

## DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



January 12, 1993

ALL-COUNTY LETTER NO. 93-03

TO: ALL-COUNTY WELFARE DIRECTORS

## REASON FOR THIS TRANSMITTAL

- State Law Change
- Federal Law or Regulation Change
- Court Order or Settlement Agreement
- Clarification Requested by One or More Counties
- Initiated by SDSS

SUBJECT: RECENT CHANGES IN THE IN-HOME SUPPORTIVE SERVICES (IHSS) PROGRAM

The purpose of this letter is to inform you of recent changes to the IHSS Program content which were filed as urgency statutes on September 28, 1992 as Chapter 939, Statutes of 1992 (AB 1773, Moore). A copy of the chaptered bill is attached.

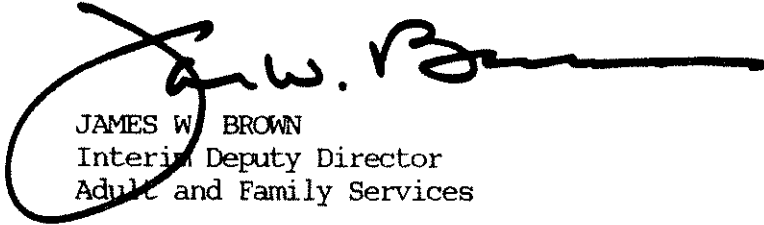
AB 1773 added the tasks of range of motion exercises and assistance with self-administration of medications to the scope of the IHSS Program and added specific definitions of paramedical services. California Department of Social Services (CDSS) will be filing regulations to revise the Program scope. Changes in authorized services should be made as necessary to implement these statutory changes at the time of the next reassessment of need. Tasks may be added effective September 28, 1992 and payment may be made retroactive to that date if need existed for the task(s) at the time. Counties that have State Hearing cases currently at issue with regard to these tasks may want to restore the hours for these tasks if restoration will mitigate the need for the hearing.

Range of motion exercises should be authorized on the SOC 293 grid in QQ, rubbing skin, repositioning, etc. CMIPS alert #117 will be suspended to allow this entry.

Currently, there is no item on the SOC 293 which relates to assistance with self-administration of medications. Until the grid is changed, assistance with self-administration of medications should be authorized on the SOC 293 grid in RR, care and assistance with prosthesis.

Paramedical services have been further defined in WIC Section 12300.1 to 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." All other current regulatory requirements which apply to paramedical services continue.

Questions about this letter should be directed to Mr. Robert A. Barton at  
(916) 657-2143.

A handwritten signature in black ink, appearing to read "J.W. Brown", with a large, stylized flourish at the end. The signature is written over the typed name and title.

JAMES W BROWN  
Interim Deputy Director  
Adult and Family Services

Attachment

cc: CWDA

Assembly Bill No. 1773

CHAPTER 939

An act to amend Sections 12300, 12300.1, 12304.1, 12306, and 13001 of, and to add Section 14132.95 to, the Welfare and Institutions Code, relating to public social services, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 26, 1992. Filed with Secretary of State September 28, 1992.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1773, Moore. In-home supportive services.

Existing law provides for the In-Home Supportive Services (IHSS) program, under which, either through employment by the recipient, or by or through contract by the county, qualified aged, blind, and disabled persons receive services enabling them to remain in their own homes. Counties are responsible for the administration of the IHSS program.

Under existing law, 2 of the types of services that can be provided under the IHSS program are nonmedical personal services and paramedical services.

This bill would substitute the term personal care services for nonmedical personal services, and would define personal care services and paramedical services.

Existing law contains provisions specifying the state and county share of the costs of the IHSS program.

This bill would make changes in state funding requirements for the IHSS program.

Existing law provides for the Medi-Cal program, under which qualified low-income persons are provided with health care services. The program is administered by the State Department of Health Services, and is funded, in part, by federal funds.

This bill would require the State Department of Health Services to seek federal approval for making personal care services a benefit under the Medi-Cal program, with the provision of this benefit being contingent upon federal approval and financial participation. To the extent that the provision of personal care services under the Medi-Cal program would impose additional duties upon each county, it would impose a state-mandated local program.

The bill would authorize the State Department of Health Services and the State Department of Social Services to adopt emergency regulations to implement the bill.

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 no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

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

SECTION 1. Section 12300 of the Welfare and Institutions Code is amended to read:

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 which 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) Where supportive services are provided by a person having the legal duty pursuant to the Civil Code to provide for the care of his or her child who is the recipient, the provider of supportive services shall receive remuneration for the services only when the provider 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.

These providers 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.

(e) 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.

SEC. 2. Section 12300.1 of the Welfare and Institutions Code is amended to read:

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.

SEC. 3. Section 12304.1 of the Welfare and Institutions Code is amended to read:

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.

SEC. 4. Section 12306 of the Welfare and Institutions Code is amended to read:

12306. (a) The state and counties shall share the annual cost of providing services under this article as specified in this section.

(b) Except as provided in subdivisions (c) and (d), 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, 65 percent of the cost of providing services under this article, and each county shall pay 35 percent of the cost of providing those services.

(c) For services eligible for federal funding pursuant to Title XIX of the federal Social Security Act under the Medi-Cal program and, except as provided in subdivisions (b) and (d) the state shall pay to each county, from the General Fund and any funds available for that purpose 65 percent of the nonfederal cost of providing services

under this article, and each county shall pay 35 percent of the nonfederal cost of providing those services.

(d) (1) For the period of July 1, 1992, to June 30, 1994, inclusive, the state's share of the cost of providing services under this article shall be limited to the amount appropriated for that purpose in the annual Budget Act.

(2) The department shall restore the funding reductions required by subdivision (c) of Section 12301, fully or in part, as soon as administratively practicable, if the amount appropriated from the General Fund for the 1992-93 fiscal year under this article is projected to exceed the sum of the General Fund expenditures under Section 14132.95 and the actual General Fund expenditures under this article for the 1992-93 fiscal year. The entire amount of the excess shall be applied to the restoration. Services shall not be restored under this paragraph until the Department of Finance has determined that the restoration of services would result in no additional costs to the state or to the counties relative to the combined state appropriation and county matching funds for in-home supportive services under this article in the 1992-93 fiscal year.

SEC. 5. Section 13001 of the Welfare and Institutions Code is amended to read:

13001. Funding for social services programs administered by county welfare departments shall include but not be limited to federal funds received under Titles IV, XIX, and XX of the federal Social Security Act, 10 percent of federal funds received under the Low-Income Home Energy Assistance Block Grant and the State General Fund. The appropriation and allocation of these funds shall be in accordance with the annual Budget Act and the provisions of this chapter.

SEC. 6. (a) As part of the Personal Care Option under Title XIX of the federal Social Security Act it will be necessary to modify state regulations and the current In-Home Supportive Services Case Management, Information and Payrolling System (IHSS/CMIPS) to interface with the State Medi-Cal Management Information System to meet federal requirements. The cost of the interface may exceed five hundred thousand dollars (\$500,000). Therefore there will be a need to amend the current IHSS/CMIPS vendor contract agreement to expedite implementation.

(b) Notwithstanding any other provision of law the State Department of Social Services shall have authority to upgrade the IHSS/CMIPS, and extend the term of and otherwise amend the IHSS/CMIPS contract to meet any and all requirements of the Health Care Financing Administration necessary for approval of the state's Title XIX State Plan change to provide personal care as an optional Medi-Cal service.

(c) The contracting activities described in subdivision (b) shall be exempt from the requirements of Article 1.5 (commencing with

Section 10115) of Chapter 1 of Part 2 of the Public Contracts Code, and shall not be subject to review by either the Department of General Services, pursuant to the Public Contract Code, including Sections 10295 and 10335 of that code, or the Department of Finance, including the Office of Information Technology pursuant to Section 11712 of the Government Code.

SEC. 7. Section 14132.95 is added to the Welfare and Institutions Code, to read:

14132.95. (a) Personal care services, when provided to a categorically needy person as defined in Section 14050.1, is a covered benefit to the extent federal financial participation is available if these services are:

(1) Provided in the beneficiary's home and other locations as may be authorized by the director subject to federal approval.

(2) Prescribed in accordance with a plan of treatment.

(3) Provided by a qualified person under the supervision of a registered nurse.

(4) Provided to a beneficiary who has a chronic, disabling condition that causes functional impairment that is expected to last at least 12 consecutive months or that is expected to result in death within 12 months and who is unable to remain safely at home without the services described in this section.

(b) The department shall seek federal approval of a state plan amendment necessary to include personal care as a medicaid service pursuant to subdivision (f) of Section 440.170 of Title 42 of the Code of Federal Regulations.

(c) Subdivision (a) shall not be implemented unless the department has obtained federal approval of the state plan amendment described in subdivision (b), and the Department of Finance has determined, and has informed the department in writing, that the implementation of this section will not result in additional costs to the state relative to state appropriation for in-home supportive services under Article 7 (commencing with Section 12300) of Chapter 3, in the 1992-93 fiscal year.

(d) (1) For purposes of this section, 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) Skin care.

(G) Repositioning, range of motion exercises, and transfers.

(H) Feeding and assurance of adequate fluid intake.

(I) Respiration.

(J) Paramedical services.

(K) Protective supervision.

(L) Assistance with self-administration of medications.

(2) Ancillary services including meal preparation and cleanup, routine laundry, shopping for food and other necessities, and domestic services may also be provided as long as these ancillary services are subordinate to personal care services. Ancillary services may not be provided separately from the basic personal care services.

(e) Personal care services provided pursuant to this section shall be consistent with the beneficiary's needs as identified in the plan of care and subject to medical necessity and applicable utilization controls. Personal care services shall not be provided to residents of facilities licensed by the department and shall not be provided to residents of a community care facility or a residential care facility for the elderly licensed by the Community Care Licensing Division of the State Department of Social Services.

(f) Services pursuant to this section shall be rendered, under the administrative direction of the State Department of Social Services, in the manner authorized in Article 7 (commencing with Section 12300) of Chapter 3, for the In-Home Supportive Services program. A provider of personal care services shall be qualified to provide the service and shall be a person other than a member of the family. For purposes of this section, a family member means a parent of a minor child or a spouse.

(g) A beneficiary who is eligible for assistance under this section, and who is not described in Section 12304, shall receive services under this section that do not exceed 195 hours per month of personal care services.

(h) A beneficiary who is eligible for assistance under this section who is in need, as determined by the county welfare department, of at least 20 hours per week of the services specified in Section 12304, shall be eligible to receive services under this section, the total of which shall not exceed a maximum of 283 hours per month of personal care services.

(i) Determination of need and authorization for services shall be performed in accordance with Article 7 (commencing with Section 12300) of Chapter 3.

(j) Reimbursement rates for personal care services shall be equal to the rates in each county for the same mode of services in the In-Home Supportive Services program pursuant to Article 7 (commencing with Section 12300) of Chapter 3, plus any increase provided in the annual Budget Act for personal care services rates.

(k) An individual who is eligible for services subject to the maximum amount specified in subdivision (b) of Section 12303.4 shall be given the option of hiring his or her own provider.

(l) 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.

(m) It is the intent of the Legislature that this entire section be an inseparable whole and that no part of it be severable. If any

portion of this section is found to be invalid, as determined by a final judgment of a court of competent jurisdiction, this section shall become inoperative.

SEC. 8. The State Department of Health Services and the State Department of Social Services may adopt regulations implementing this act 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 Procedures 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 be subject to the review and approval of the Office of Administrative Law.

Notwithstanding subdivision (h) of Section 11364.1 and Section 11349.6 of the Government Code, the State Department of Health Services and the State Department of Social Services 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.

The Office of Administration Law shall provide for the printing and publication of these regulations in the California Code of Regulations. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, these regulations shall not be repealed by the Office of Administrative Law and shall remain in effect until revised or repealed by the department.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the Legislature finds and declares that there are savings as well as costs in this act which, in the aggregate, do not result in additional net costs. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 10. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to facilitate implementation of the Title XIX Personal Care Option (PCO) Program, and bridge the gap between the current In-Home Supportive Services (IHSS) Program and the PCO and remaining IHSS programs, it is necessary that this act take effect immediately.