

**California Department of Social Services Proposed Trailer Bill Language
IHSS Budget Reforms Clean-up
March 2010**

Issue	Current Law	Change Requested	Rationale for Change
Provider Enrollment			
IHSS Provider Enrollment Agreement W&IC Section 12301.24 Page 3	<ul style="list-style-type: none"> Requires the applicant/existing provider to complete and sign the agreement. 	<ul style="list-style-type: none"> Amends language to require the applicant/existing provider to submit the agreement to the county. 	<ul style="list-style-type: none"> Ensures that the provider enrollment agreement is submitted to the county.
Standardized Provider Timesheet			
Timesheet <i>Technical correction</i> W&IC Section 12301.25 (b) Page 4	<ul style="list-style-type: none"> Requires a person convicted of fraud, as defined in subdivision (a) of Section 12305.8, resulting from intentional deception or misrepresentation in the provision of the timesheet information under this section, be subject to a civil penalty. 	<ul style="list-style-type: none"> Remove the words “resulting from intentional deception or misrepresentation.” 	<ul style="list-style-type: none"> Clarifies language regarding individuals convicted of fraud, which is defined in Section 12305.8.
Timesheet <i>Extend effective date</i> W&IC Section 12301.25 (c) Page 4	<ul style="list-style-type: none"> Provides that effective July 1, 2011, the standardized provider timesheet will contain designated spaces for the index fingerprint of the provider and recipient. 	<ul style="list-style-type: none"> Deletes effective date of July 1, 2011. Replaces language with “when the CMIPS II system is fully implemented statewide.” 	<ul style="list-style-type: none"> Coordinates the addition of recipient and provider fingerprints on timesheets with the full implementation of the new IHSS Case Management and Information Payrolling System (CMIPS II)
Advisory Committee			
Advisory Committee W&IC Section 12301.3 Page 4 – Amendment 1	<ul style="list-style-type: none"> Requires each county to appoint an in-home supportive services advisory committee to provide ongoing advice and recommendations regarding IHSS to the county board of supervisors, and the governing body and administrative agency of the public authority, non-profit consortium, contractor, and public employees. 	<ul style="list-style-type: none"> Replaces “shall” with “may” and deletes language establishing the membership of the advisory committee. 	<ul style="list-style-type: none"> Makes the advisory committees optional, which eliminates mandated administrative costs for the committees.

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Advisory Committee W&IC Section 12301.4 Page 4 – Amendment 2	<ul style="list-style-type: none"> Requires each advisory committee to provide ongoing advice and recommendations regarding IHSS. 	<ul style="list-style-type: none"> Deletes language because this language has been incorporated in section 12301.3. 	<ul style="list-style-type: none"> Combines a portion of the language with 12301.3 and deleted this section regarding advisory committees.
Advisory Committee W&IC Section 12301.6(b)(3) (B), (C), and (D) Pages 5-6	<ul style="list-style-type: none"> Provides requirements for the members of the advisory committee. 	<ul style="list-style-type: none"> Deleted language referring to advisory committees. 	<ul style="list-style-type: none"> Since the advisory committee is optional, the composition of the advisory committee shall not be mandated.
Advisory Committee W&I Section 12302.25(d) and (e) Amendment 3	<ul style="list-style-type: none"> Requires a county to establish an advisory committee prior to implementing provision that allows county to establish an employer for IHSS providers, (using a Public Authority or Non-Profit Consortium, or Contract mode); and to take into account the advice and recommendation of the advisory committee. 	<ul style="list-style-type: none"> Deleted language referring to advisory committees. 	<ul style="list-style-type: none"> Section not needed since the advisory committees are optional. Also, all counties have already established the employer for IHSS providers (i.e. PAs/NPCs, and contract mode.)
Advisory Committee W&IC Section 12315- Amendment 4	<ul style="list-style-type: none"> Requires the county to obtain input and recommendations of the IHSS Advisory committee. 	<ul style="list-style-type: none"> Deleted language requiring advisory committee input. 	<ul style="list-style-type: none"> Since the advisory committee is optional, reference to their input and recommendations shall not be mandated.

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Criminal Background Check			
<p>Criminal Background Check Clarify Effective Date</p> <p>W&IC Section 12301.6(e)(2)(A)(i) Page 7-8</p>	<ul style="list-style-type: none"> Provides effective date of the amendments to the section made during the 2009-10 Fourth Extraordinary Session of the Legislature. 	<ul style="list-style-type: none"> Clarifies the beginning date of the requirement for registry providers and prospective registry applicants to undergo a criminal background check. Clarifies that any registry provider or prospective registry provider can include an individual caring for a minor. Clarifies that the criminal background check is conducted at the prospective registry applicant's or provider's expense 	<ul style="list-style-type: none"> Amended language for readability and to clarify the beginning date of the criminal background check process. Amendments to this section also clarified the inclusion of individual's caring for minors in the criminal background check process that this is at the prospective registry or applicant's expense.
<p>Criminal Background Check Clarify Process for Sharing CORI</p> <p>W&IC Section 12301.6(e)(2)(B)(i) and (ii) Page 8-10</p>	<ul style="list-style-type: none"> Allows the applicant or provider who is rejected as a result of the information contained in the criminal background information, to receive a copy of his/her own criminal history record from Department of Justice (DOJ). 	<ul style="list-style-type: none"> Clarifies the DOJ's process to allow the public authority (PA) or nonprofit consortium (NPC) to provide a copy of the criminal offender record information (CORI) upon request by the applicant, if the applicant is denied placement on the registry, based upon the information in the CORI. Also, language has been added to clarify that the PA/NPC is authorized to provide the department with a copy of the CORI, upon request by the department for an applicant's appeal. 	<ul style="list-style-type: none"> These changes were drafted with the DOJ. The request to amend current statute had been made by DOJ to ensure the appropriate processes are used.

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<p>Criminal Background Check Clarify Process for Sharing CORI</p> <p>W&IC Section 12301.6(e)(2)(C) and (D) Page 10</p>	<ul style="list-style-type: none"> Requires the applicant to be informed of his/her right to a waiver of the fee for obtaining a copy of the criminal history record and how to submit a claim and proof of indigency. 	<ul style="list-style-type: none"> Deleted language regarding the process to obtain a copy of CORI from DOJ. Section D was re-lettered and amended to provide the correct cross-reference to the Penal Code. 	<ul style="list-style-type: none"> Section was deleted since the current process allows the applicant/provider to receive a copy of his/her criminal record information.
<p>Criminal Background Check Disqualifying Crimes</p> <p>W&IC Section 12305.81(a),(2),(3) (b)(2) Page 18-20</p>	<ul style="list-style-type: none"> Requires that a person not be eligible to provide or receive payment for providing supportive services for 10 years following a conviction for, or incarceration following a conviction for fraud against a government health care or supportive services program, or a violation of 273a, or 368 of the penal code. 	<ul style="list-style-type: none"> Precludes a person from providing or receiving payment for providing supportive services for 10 years for specified crimes. Deletes the requirement that the text of Section 273a and Section 368 be provided to prospective or current providers. 	<ul style="list-style-type: none"> Convictions similar to those governing providers in residential care facilities have been included, consistent with the requirements and process used for years by the CDSS Community Care Licensing Division (CCLD), in-home care providers licensed by the California Department of Public Health, and other similarly responsible service providers. At a minimum, the requirements will provide for "non-exemptible" crimes, which, due to the nature of these offenses, would preclude any individual convicted or incarcerated for one of the specified crimes within the last ten years from providing services in any care giving capacity.
<p>Criminal Background Check Provider Declaration</p> <p>W&IC Section 12305.81(b)(4) Page 20 -21</p>	<ul style="list-style-type: none"> Requires the provider enrollment form to include a statement declaring that the person has not in the last 10 years been convicted or incarcerated following a conviction for a crime involving fraud against a government health care or supportive services program, or a violation of 273a or 368 of the penal code. 	<ul style="list-style-type: none"> Amends the prospective or current provider declaration consistent with the amended list of crimes in W&IC Section 12305.81(a) 	<ul style="list-style-type: none"> Convictions on the declaration must be consistent with the amended list of crimes in W&IC Section 12305.81(a).

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<p>Criminal Background Check Ineligibility and Removal from PA/NPC Registry Approval for FFP</p> <p>W&IC Section 12305.81(d), (e), (f), and (g) Page 22-23</p>	<ul style="list-style-type: none"> Provides that a PA who determines a registry provider to be not eligible to provide supportive services, to report the finding to the department. 	<ul style="list-style-type: none"> Amends PA and NPC requirements to clarify that an individual not eligible to be a provider under W&I Section 12305.81(a) is removed from the Registry. Adds language requiring the Department of Health Care Services to seek approval of any amendments to the state plan to implement and receive federal financial participation. Adds language allowing the Department to implement changes to section 12305.81 via ACL and the operative date of these changes. 	<ul style="list-style-type: none"> Amendments are necessary to be consistent with non-registry providers. DHCS must seek approval from CMS to implement and receive FFP for the changes to the provider enrollment requirements for the IHSS program.
<p>Criminal Background Check Clarify Provider of Services</p> <p>W&IC Section 12305.86(a) Page 25</p>	<ul style="list-style-type: none"> Provides that the DOJ conduct a state-level criminal offender record information search for any person seeking to become an in-home supportive services provider who is not listed on the registry. 	<ul style="list-style-type: none"> Clarifies that any provider or prospective provider can include an individual caring for a minor. 	<ul style="list-style-type: none"> At DOJ's suggestion, clarifies the inclusion of individual's caring for minors in the criminal background check process. This is consistent with W&IC Section 12301.6(e)(2)(A)(i).
<p>Criminal Background Check Clarify Process for Sharing CORI</p> <p>W&IC Section 12305.86(c) Page 26-28</p>	<ul style="list-style-type: none"> Allows the applicant or provider who is rejected as a result of the information contained in the criminal background information, to receive a copy of his/her own criminal history record from Department of Justice (DOJ). 	<ul style="list-style-type: none"> Clarifies DOJ's process to allow the county to provide a copy of the CORI upon request by the applicant, if the applicant had been denied, based upon the information. Also, language has been added to clarify that the county is authorized to provide the department with a copy of the CORI, upon request by the 	<ul style="list-style-type: none"> These changes were drafted with the DOJ. The request to amend current statute had been made by DOJ to ensure the appropriate processes are used.

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<p>Criminal Background Check Liability</p> <p>W&IC Section 12305.86(f) Page 28 Insert Amendment 4 Insert B</p>	<ul style="list-style-type: none"> Allows counties and the state to be immune from any liability resulting from implementation of criminal background checks, (W&IC Section 12301.6 (f)(3)). 	<p>department for an applicant's appeal.</p> <ul style="list-style-type: none"> Provides counties and the state with immunity from liability in implementing the criminal background check provisions. Adds language allowing the Department to implement trailer bill provisions via ACL and the operative date of these changes 	<ul style="list-style-type: none"> Provides for consistency with Section 12301.6(f)(3). Provides authority to implement through ACL.

Recipient Fingerprinting			
<p>Recipient Fingerprinting</p> <p>W&IC Section 12305.73 Page 17</p>	<ul style="list-style-type: none"> Requires recipient to be fingerprinted by a social worker in the recipient's home. 	<ul style="list-style-type: none"> Amended language to also allow a designated county representative to perform the fingerprint. 	<ul style="list-style-type: none"> Allows counties the flexibility to utilize designated county representatives to perform fingerprinting of recipients.
<p>Recipient Fingerprinting Authority to Implement via ACL</p> <p>W&IC Section 12305.73(f) Page 17 – Insert A</p>	<ul style="list-style-type: none"> No statutory authority provided for implementation by All County Letter 	<ul style="list-style-type: none"> Amended language to provide authority for Department to implement provisions via All County Letter until regulations are adopted. Emergency regulations shall be adopted no later than July 1, 2012. 	<ul style="list-style-type: none"> Codifies authority to implement through ACL and OAL bypass beyond date set in AB X4 19.

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Fraud			
<p>Fraud Investigations</p> <p>W&IC Section 12305.82 (e) Page 25</p>	<ul style="list-style-type: none"> Provides authority for counties to investigate fraud in the provision or receipt of in-home supportive services – (W&IC Section 12305.82). 	<ul style="list-style-type: none"> Deletes section (e) that limits the county to only investigate cases with suspected fraud with respect to an overpayment of \$500 or less. 	<ul style="list-style-type: none"> Existing statute (W&IC section 12305.82 (a) authorizes counties to also investigate fraud in the provision or receipt of in-home supportive services. Section “e” has been deleted to allow counties to investigate cases of suspected fraud in any amount, (i.e. beyond \$500). Local law enforcement agencies have the appropriate staff to pursue investigations of fraud; they have proven to be successful in prosecuting these cases.