

WELFARE AND INSTITUTIONS CODE - WIC
DIVISION 9. PUBLIC SOCIAL SERVICES [10000 - 18996]

(Division 9 added by Stats. 1965, Ch. 1784.)

PART 3. AID AND MEDICAL ASSISTANCE [11000 - 15766]

(Part 3 added by Stats. 1965, Ch. 1784.)

CHAPTER 3. State Supplementary Program for Aged, Blind and Disabled
[12000 - 12351]

(Chapter 3 repealed and added by Stats. 1973, Ch. 1216.)

ARTICLE 7. In-Home Supportive Services [12300 - 12330]

(Article 7 added by Stats. 1973, Ch. 1216.)

12300.4.

(a) Notwithstanding any other law, including, but not limited to, Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code and Title 23 (commencing with Section 110000) of the Government Code, a recipient who is authorized to receive in-home supportive services pursuant to this article, or Section 14132.95, 14132.952, or 14132.956, administered by the State Department of Social Services, or waiver personal care services pursuant to Section 14132.97, administered by the State Department of Health Care Services, or any combination of these services, shall direct these authorized services, and the authorized services shall be performed by a provider or providers within a workweek and in a manner that complies with the requirements of this section.

(b) (1) A workweek is defined 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.

(2) A provider of services specified in subdivision (a) shall not work a total number of hours within a workweek that exceeds 66, as reduced by the net percentage defined by Sections 12301.02 and 12301.03, as applicable, and in accordance with subdivision (d). The total number of hours worked within a workweek by a provider is defined as the sum of the following:

(A) All hours worked providing authorized services specified in subdivision (a).

(B) Travel time as defined in subdivision (f), only if federal financial participation is not available to compensate for that travel time. If federal financial

participation is available for travel time as defined in subdivision (f), the travel time shall not be included in the calculation of the total weekly authorized hours of services.

(3) (A) If the authorized in-home supportive services of a recipient cannot be provided by a single provider as a result of the limitation specified in paragraph (2), it is the responsibility of the recipient to employ an additional provider or providers, as needed, to ensure his or her authorized services are provided within his or her total weekly authorized hours of services established pursuant to subdivision (b) of Section 12301.1.

~~(B) If the provider of authorized waiver personal care services cannot provide those services to a recipient as a result of the limitation specified in paragraph (2),~~ The State Department of Health Care Services shall work with the recipient to engage additional providers, as necessary. It is the intent of the Legislature that this section shall not result in reduced services authorized to recipients of waiver personal care services defined in subdivision (a).shall take all necessary steps to ensure that implementation of this section does not reduce services to participants on the Nursing Facility/Acute Hospital or In-Home Operations Waivers."

AND/OR as an alternative to this fix, delete 12300.4(b)(2)(B) entirely and instead, amend 14132.99 of the Welfare and Institutions Code to read (and change subsequent number):

(e) Commencing January 1, 2015, any increases in provider payment rates in the In-Home Supportive Services as set forth in section 12300 et.seq., Personal Care Services Program as set forth in section 14132.95, or Waiver Personal Care Services program as set forth in section 14132.97, including increased hourly rates and payments for overtime, shall not reduce services to participants on the Nursing Facility/Acute Hospital and In-Home Operations Waivers. The State Department of Health Care Services shall take all necessary steps to implement this provision.

(4) (A) A provider shall inform each of his or her recipients of the number of hours that the provider is available to work for that recipient, in accordance with this section.

(B) A recipient, his or her authorized representative, or any other entity, including any person or entity providing services pursuant to Section 14186.35, shall not authorize any provider to work hours that exceed the applicable limitation or limitations of this section.

(C) A recipient may authorize a provider to work hours in excess of the recipient's weekly authorized hours established pursuant to Section 12301.1 without notification of the county welfare department, in accordance with both of the following:

(i) The authorization does not result in more than 40 hours of authorized services per week being provided.

(ii) The authorization does not exceed the recipient's authorized hours of monthly services pursuant to paragraph (1) of subdivision (b) of Section 12301.1.

(5) For providers of in-home supportive services, the State Department of Social Services or a county may terminate the provider from providing services under the IHSS program if a provider continues to violate the limitations of this section on multiple occasions.

(c) Notwithstanding any other law, only federal law and regulations regarding overtime compensation apply to providers of services defined in subdivision (a).

(d) A provider of services defined in subdivision (a) is subject to all of the following, as applicable to his or her situation except as set forth in subdivision (e):

(1) A provider who works for an individual recipient of those services shall not work a total number of hours within a workweek that exceeds 66 hours, as reduced by the net percentage defined by Sections 12301.02 and 12301.03, as applicable. In no circumstance shall the provision of these services by that provider to the individual recipient exceed the total weekly hours of the services authorized to that recipient, except as additionally authorized pursuant to subparagraph (C) of paragraph (4) of subdivision (b). If multiple providers serve the same recipient, it shall continue to be the responsibility of that recipient or his or her authorized representative to schedule the work of his or her providers to ensure the authorized services of the recipient are provided in accordance with this section.

(2) A provider of in-home supportive services described in subdivision (a) who serves multiple recipients is not authorized to, and shall not, work more than 66 total hours in a workweek, as reduced by the net percentage defined by Sections 12301.02 and 12301.03, as applicable, regardless of the number of recipients for whom the provider provides services authorized by subdivision (a). Providers are subject to the limits of each recipient's total authorized weekly hours of in-home supportive services described in subdivision (a),

except as additionally authorized pursuant to subparagraph (C) of paragraph (4) of subdivision (b).

(e) Authorization for a provider to work in excess of the limitations of subdivision (d) may be given on a permanent, short-term, or one-time basis pursuant to the process set forth in paragraph (1) of subdivision (b) of section 12301.1.

(1) Authorization for an exception to the limitations of subdivision (d) shall be granted when, absent authorization for an exception to the limitations of subdivision (d) for one more providers:

(A) the recipient would be at risk of out-of-home placement;

(B) the recipient's health or safety would be at risk;

(C) no other appropriate provider is available to serve the recipient;

(D) the recipient's existing provider relationship will be disrupted;

(E) a parent provider for one or more adult recipients; or

(F) the recipient's preferred choice of providers cannot be honored.

(2) Authorization for an exception to the travel time limitation set forth in paragraph (1) of subdivision (f) of section 12300.4 shall be granted when the limitation on travel time would result in a loss of services or unwanted work schedule change for one or more recipients.

(3) A categorical exemption from the limitations of subdivision (d) shall be granted to providers who are paid to provide services only because no other suitable provider is available.

(ef) Recipients and providers shall be informed of the limitations and requirements contained in this section, through notices at intervals and on forms as determined by the State Department of Social Services or the State Department of Health Care Services, as applicable, following consultation with stakeholders.

(fg) (1) A provider of services described in subdivision (a) shall not engage in travel time in excess of seven hours per week. For the purposes of this subdivision, "travel time" means time spent traveling directly from a location where authorized services specified in subdivision (a) are provided to one recipient, to another location where authorized services are to be provided to another recipient. A provider shall coordinate hours of work with his or her recipient or recipients to comply with this section.

(2) The hourly wage to compensate a provider for travel time described in this subdivision when the travel is between two counties shall be the hourly wage of the destination county.

(3) Travel time, and compensation for that travel time, between a recipient of authorized in-home supportive services specified in subdivision (a) and a recipient of authorized waiver personal care services specified in subdivision (a), shall be attributed to the program authorizing services for the recipient to whom the provider is traveling.

(4) Hours spent by a provider while engaged in travel time shall not be deducted from the authorized hours of service of any recipient of services specified in subdivision (a).

(5) The State Department of Social Services and the State Department of Health Care Services shall issue guidance and processes for travel time between recipients that will assist the provider and recipient to comply with this subdivision. Each county shall provide technical assistance to providers and recipients, as necessary, to implement this subdivision.

(~~g~~h) A provider of authorized in-home supportive services specified in subdivision (a) shall timely submit, deliver, or mail, verified by postmark or request for delivery, a signed payroll timesheet within two weeks after the end of each bimonthly payroll period. Notwithstanding any other law, a provider who submits an untimely payroll timesheet for providing authorized in-home supportive services specified in subdivision (a) shall be paid by the state within 30 days of the receipt of the signed payroll timesheet.

(~~h~~i) This section does not apply to a contract entered into pursuant to Section 12302 or 12302.6 for authorized in-home supportive services. Contract rates negotiated pursuant to Section 12302 or 12302.6 shall be based on costs consistent with a 40-hour workweek.

(~~i~~j) The state and counties are immune from any liability resulting from implementation of this section.

(~~j~~k) Any action authorized under this section that is implemented in a program authorized pursuant to Section 14132.95, 14132.97, 14132.952, or 14132.956 shall be compliant with federal Medicaid requirements, as determined by the State Department of Health Care Services.

(~~k~~l) Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the State Department of Social Services and the State Department of Health Care Services may implement, interpret, or make specific this section by means of all-county letters or similar instructions, without taking any regulatory action.

(1) This section shall become operative only when the regulatory amendments made by RIN 1235-AA05 to Part 552 of Title 29 of the Code of Federal Regulations are deemed effective, either on the date specified in RIN 1235-AA05 or at a later date specified by the Federal Department of Labor, whichever is later.

(2) If the regulatory amendments described in paragraph (1) become only partially effective by the date specified in paragraph (1), this section shall become operative only for those persons for whom federal financial participation is available as of that date.
