

December 11, 2019

CALIFORNIA DEPARTMENT OF SOCIAL SERVICES

EXECUTIVE SUMMARY

ALL COUNTY LETTER NO. 19-111

The purpose of this All County Letter is to inform counties of the new In-Home Supportive Services Maintenance of Effort requirements effective July 1, 2019, as authorized in Senate Bill 80 (Chapter 27, Statutes of 2019).



KIM JOHNSON
DIRECTOR

STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF SOCIAL SERVICES
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GAVIN NEWSOM
GOVERNOR

December 11, 2019

ALL COUNTY LETTER (ACL) NO. 19-111

TO: ALL COUNTY WELFARE DIRECTORS
ALL IN-HOME SUPPORTIVE SERVICES PROGRAM MANAGERS

SUBJECT: IN-HOME SUPPORTIVE SERVICES MAINTENANCE OF EFFORT
EFFECTIVE JULY 1, 2019

REFERENCE: [SENATE BILL \(SB\) 80 \(CHAPTER 27, STATUTES OF 2019\)](#)
[WELFARE & INSTITUTIONS CODE 12306.16](#)
[WELFARE & INSTITUTIONS CODE 12301.61](#)
[ACL NO. 19-101, DATED OCTOBER 14, 2019](#)
[ACL NO. 19-69 DATED JULY 30, 2019](#)
[ACL NO. 18-35, DATED MARCH 22, 2018](#)
[ACL NO. 02-95, DATED DECEMBER 18, 2002](#)
[CFL NO. 19/20-22 DATED SEPTEMBER 4, 2019](#)

The purpose of this ACL is to inform counties of the new In-Home Supportive Services (IHSS) Maintenance of Effort (MOE) requirements in effect beginning Fiscal Year (FY) 2019-20, as authorized in [SB 80 \(Chapter 27, Statutes of 2019\)](#).

BACKGROUND

Under the 2017 County IHSS MOE, the counties' share of IHSS costs was reset to reflect the counties' share of estimated 2017-18 IHSS costs based on historical county cost-sharing levels. The 2017 County IHSS MOE increased annually by: (1) counties' share of costs from locally established wage, health benefit, or non-health benefit increases; and, (2) an annual inflation factor of zero to 7 percent based on 1991 Realignment revenues.

In January 2019, the Department of Finance (DOF) found that 1991 Realignment could no longer support county costs of IHSS in its [Senate Bill 90: 1991 Realignment Report](#). As a result, Welfare and Institutions Code (WIC) sections 12306.1 and 12301.16 (SB 80, Chapter 27, Statutes of 2019) were enacted and the new County IHSS MOE became effective on July 1, 2019.

Changes to the County IHSS MOE include:

- Reduction of the County IHSS MOE base from \$2.06 billion to \$1.56 billion;
- Allocation of state General Funds (GF) for IHSS County and PA administration with no county share up to the allocation amount and 100 percent county cost for the non-federal share of any expenditures above the allocation amount;
- Annual inflation factor of 4 percent beginning July 1, 2020 and annually thereafter;
- The non-federal sharing ratio will change for any locally established increase in wages or benefits on or after the state minimum wage reaches \$15.00 per hour from 65 percent state and 35 percent county to 35 percent state and 65 percent county and the state participation cap is eliminated.
- The statutes also clarified that the Public Authority (PA) rate is inclusive of wages, benefits, non-health benefits and administrative costs.

COUNTY & PUBLIC AUTHORITY ADMINISTRATIVE COSTS

The state shall pay 100 percent of the non-federal share of the allowable County IHSS administration costs and 100 percent of the non-federal share of the allowable PA administration costs that are within a county's approved PA rate until the county's GF allocation is exhausted. Once the county has exhausted its GF allocation, each county shall pay 100 percent of the non-federal share of County IHSS and PA administration costs. Each county shall pay 100 percent of any PA administrative costs in excess of their Department of Health Care Services (DHCS), California Department of Social Services (CDSS), and Board of Supervisor (BOS) approved administrative rate.

Any county expenditures for county or PA administrative costs in excess of the GF allocation will not be attributable towards meeting the County IHSS MOE requirement.

STATE PARTICIPATION CAP

The state shall participate in a total of individual provider wages and health benefits up to one dollar and ten cents (\$1.10) per hour above the state minimum wage until the state minimum wage reaches \$15.00. Once the state minimum wage reaches \$15.00, there will be no cap on state participation for approved locally negotiated increases in provider wages and individual health benefits.

ADJUSTMENTS TO COUNTY IHSS MOE

Annual Inflation

Beginning on July 1, 2020, and annually thereafter, the County IHSS MOE will be increased by an inflation factor of 4 percent.

Locally Negotiated Wages and/or Health Benefits

July 1, 2019 until the state minimum wage reaches \$15.00

Any increases to IHSS provider wages, health benefits, or future increases resulting from the same, including increases to health benefit premiums that are locally negotiated, mediated, imposed, or adopted by ordinance, between July 1, 2019 and when the state minimum wage is \$15.00, will result in an adjustment to the County IHSS MOE of 35 percent of the non-federal share of the increase up to the state participation cap in effect at the time of the increase. The county shall have the responsibility of paying the entire non-federal share of any portion of a cost increase in excess of the state participation cap unless the county is utilizing the 10 percent option (refer to “10 Percent Increase Over Three-Year Period” section for further explanation). The county shall have the responsibility of paying the entire non-federal share if the increase is not approved by CDSS.

Beginning when the state minimum wage reaches \$15.00

Any increases to IHSS provider wages, health benefits, or future increases resulting from the same, including increases to health benefit premiums that are locally negotiated, mediated, imposed, or adopted by ordinance, on or after the day the state minimum wage reaches \$15.00, will result in an adjustment to the County IHSS MOE of 65 percent of the non-federal share of the increase. The county shall have the responsibility of paying the entire non-federal share if the increase is not approved by CDSS.

Health Benefit Premium Increases

If a county, PA, or Nonprofit Consortium (NPC) has a current memorandum of understanding (MOU) or collective bargaining agreement (CBA) executed or extended and submitted to CDSS for approval prior to July 1, 2019, through the end date, as specified in the MOU or CBA, the state shall cover 100 percent of the non-federal share of health benefit premium increases and there shall not be an adjustment to the rebased County IHSS MOE. For any MOU or CBA submitted for approval after July 1, 2019, including adjustments to the health benefit rate due to a premium increase, the County IHSS MOE will be adjusted for the county’s share of that increase as described in the “Locally Negotiated Wages and/or Health Benefits” section above.

Locally Negotiated Non-Health Benefit Increases

There will be a one-time adjustment to the County IHSS MOE equal to 35 percent of the non-federal share of certain non-health benefit increases or future increases resulting from the same that are locally negotiated, mediated, imposed, or adopted by ordinance. Clarification on which non-health benefits the state participates and impact the MOE and claiming instructions, will be released in a forthcoming ACL.

Wage Supplement

Counties may establish a wage supplement that may be applied only to the highest wage rate paid in the county since June 30, 2017.

MOE Adjustment – Below or Equal to State Participation Cap

If a county negotiates a wage supplement, the County IHSS MOE shall include a one-time adjustment for the county share (35 percent until the state minimum wage reaches \$15.00) of the non-federal cost of the increase, for counties where the combined provider wages and individual health benefits plus the wage supplement is less than or equal to the state participation cap.

MOE Adjustment – Above the State Participation Cap

For counties where the combined provider wages and health benefits, plus the wage supplement, is above the state participation cap, the one-time county share adjustment shall be 100 percent of the non-federal costs of the adjustment, unless the county is utilizing the 10 percent option (refer to “10 Percent Increase Over Three-Year Period” section for further explanation).

Once a county has established a wage supplement, the wage supplement will first be applied as of the effective date of the agreement following state approval of the PA rate change. The wage supplement will be subsequently applied to the state minimum wage when the state minimum wage increases to an amount that is equal to or exceeds the county paid wage without inclusion of the wage supplement. Subsequent application of the wage supplement to the new state minimum wage will not adjust the County IHSS MOE.

For any changes to provider wages or health benefits locally negotiated, mediated, or imposed by a county, PA, or NPC, for which a rate change request was submitted to the department prior to January 1, 2018, for review, the wage supplement will be subsequently applied to the state minimum wage when the state minimum wage increases to an amount that is equal to or exceeds the county paid wage including the wage supplement.

Wage Supplement Scenarios*County A*

Scenario: County A is negotiating an additional \$0.50 wage supplement, effective January 1, 2022. Their current provider wage is the state minimum wage plus an initial \$1.00 wage supplement.

Provider Wage (7/1/2019)	Min. Wage \$13.00 (1/1/2020)	Min. Wage \$14.00 (1/1/2021)	Min. Wage \$15.00 (1/1/2022)
Wage: \$12.00 Supplement: \$1.00	Wage: \$13.00 Supplement: \$1.00	Wage: \$14.00 Supplement: \$1.00	Wage: \$15.00 Supplement: \$1.50

County A's provider wage is \$13.00 (\$12.00 + \$1.00 wage supplement) as of July 1, 2019. They have no individual health benefits. The \$1.00 wage supplement is added to all subsequent minimum wage increases until County A negotiates an additional \$0.50 wage supplement; creating a total wage supplement of \$1.50 beginning January 1, 2022. If the state minimum wage has reached \$15.00, the County IHSS MOE shall have a one-time adjustment of 65 percent of the non-federal share of the \$0.50

increase; if minimum wage has not reached \$15.00, the county IHSS MOE shall have a one-time adjustment of 35 percent of the non-federal share.

Since the increase takes effect in January, the adjustment will be prorated for the current fiscal year and then annualized for future fiscal years. Subsequent applications of this wage supplement to future minimum wage increases will not adjust the County IHSS MOE.

County B

Scenario: County B is negotiating a \$0.50 wage supplement, effective March 1, 2020. Their current provider wage is above the state minimum wage, and their combined provider wage and health benefits with the new wage supplement are above the state participation cap.

Provider Wage (1/1/2020)	Min. Wage \$13.00 (1/1/2020)	Wage Supplement (3/1/2020)	New Wage (3/1/2020)	Min. Wage \$14.00 (1/1/2021)	Min. Wage \$15.00 (1/1/2022)
\$14.00	\$14.00	\$0.50	\$14.50	\$14.50	\$15.50

County B's provider wage is \$14.00 as of January 1, 2020, one dollar above the state minimum wage of \$13.00. They have no individual health benefits. In March 2020, County B established a \$0.50 wage supplement creating a county individual provider wage of \$14.50. The new county individual provider wage is above the \$14.10 state participation cap. Therefore, the adjustment to the County IHSS MOE requires two calculations:

Total Increase: \$14.00 to \$14.50 (Increase of \$0.50)

- \$14.00 to \$14.10 (\$0.10)
 - One-time adjustment to the County IHSS MOE of 35 percent of the non-federal share of the \$0.10 increase.
- \$14.10 to \$14.50 (\$0.40)
 - One-time adjustment to the County IHSS MOE of 100 percent of the non-federal share of the \$0.40 increase, if they do not utilize the 10 percent option.

Since the increase takes effect in March, the adjustment will be prorated for the current fiscal year and then annualized for future fiscal years. Subsequent applications of this wage supplement to future minimum wage increases will not adjust the County IHSS MOE.

Additional wage supplement scenarios can be found in [ACL 18-35](#). Policy information regarding the County IHSS MOE in ACL 18-35 is superseded by this ACL, however, the wage supplement scenarios are relevant.

10 Percent Increase Over Three-Year Period

For a county that is at or above the current state participation cap in combined wages and health benefits, the county may negotiate a contract for combined wages and benefits, and the state shall participate, splitting the cost of the non-federal share 65 percent state and 35 percent county, in a cumulative total of up to 10 percent of the sum of the combined total of changes in wages, health benefits, or both within a three-year period and upon request by the county.

A three-year period is defined as three consecutive years with a new three-year period beginning only after the conclusion of the previous three-year period. The state shall participate in no more than two three-year periods after which time the county shall pay the entire non-federal share of any future increases in wages and health benefits that exceed the cap in effect at that time.

To be eligible for state participation, a 10 percent increase is required to begin prior to the state minimum wage reaching \$15.00 per hour. Once minimum wage reaches \$15.00 there will no longer be a cap on state participation for approved increases in provider wages, health benefits, or non-health benefits.

10 Percent Increase Scenarios*County C*

Scenario: County C is negotiating a \$1.00 wage supplement effective February 1, 2020 and a subsequent \$1.31 wage supplement effective July 1, 2020. They chose to utilize the 10 percent option.

First Three-Year Period (2/1/2020 – 1/31/2023):

Provider Wage & Health Benefit (1/1/2020)	Provider Wage & Health Benefit (2/1/2020)	Provider Wage & Health Benefit (7/1/2020)	Provider Wage & Health Benefit (1/1/2021)
Min. Wage: \$13.00 Supplement: \$0.00 Health Benefit: \$0.20	Min. Wage: \$13.00 Supplement: \$1.00 Health Benefit: \$0.20	Min. Wage: \$13.00 Supplement: \$2.31 Health Benefit: \$0.20	Min. Wage: \$14.00 Supplement: \$2.31 Health Benefit: \$0.20

County C's starting provider wage plus health benefits was \$13.20. Their beginning provider wage plus health benefits are under the state participation cap, however, their negotiated wage increase will put them over the state participation cap of \$14.10. The state will participate in 65 percent of the non-federal share up to the state participation cap, therefore, County C's wage, including the wage supplement, exceeds the state participation cap by \$0.10 ($\$14.10 - \$13.20 = \0.90). However, because County C is utilizing the 10 percent option, the state will participate in 65 percent of the non-federal share of 10 percent of the state participation cap. County C will receive state participation up to \$1.41 ($\$14.10 * 0.10 = \1.41).

County C used the 10 percent of \$1.41 as follows:

- February 1, 2020: \$13.20 to \$14.20 (\$0.10 used; \$1.31 remaining)
- July 1, 2020: \$14.20 to \$15.51 (\$1.31 used; \$0.00 remaining)

County C cannot utilize a second three-year period because their first three-year period does not end until after the state minimum wage reaches \$15.00.

Additional 10 percent increase scenarios can be found in [ACL 18-35](#). Policy information regarding the County IHSS MOE in ACL 18-35 is superseded by this ACL, however, the 10 percent increase scenarios are relevant.

Contract Mode

January 1, 2019 until the state minimum wage reaches \$15.00

Existing Contracts: For any rate increases to existing contracts that a county has already entered into pursuant to Section [12302](#), the state shall pay 65 percent, and the affected county shall pay 35 percent, of the non-federal share of the amount of the rate increase up to the Maximum Allowable Contract Rate (MACR). The county shall pay the entire non-federal share of any portion of the rate increase exceeding the MACR. Refer to [ACL 02-95](#) for county MACRs.

New Contracts: For new contracts entered into pursuant to Section 12302, the state shall pay 65 percent, and the affected county shall pay 35 percent, of the non-federal share of the difference between the locally negotiated, mediated, imposed, or adopted by ordinance, provider wage and the contract rate for all of the hours of service to IHSS recipients to be provided under the contract up to the MACR. The county shall pay the entire non-federal share of any portion of the rate increase exceeding the MACR.

Beginning when the state minimum wage reaches \$15.00

Existing Contracts: For any rate increases to existing contracts that a county has already entered into pursuant to Section 12302, the state shall pay 35 percent, and the affected county shall pay 65 percent, of the non-federal share of the amount of the rate increase up to the MACR. The county shall pay the entire non-federal share of any portion of the rate increase exceeding the MACR.

New Contracts: For new contracts entered into pursuant to Section 12302, the state shall pay 35 percent, and the affected county shall pay 65 percent, of the non-federal share of the difference between the locally negotiated, mediated, imposed, or adopted by ordinance, provider wage and the contract rate for all of the hours of service to IHSS recipients to be provided under the contract up to the MACR. The county shall pay the entire non-federal share of any portion of the rate increase exceeding the MACR.

Effective Dates Other Than July 1

For wage or health benefit increases that take effect on a date other than July 1, the County IHSS MOE will be adjusted to reflect the annualized cost of the county's share of the non-federal cost.

For existing or new contracts, increases or initial rates that take effect on a date other than July 1 will result in the County IHSS MOE being adjusted to reflect the annualized cost of the county's share of the non-federal cost. This adjustment, for existing and new contracts respectively, is calculated as follows:

Existing Contracts: The first-year cost of the amount of the rate increases calculated using the prorated share of the number of hours of service provided in the contract for the fiscal year in which the increases became effective.

New Contracts: The first-year cost of the difference between the locally negotiated, mediated, imposed, or adopted by ordinance, provider wage and the contract rate for all of the hours of service to IHSS recipients calculated using the prorated share of the number of hours of service provided in the contract for the fiscal year in which the contract became effective.

COLLECTIVE BARGAINING-COUNTIES SUBJECT TO A WITHHOLDING OF FUNDS

Effective October 1, 2019 until January 1, 2021, counties shall be subject to a withholding of 1991 Realignment funds if all the following conditions are met:

1. The parties have completed the process described in subdivisions (a) through (c) of Welfare & Institutions Code Section [12301.61](#) (negotiation, mediation, factfinding, post-factfinding mediation, public hearing held by county board of supervisors, and final factfinding panel).
2. The factfinding panel has issued findings of fact and recommended settlement terms that are more favorable to the employee organization than those proposed by the PA or NPC.
3. The parties do not reach a collective bargaining agreement within 90 days after the release of the factfinding panel's recommended settlement terms.
4. The collective bargaining agreement for IHSS providers in the county has expired.

The amount of funds withheld will be equivalent to one percent of the county's FY 2018-19 County IHSS MOE requirement, prior to applying any state GF offsets. The Public Employment Relations Board is required to notify the county, the employee organization, the Department of Finance and the State Controller that a county is subject to the withholding.

Questions or requests for clarification regarding the information in this letter should be directed to the Adult Programs Division (APD) Fiscal and Administrative Bureau's Financial Management Unit (FMU) at APD_FMU@dss.ca.gov or by calling (916) 653-3850. The inquiry will be directed to the assigned APD FMU Analyst for each county.

Sincerely,

Original Document Signed By

DEBBI THOMSON
Deputy Director
Adult Programs Division