

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



April 4, 2002

ALL-COUNTY INFORMATION NOTICE NO. I 27-02

TO: ALL COUNTY WELFARE DIRECTORS
IHSS PROGRAM MANAGERS

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 CDSS

SUBJECT: ASSEMBLY BILL 1682, CHAPTER 90, STATUTES OF 1999 (AB 1682)
IMPLEMENTATION TIMELINE COMPLIANCE QUESTIONS RAISED BY
COUNTIES

In recent months counties have submitted a number of questions regarding the implementation requirements of AB 1682. The following information responds to those questions.

Question 1. How is compliance with the AB 1682 deadline of January 1, 2003 defined?

Answer: A county is in compliance with AB 1682 if the following conditions are met on or before January 1, 2003:

- i. The county has created and convened the Advisory Committee required by AB 1682.
- ii. The County Board of Supervisors has "officially" made the decision as to which option(s) the county will utilize to meet the employer/employee relations functions described in AB 1682 taking into account the advice and recommendations of the Advisory Committee.
- iii. The county can act as, or has established and has operational, an employer capable of fulfilling the requirements and functions set forth in Chapter 10 of the Government Code §3500 et seq., (Meyers, Milias, Brown Act) and other state and federal laws.

The three options available to a county in complying with the statute are County Employment (Homemaker Mode), Contract Mode and Individual Provider Mode. A county may elect to use mixed modes of service consisting of any combination of the three available modes.

If a county chooses to offer the Individual Provider mode, the county can meet the AB 1682 "employer" requirements by serving in that capacity itself, creating a Public Authority (PA) or contracting with a Non-Profit Consortium.

Question 2. Does the Board of Supervisors' adoption of the ordinance establishing a PA by January 1, 2003 meet the AB 1682 requirement that the Board designate an "employer"¹ by that date?

Answer: If a county chooses the PA option to meet the requirements of AB 1682, merely having the ordinance adopted by the county board of supervisors that creates the public authority is not sufficient to comply with AB 1682.

Question 3. To be in compliance with AB 1682, what, in addition to adopting the ordinance, does a PA county have to have accomplished by January 1, 2003, that is, what legal infrastructure must be in place?

Answer: For compliance with AB 1682 a PA must be:

- i. Established by the local ordinance.
- ii. Have the necessary agreement with the county fully executed.
- iii. Be staffed and operational to the extent that it can carry out the employer's responsibilities under the employer-employee relations statutes cited in the bill.

Question 4. Does the California Department of Social Services or (the Department) have a time-line expectation and specific products for full implementation once the PA ordinance is passed, and the PA is created?

Answer: The Department is evaluating the need for regulations regarding the implementation time frame(s) for PAs. At the present time, there are no established standards in this area. Since the county is contracting with the PA, it is the county's responsibility to ensure that the county's interagency agreement with the PA establishes explicit contractual requirements for the PA to fully implement the PA's statutory responsibilities to deliver services to recipients and providers. The county has a responsibility in executing its agreement with the PA to exercise due diligence to ensure that those services become available in accordance with a reasonable work plan and timeline established in the agreement.

Pursuant to our existing regulations governing public authorities, there are minimum requirements the PA must meet. The services that a PA must provide are listed in the Manual of Policy and Procedures (MPP) at 30-767.23. It should be noted those same requirements apply to an NPC. One of the minimum requirements is to "Provide registry services to recipients..." MPP 30-767.231. A PA cannot be in compliance with the requirements of AB 1682 or even the prior existing statutes if it does not establish a functional registry.

¹ "Employer" for purposes of this ACIN is the term designating the employer that meets the requirement of AB 1682 as articulated in W&I Code 12302.25. (a) On or before January 1, 2003, each county shall act as, or establish, an employer for in-home supportive service providers under Section 12302.2 for the purposes of Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code and other applicable state or federal laws.

Question 5. What is the allowed time limit for establishing an Employer/Employee Relations Policy following adoption of the ordinance creating the PA?

Answer: There is no express statutory requirement that an employer, under Government Code §3500 et seq., have a written Employer/Employee Relations Policy. Hence, there is no timeline requirement.

Government Code §3507 allows a public employer to establish reasonable rules and regulations for administering, employer-employee relations, but only after consultation in good faith with representatives of an employee organization.

Question 6. As a matter of practical application, if a county intends to establish a fully functional PA, and passes such an ordinance, but can't fulfill the employer function required by AB 1682 through the PA by January 1, 2003, must the county "act as" the "employer" in the interim? If the county takes no action is it automatically defaulted to act as the "employer"?

Answer: A county does not become the AB 1682 "employer" by operation of law if it has not established its AB 1682 "employer" by January 1, 2003. The statute requires that counties act as or establish an "employer" on or before that date. If a county fails to do one or the other it will be out of compliance with the statute, and to that extent, it will be in violation of the law. Accordingly, a county may, but is not legally required to, "act as" the "employer" for purposes of compliance with AB 1682 until a PA created by a county becomes fully functional.

Question 7. Can a county change its mode(s) of service and, consequently, its means of complying with AB 1682 after implementing its initial approach to AB 1682 compliance?

Answer: There is no statutory prohibition against a county changing its IHSS mode(s) of service or changing methods of service delivery. Similarly, there is no legal bar to a county changing its method for complying with AB 1682. However, the County's Advisory Committee must be consulted as required by Welfare and Institutions Code (W&I Code) §12302.25 as to the modes and methods of service delivery before any changes are made.

If you have any questions regarding this letter, please contact Alan Stelmack, Chief, Adult Programs Branch at (916) 229-4582.

Sincerely,

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Signed By

DONNA L. MANDELSTAM
Deputy Director
Disability and Adult Programs Division