

Date of Hearing: May 15, 2024

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Buffy Wicks, Chair

AB 3079 (Ting) – As Amended April 25, 2024

Policy Committee: Human Services

Vote: 5 - 1

Urgency: No

State Mandated Local Program: Yes

Reimbursable: Yes

SUMMARY:

This bill 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. Requires these providers be exempt from criminal background checks otherwise required for IHSS providers.

Specifically, this bill:

- 1) Requires, by March 1, 2025, or when the Case Management Information and Payrolling System (CMIPS) 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, to ensure individuals without satisfactory immigration status 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 who is by blood, adoption, or marriage, 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 described above to include a process for enrolling a person as a provider using an ITIN in lieu of a Social Security number, and a process for enrolling a prospective provider who is in the process of obtaining an ITIN.
 - c) Specifies 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 to develop recommendations to enable any recipient of services to select a related provider of their choice.

- 3) Exempts a person who meets the criteria specified in 1, above, from a criminal background check, but requires the person attest to convictions that prohibit a person from providing IHSS services under existing law. Specifies a person who attests to a prohibited conviction is prohibited from providing IHSS.
- 4) Permits a family member to employ a related provider who meets the criteria specified in 1, above, and who attested to a conviction that would otherwise prohibit the relative from providing IHSS.

FISCAL EFFECT:

CDSS anticipates significant one-time General Fund automation costs, potentially in the millions of dollars to reprogram CMIPS to account for the changes in the provider enrollment requirements.

COMMENTS:

- 1) **Purpose.** 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, [This bill] authorizes undocumented IHSS recipients to select an undocumented family member to serve as their in home provider.

- 2) **Background. IHSS.** IHSS allows eligible low-income individuals in California who are 65 years of age and older, living with a disability, or blind to access services that enable them to remain in their own homes and avoid premature institutional care. IHSS program providers are paid to assist with personal care services (such as bathing, toileting, and grooming), domestic and related services (meal preparation, housecleaning), paramedical services, and protective supervision. As of February 2023, there were 613,410 IHSS providers in California; 95.5% of providers are a relative, spouse, or parent of the recipient, and 55.6% of providers live in the same residence as the recipient. There are over 593,000 Californians who receive IHSS.

Eligible IHSS recipients must physically reside in the United States, be a California resident, be Medi-Cal qualified, live at home or in a place of their own choosing, which can include a licensed community care facility or 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.

IHSS provider applicants must complete an enrollment process, which includes submitting the necessary forms to the county, submitting fingerprint images to the Department of Justice (DOJ) for a criminal background check, and participating in a provider orientation.

In 2021, California expanded Medi-Cal benefits to qualified individuals regardless of immigration status. With this expansion, individuals who are undocumented, over 50 years of age, and otherwise qualified are also newly eligible for IHSS. However, undocumented recipients cannot select an undocumented family member to act as their provider due to immigration status.

The Department of Labor statistics show there are not enough direct care workers to meet population needs. To help address the labor shortage and to allow an undocumented IHSS recipient choose their preferred provider, this bill allows an IHSS recipient to hire an undocumented family-member provider. This bill exempts the provider from the usual background check requirements, but requires the person to attest to prohibited convictions.

Legal Questions. 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. On the other hand, legal experts from the UCLA Center for Immigration Law and Policy offered a legal analysis that asserts 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 Deferred Action for Childhood Arrivals (DACA) student's right to work on campus. Ultimately, the UC Regents in January 2024 rejected the proposal to allow undocumented immigrants to be employed on UC campuses.

- 3) **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.

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