsibility to Kids (CalWORKs) program. (42 U.S.C. 601 *et seq.*, WIC 11200 *et seq.*)
- 5) Establishes citizenship requirements for SNAP benefits, including that undocumented immigrants are ineligible for SNAP, as specified. (7 Code of Federal Regulations [C.F.R.] 273.4)
- 6) Requires the California Department of Social Services (CDSS) to establish CFAP to provide assistance for persons who are not eligible for federal SNAP benefits due solely to their immigration status, as specified. (WIC 18930 *et seq.*)
- 7) Provides that noncitizens of the United States (U.S.) shall be eligible for CFAP if the person’s immigration status meets the SNAP eligibility criteria in effect on August 21, 1996, but is not eligible for SNAP benefits solely due to their immigration status, as specified. (WIC 18930(b)(1))

- 8) Requires, to the extent allowed by federal law, that the income, resources, and deductible expenses of those who receive CFAP benefits shall be excluded when calculating CalFresh benefits. (WIC 18930(d)(1))
- 9) Provides that no household shall receive more CalFresh benefits than it would if no household member was rendered ineligible pursuant to federal law, as specified. (WIC 18930(d)(2))
- 10) Declares that elders and dependent adults may be subjected to abuse, neglect, or abandonment and that the state has the responsibility to protect them. Further provides for uniform state guidelines, which specify when county adult protective service agencies are to investigate allegations of abuse of elders and dependent adults and the appropriate role of local law enforcement, in order to ensure that a minimum level of protection is provided to elders and dependent adults in each county. (WIC 15600(a) and (i))
- 11) Defines “abuse of an elder or a dependent adult” to mean physical abuse, neglect, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering; the deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering, or financial abuse, as defined. (WIC 15610.07(a); and Penal Code Section [PEN] 368.5(A)(i))
- 12) Defines “adult protective services” to mean a county welfare department, except persons who do not work directly with elders or dependent adults as part of their official duties, including support staff and maintenance staff. (WIC 15610.13)
- 13) Authorizes APS agencies and local long-term care ombudsman programs, within their jurisdiction and statutory authority, to investigate elder and dependent adult abuse and criminal neglect, and to assist local law enforcement agencies in criminal investigations at the law enforcement agencies’ request, if consistent with federal law, as specified. (PEN 368.5(b))
- 14) Establishes the Medi-Cal program, which is administered by the State Department of Health Care Services, under which qualified low-income persons receive health care benefits and, in part, which is governed and funded by federal Medicaid program provisions. (42 U.S.C. 1396 *et seq.*, WIC 14000 *et seq.*)
- 15) Requires, in federal regulations, state agency personnel used in the SNAP certification process to be employed in accordance with the current standards for a merit system of personnel administration or any standards later prescribed by the U.S. Civil Service Commission, as specified, and further, stipulates that volunteers and other non-State agency employees shall not conduct certification interviews or certify SNAP applicants. (7 C.F.R. 272.4(a))
- 16) Stipulates in federal regulations that a state Medicaid agency may delegate authority to make eligibility determinations or to conduct fair hearings, as specified, only to a government agency which maintains personnel standards on a merit basis. (42 C.F.R. 431.10(c)(2))

FISCAL EFFECT: This bill was keyed non-fiscal by the Legislative Counsel.

COMMENTS:

Background: *Federal guidance.* The U.S. Department of Agriculture issued guidance in 2017 inviting states to request a waiver to the long-standing regulation preventing privatized workers from determining eligibility for SNAP. In response to concerns that privatizing and contracting out eligibility standards would not only threaten the jobs of existing civil service employees, but also impact the standards used for eligibility, legislation was introduced to prohibit this practice in California. AB 3224 (Thurmond), Chapter 179, Statutes of 2018, was enacted to require any decisions governing eligibility for Medi-Cal, CalWORKs, or CalFresh that are made by counties in California, to be made exclusively by a merit or civil service employee of the county. This bill simply expands this requirement to include more social service programs.

Research conducted by In the Public Interest, a national nonprofit research and policy organization, regarding attempts to privatize Medicaid in Kansas and Iowa, has indicated that privatization correlates with a decreasing approval rate of applicants and a worsening of services offered, quality of care, and protections for workers managing these essential programs. Additionally, cost savings to the state did not materialize. As the experiences seen in the privatization of Medicaid in Kansas and Iowa, not only were the fees charged by the private companies higher than what it had cost the government to manage the program, but the insurance companies requested additional government funding claiming they were functioning over budget. In fact, they had been cutting corners, and putting more pressure on fewer medical providers in order to make a profit on managing the Medicaid program.

Merit and civil service employees. Civil service, also known as the merit system, was created to assure that the recruitment and retention of a qualified work force, and, the selection and promotion of employees providing public services and compensated by tax dollars is conducted in a fair and impartial manner and in a competitive fashion. State employees are part of the civil service and the California State Constitution.

In Home Supportive Services. The IHSS program in California is available to eligible low-income individuals who need assistance with daily living tasks. To qualify for the state-established program, an individual must be at least 65 years old, living with a disability, or blind. IHSS providers are paid through the program to assist with personal care services (bathing, grooming, etc.), domestic and related services (food preparation, light housecleaning, etc.), protective supervision, and paramedical services. Recipients of IHSS are responsible for selecting, hiring, firing, directing, and supervising their provider—however, the state handles payroll. According to CDSS, at the end of January 2022, there were 569,710 IHSS providers throughout the state and 666,357 individuals enrolled in the program. Within the entire program, over 98% of recipients receive care as a Medicaid benefit. CDSS has oversight of the IHSS program, and the program is administered at the county level.

California Food Assistance Program. Due to the strict federal eligibility requirements that limit who can receive CalFresh benefits, California operates the state-funded CFAP, which provides food benefits to qualified non-citizens. In order to qualify for CFAP indefinitely, non-citizens must: currently be ineligible for CalFresh solely due to their immigration status; have been legally residing in the U.S. as a lawfully permanent resident prior to August 22, 1996; be battered or abused; and, be qualified non-citizens who are no longer federally eligible under the seven-year time limit. Additionally, a non-citizen can qualify for CFAP if they are otherwise eligible for the program but were sponsored into the U.S. on or after August 22, 1996, and: their

sponsor has died or is disabled; or, the applicant, after entry into the U.S., is a victim of abuse by the sponsor or the spouse of the sponsor if the spouse is living with the sponsor. According to data from the Legislative Analyst's Office (LAO), CFAP serves approximately 35,000 legal permanent residents.

Cash Assistance Program for Immigrants. The 1998 Budget Act Implementation Bill for Social Services authorized the state-funded CAPI. The program was designed to provide cash assistance to certain aged, blind, and disabled immigrants who could no longer qualify for the Supplemental Security Income/State Supplementary Payment (SSI/SSP) Program. CAPI payment amounts vary depending on a person's marital status, living arrangements and other income and its payment standards are equivalent to the amount of SSI/SSP benefits. To qualify, recipients must meet the following:

- Meet all other SSI/SSP eligibility criteria except for immigration status.
- Be aged, blind, or disabled.
- Be a resident of California.
- Have resources below the allowable limits of \$2,000 for an individual or \$3,000 for a couple, and:
 - Have income less than the CAPI standards.
 - Be a non-citizen and meet the immigration status criteria in effect for SSI/SSP as of August 21, 1996.
 - Be ineligible for SSI/SSP solely due to immigration status. This means a CAPI applicant must apply for SSI/SSP, or submit other proof of ineligibility from the Social Security Administration.

Adult Protective Services was established in 1984 and has agencies located in each of the 58 counties to assist adults 60 years of age and older, and dependent adults ages 18-59, who are disabled, when they are victims of abuse, neglect or exploitation, or unable to meet their own needs. When reports of abuse, neglect, or exploitation are made, APS conducts an investigation and depending on the outcome, can provide services to keep them safe from harm. These services are provided without regard to income. In 1998, SB 2199 (Lockyer), Chapter 946, Statutes of 1998, was enacted to require each county to have a 24-hour emergency response system, to offer time-limited case management services that include advocacy, counseling and community services, as well as emergency shelter and in-home protection. The most common type of abuse reported is financial abuse, followed by psychological/emotional abuse, neglect and physical abuse. These made up almost 94% of the over 400,000 cases of abuse reported to APS between October 2019 to September 2022.

Author's Statement: According to the Author, "Privatization of social services has been a national trend for many decades, exacerbated by the Trump Administration. We now see from study after study that privatization correlates with a decreasing approval rate of applicants and a worsening of services offered, quality of care, and protections for workers managing these essential programs, all in the name of cost savings to the State that never materialize. California made a great first step in 2018 by passing AB 3224 to prevent the State from contracting out with

private companies to make eligibility decisions for CalFresh, CalWORKs, and Medi-Cal. [This bill] will expand on this work to protect California's low-income, foreign-born, and elderly communities by extending privatization protections for CAPI, CFAP, IHSS, and APS programs.”

Need for this bill: The provisions of this bill seek to build on the existing prohibition to contracting out eligibility decisions for Medi-Cal, CalWORKs, or CalFresh, by ensuring that eligibility decisions for other California safety net programs are not made by private companies who could place profit over meeting the needs of the state's vulnerable clients. This bill would not impact the parameters of eligibility nor would it impact the provision of services, it would simply maintain the current practice of not contracting out eligibility decisions for social services programs. Despite this, the author and sponsor have reported that several counties are considering contracting eligibility workers to perform Medi-Cal eligibility redeterminations, which would be in contrast to existing law.

Equity Implications: This bill is attempting to prevent the disruption of services provided to those who qualify for CAPI, CFAP, IHSS, and APS, the majority of whom are low-income, foreign-born, and/or elderly and in need of the services provided by California's safety net. According to data from the Public Policy Institute of California, California has done a better job than most other states in preventing large-scale privatization of social services. Nationally, California serves more families than other states do: in 2015, 65 out of 100 in poverty received cash assistance through CalWORKs, compared to the national average of 23 out of 100. By codifying current practice these programs that are proven to work well in pulling low-income families out of poverty through cash assistance provisions will be protected.

RELATED AND PRIOR LEGISLATION:

AB 3224 (Thurmond), Chapter 179, Statutes of 2018, required any decisions governing eligibility for Medi-Cal, CalWORKs, or CalFresh that are made by counties in California, to be made exclusively by a merit or civil service employee of the county.

REGISTERED SUPPORT / OPPOSITION:

Support

AFSCME, AFL-CIO (Co-Sponsor)
California State Council of Service Employees International Union (SEIU California) (Co-Sponsor)
California Labor Federation, AFL-CIO
Coalition of California Welfare Rights Organizations
County Welfare Directors Association of California (CWDA)
TechEquity Collaborative

Opposition

None on file

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