IHSS Wages and Bargaining Provisions Brief
March 2018

The In-Home Supportive Services (IHSS) trailer bill SB 90 (Chapter 25, Statutes of 2017) and the Health and Human Services clean-up trailer bill AB 130 (Chapter 251, Statutes of 2017) both contained provisions related to bargaining with IHSS provider unions. In addition, recently adopted legislation, AB 110 (Chapter 8, Statutes of 2018), contained additional clean-up provisions on the bargaining provisions. These statutes provide additional tools for counties to utilize when negotiating locally, but also put in place new requirements and timelines related to bargaining with IHSS provider unions. The provisions are complex and each county will need to make important decisions based on the tools that are available and the local bargaining situation. To assist counties in those efforts, this document provides an overview of the significant new wage and bargaining provisions. We will continue to engage with the Administration on implementation, including on how the MOE adjustment calculations will work, and to advocate for an All County Letter and County Fiscal Letter that provides the official and detailed guidance that counties need related to wages and bargaining.

Statewide Perspective on Collective Bargaining
Currently, many counties are in negotiations with IHSS provider unions. In addition to understanding the new bargaining provisions, counties will need to take into account the IHSS cost shift and offsetting revenue for 2017-18 and the outlook for subsequent years. At the statewide level, the California Department of Social Services (CDSS) is required to submit a report to the fiscal committees of the Legislature on the status of all IHSS provider bargaining contracts in every county by April 1, 2018.

The Statewide Authority that was responsible for collective bargaining in the seven pilot counties under the Coordinated Care Initiative has been dissolved and the IHSS Employer-Employee Relations Act has been repealed. All counties must meet the requirements of Welfare and Institutions Code § 12302.25 to act as or establish an employer of record for IHSS and to meet and confer pursuant to the Meyers-Milias-Brown Act. Most counties have established a Public Authority to fulfill these requirements.

State Approval Needed to Change IHSS Provider Wages & Benefits
The state must review and approve the Public Authority rate for wages, health benefits, and other economic terms of a local bargaining agreement before the changes can take effect. It is important to note that the state has never denied a rate increase. Counties must provide CDSS with documentation of the County Board of Supervisors' approval of the proposed public authority or nonprofit consortium rate. Increases or decreases to the hourly wage and/or health benefits will not take effect until the both CDSS and the Department of Health Care Services have determined that the increase is consistent with federal law to ensure federal financial participation. In addition, AB 110 clarifies that CDSS must also review the increase for compliance with state law. The rate increases will go into effect on the first day of the month after the month that final approval by the state is granted. Counties should keep in mind that the state approval process can take up to 60 days. A request to change the Public Authority rate

must be made at least 60 calendar days, but not more than 90 calendar days, prior to the requested effective date of the change.

If the economic terms of the contract are not approved by the state, the county is required to pay the entire nonfederal share of the cost of the new increase in wages, benefits and taxes. Most counties have included language in their labor contracts to ensure that if the state does not approve the rates or other economic terms, the county is not required to implement the related rate increase(s). Counties may wish to consider this issue when negotiating contracts.

State Financial Participation in Wages and Benefits

Under the provisions of SB 90/AB 130, there are a few variables that determine the amount of state financial participation in IHSS provider wages and benefits. The state will participate in 65 percent of the nonfederal share of costs of wages and health benefits up to $12.10 per hour, which is the current state participation cap. Once the state minimum wage increases to $12.00 per hour, the cap on state participation will rise to $13.10 per hour, $1.10 above the increased state minimum wage. It will continue to rise to $1.10 above the increased state minimum wage for subsequent increases in the state minimum wage. It's important to remember that the sum of the hourly wage plus the amount of the hourly rate for health benefits establishes the total amount that determines the level of state financial participation. For example, if a county has a provider wage of $11.60 per hour and provides health benefits of $0.50 per hour, then the county would be at the state participation cap. Counties will pay the entire nonfederal share of costs for any wage or benefit increase that is above this cap. However, there is a new provision that will allow limited state participation above this cap and that is detailed below in the *State Participation above the Cap* section.

MOE Adjustment for Wage and Health Benefit Increases

The County IHSS MOE will be adjusted for the annualized cost of increases in provider wages or health benefits that are locally negotiated, mediated or imposed on or after July 1, 2017, including those increases that result from being adopted by a local ordinance. The MOE adjustment shall reflect the County's share of costs for the wage increases, 35 percent of the nonfederal share up to the state participation cap and 100 percent of the nonfederal share for amounts above the cap. The annualized MOE adjustment will be calculated based on the county's 2017-18 paid IHSS hours and the appropriate cost-sharing ratio that results from the inflation factors that have occurred to that point. The Department of Finance is required to consult with CSAC on the process for these MOE adjustments and those discussions are in progress.

Wage Supplement

A new tool available to counties is the ability to negotiate a wage supplement, which is a specified amount that is in addition to the county provider wage. When a wage supplement is first negotiated and applied, there is a one-time adjustment to the County IHSS MOE for the amount of the wage supplement. The annual inflation factor will apply to any MOE adjustments. For subsequent applications of the wage supplement, there is no adjustment to the County IHSS MOE. The state participation in the nonfederal costs of the wage supplement depends on where the county's wage is in relation to the state participation cap and if the county is using another tool to garner state participation above the cap. See the *County Implications* section for more information.

The recent IHSS clean-up bill, AB 110, outlines how the subsequent applications of the wage supplement will work. AB 110 specifies that a wage supplement will be subsequently applied when the state minimum wage equals or exceeds the county provider wage absent the wage supplement amount. This is consistent with how CSAC, CWDA, and CAPA understood the wage supplement would work and with our advocacy efforts during implementation. AB 110 also outlines that a wage supplement must be added to the highest wage paid in the county since June 30, 2017. Finally, it provides an exception to these provisions for those agreements submitted to CDSS prior to January 1, 2018.

As an example of how the subsequent applications of the wage supplement will work, if a county's provider wage is $11.75 per hour and the county negotiates a $0.50 wage supplement, the amount the IHSS provider is paid would increase to $12.25 per hour ($11.75 provider wage plus $0.50 supplement) and there would be a one-time MOE adjustment. When the minimum wage increases to $12.00 per hour, it passes the provider wage absent the wage supplement of $11.75 per hour and the wage supplement would be subsequently applied, bringing the total wage to $12.50 per hour ($12.00 provider wage from new minimum wage plus $0.50 supplement). There would be no MOE adjustment for this subsequent application of the wage supplement. It is important to note that the wage supplement does not maintain a specific difference between state minimum wage and what the IHSS provider is paid. Rather, it is a set amount that is applied whenever the state minimum wage equals or exceeds the provider wage absent the supplement amount. See the *County Implications* section for tables demonstrating how the wage supplement works.

State Participation above the Cap (10 Percent Over Three Years)
There is a new tool available to allow the state to participate in the nonfederal share of costs of a wage increase for counties that are above the state participation cap, currently at $12.10 per hour and rising to $1.10 per hour above the state minimum wage after the minimum wage increases to $12.00 per hour and for subsequent minimum wage increases. The state will participate in a cumulative total of up to a 10 percent increase in the sum of the combined total of changes in wages or health benefits, or both over a three-year period. For example, if a county's provider wage is $12.50 per hour and benefits are $0.50 per hour, the total wages and benefits are $13.00 per hour. This means the county could secure state participation in up to a $1.30 increase over three years. State participation will be at the sharing ratio of 65 percent of the nonfederal share. The state will participate in the nonfederal costs of provider wage and/or health benefit increases provided during no more than two, three-year periods. After that point, for any subsequent provider wages and health benefit increases provided by the county, the county will pay the entire nonfederal share. The second three-year period must begin after the first three-year period has ended. In addition, a 10 percent increase above the state participation cap is required to begin prior to January 1, 2022, when state minimum wage reaches $15.00 per hour. The County IHSS MOE will be adjusted based on the 35 percent county share of the nonfederal cost in the wage increase, for up to a 10 percent increase over three years, and 100 percent of the nonfederal share of costs of the provider wages and health benefit provided above that 10 percent amount. When submitting a rate increase for approval, counties must specify and select that they are utilizing this tool to secure state participation above the cap. Counties are able to utilize this tool in conjunction with the wage supplement to secure state participation in part or all of a wage supplement that is above the cap. See the *County Implications* section for more information.

County Implications
All counties are eligible to negotiate a wage supplement. All counties that have individual provider wages and health benefits currently equal to or above the state participation cap or that increase to an amount equal to or above the cap, are eligible to utilize the 10 percent over three years state participation provision. Counties are also able to utilize the wage supplement in conjunction with the 10 percent over three years provision to secure state participation in a

wage supplement above the state participation cap up to that 10 percent amount. The fiscal impacts and practical implications of these two new tools differ depending on the county's provider wage and health benefits. The below section describes the options and considerations for counties depending on how their county provider wage and health benefits relates to the minimum wage and the state participation cap.

<u>Counties at state minimum wage</u>

The state will participate in the nonfederal costs of the wage supplement at the state-county sharing ratio of 65/35 up to the point that the wage supplement takes the county's combined provider wages and health benefits above the state participation cap. The one-time adjustment to the MOE shall be equal to 35 percent of the nonfederal share of costs. For counties currently at the state minimum wage, negotiating a wage supplement can be an effective tool for potentially securing a provider wage that is a set amount above the minimum wage and will continue to stay that amount above the minimum wage as minimum wage increases. For example, if a county negotiates a $0.50 supplement, then the amount the IHSS provider is paid would increase to $11.50 per hour ($11.00 provider wage plus $0.50 supplement) with the one-time MOE adjustment at 35 percent county share. When the state minimum wage increases to $12.00 per hour, there would be a subsequent application of the wage supplement as it passes the $11.00 provider wage absent the supplement and the overall county wage would increase to $12.50 ($12.00 provider wage plus $0.50 supplement) with no MOE adjustment for the subsequent application of the wage supplement. This would occur again when the minimum wage increases to $13.00 per hour. This example is shown below.

	1/1/2018	1/1/2019	1/1/2020	1/1/2021
State minimum wage	$11.00	$12.00	$13.00	$14.00
County Provider Wage	$11.00	$12.00	$13.00	$14.00
Wage supplement	$0.50	$0.50	$0.50	$0.50
Total amount IHSS provider is paid	$11.50	$12.50	$13.50	$14.50

<u>Counties above minimum wage and below the state participation cap</u>

For these counties, the state will participate in the nonfederal costs of the wage supplement and the one-time MOE adjustment at the state-county sharing ratio of 65/35 up to the point that the wage supplement takes the county's combined provider wages and health benefits above the state participation cap. For example, if a county's provider wage is $11.75 per hour and the county negotiates a $0.50 supplement, then the overall wage would increase to $12.25 per hour ($11.75 provider wage plus $0.50 supplement) with the one-time MOE adjustment. The $0.50 wage supplement would be subsequently applied when the state minimum wage reaches $12.00 per hour, passing the provider wage absent the supplement of $11.75 per hour. When the minimum wage reaches $13.00 per hour, the wage supplement would be subsequently applied again. This example is shown below.

	1/1/2018	1/1/2019	1/1/2020	1/1/2021
State minimum wage	$11.00	$12.00	$13.00	$14.00
County Provider Wage	$11.75	$12.00	$13.00	$14.00
Wage supplement	$0.50	$0.50	$0.50	$0.50
Total amount IHSS provider is paid	$12.25	$12.50	$13.50	$14.50

Once a county's combined provider wage and health benefits is equal to or above the state participation cap, the county is responsible for the entire nonfederal share of cost for increases above that amount. If the wage supplement takes the county's combined provider wage and health benefits above the state participation cap, the county is responsible for the entire nonfederal share of cost for the amount of the wage supplement that is above the state participation cap. However, these counties would now be able to utilize the 10 percent over three years provision. Counties can utilize this tool in conjunction with the wage supplement to secure state participation in that amount. For these counties, if the wage supplement goes above the state participation cap, but is an amount that is within the 10 percent range, counties are able to use these tools together to secure state participation. This provision can also be used for a standalone wage increase that secures state participation in an amount up to 10 percent over three years.

<u>Counties at or above the state participation cap</u>
The new 10 percent over three years provision provides a specific new tool for these counties. Prior to this provision, the state did not participate in any of the nonfederal costs of a provider wage or health benefit that was above the state participation cap. These counties will now be able to secure 65 percent state participation in a cumulative total of up to a 10 percent increase in the sum of the combined total of changes in wages or health benefits, or both over a three-year period. Counties can use this tool for a standalone wage increase. For example, if a county’s provider wage is $12.50 per hour and benefits are $0.50 per hour, the total wages and benefits are at $13.00 per hour. This means the county could secure state participation in up to a $1.30 increase over three years.

These counties are also eligible to negotiate a wage supplement. However, the cost of the wage supplement and the one-time MOE adjustment will be at 100 percent county share of the nonfederal share unless the county also utilizes the 10 percent over three years provision. For example, if a county’s provider wage is $12.50 per hour with benefits of $0.30 per hour and the county negotiates a $1.00 supplement, then the total amount the IHSS provider is paid would increase to $13.50 per hour ($12.50 provider wage plus $1.00 supplement). If the county utilizes the 10 percent over three years provision in conjunction with this wage supplement, then there would be a one-time MOE adjustment at 35 percent county share as this supplement falls within the 10 percent amount of $1.28 (10 percent of the total $12.80 in provider wages and health benefits). The $1.00 wage supplement would not apply again until the state minimum wage increases to $13.00 per hour and passes the county’s provider wage absent the wage supplement of $12.50 per hour. At that point, the overall wage would go to $14.00 per hour ($13.00 county provider wage plus $1.00 supplement) with no MOE adjustment for the subsequent application of the $1.00 supplement. This example is shown below.

	1/1/2018	1/1/2019	1/1/2020	1/1/2021
State minimum wage	$11.00	$12.00	$13.00	$14.00
County Provider Wage	$12.50	$12.50	$13.00	$14.00
Wage supplement	$1.00	$1.00	$1.00	$1.00
Total amount IHSS provider is paid	$13.50	$13.50	$14.00	$15.00

<u>County Bargaining Options</u>
The below table describes the options for counties depending on their current wage and the availability of state participation for each of those options. All references to county share of costs are to the nonfederal share.

	Traditional Bargaining	Wage Supplement	10 Percent over Three Years
Counties at minimum wage	MOE adjusted at 35% county share up to the point that county provider wage & health benefits goes above the state participation cap, then MOE adjusted at 100% county share for the remaining amount	Wage supplement added on top of county base wage and MOE adjusted one-time at 35% county share; No MOE adjustment for subsequent applications of wage supplement If wage supplement takes overall county wage and benefits above the state participation cap, then amount above the cap is at 100% county share or the county can utilize the 10 percent over three years provision to secure state participation in this amount; see below for more details	n/a until the county provider wage & health benefits reaches the state participation cap; see below for more details
Counties above minimum wage and below the state participation cap	MOE adjusted at 35% county share up to the point that county provider wage & health benefits goes above the state participation cap, then MOE adjusted at 100% county share for the remaining amount	Wage supplement added on top of county base wage and MOE adjusted one-time at 35% county share; No MOE adjustment for subsequent applications of wage supplement If wage supplement takes overall county wage and benefits above the state participation cap, then amount above the cap is at 100% county share or the county can utilize the 10 percent over three years provision to secure state participation in this amount; see below for more details	n/a until the county provider wage & health benefits reaches the state participation cap; see below for more details
Counties at or above the state participation cap	MOE adjusted at 100% county share	Wage supplement added on top of county provider wage and MOE adjusted one-time at 100% county share; No MOE adjustment for subsequent applications of wage supplement If county utilizes 10 percent over three years in conjunction with wage supplement, then wage supplement added on top of county provider wage and MOE adjusted one-time at 35% county share up to the 10 percent amount and 100% county share for any amount above that 10 percent; No MOE adjustment for subsequent applications of wage supplement	MOE adjusted at 35% county share up to a 10 percent increase of the county provider wage and benefits over a three year period; any increase above the 10 percent amount is at 100% county share

Procedures to Resolve Differences in Collective Bargaining
The new statute also contains special procedures to help the parties reach agreement on a new Memorandum of Understanding (MOU). After January 1, 2018, either the Public Authority or the union representing IHSS workers may request mediation to be conducted by State Mediation & Conciliation Services, which is a division of the Public Employment Relations Board (PERB). Mediators have no authority to impose a settlement, but can be useful in helping the parties look at the problem from a new perspective and find common ground. Unlike the Meyers-Milias-Brown Act, mediation is required if only one party initiates the request; neither the employer nor the union can block mediation. State Mediation & Conciliation Services will designate a pool of no more than five qualified individuals with relevant subject matter expertise, priority given to IHSS expertise, to serve as mediators or on a factfinding panel. The mediation shall take place within 15 business days from when it was requested. If there is no agreement on a mediator, State Mediation & Conciliation Services will appoint one from the pool.

If no agreement is reached through mediation, then the parties will move to factfinding. It is also possible to bypass mediation and move directly to factfinding if both parties agree. With the assistance of State Mediation & Conciliation Services, a factfinding panel is appointed which reviews both parties' proposals, holds hearings and ultimately recommends a settlement. The factfinding panel must recommend advisory terms of settlement within 30 days after being appointed by State Mediation & Conciliation Services. Either party may then request post-factfinding mediation, which shall take place within 15 days. The findings of fact and recommended settlement terms will not be made public until mediation has finished.

When the services of a mediator or factfinding panel are utilized, the costs will be split equally between the parties. Timelines can be extended if there are no individuals available to serve as mediators or on a factfinding panel.