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In-Home Supportive Services. Wages and Mandatory Training. Initiative Statute.

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December 6, 2013

VIA MESSENGER DELIVERY**RECEIVED**

DEC 06 2013

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICEAshley Johansson, Initiative Coordinator
Office of the Attorney General
1300 I Street
Sacramento, CA 95814**RE:** Fair Wages and Training for Home Care Workers Act of 2014

Dear Ms. Johansson:

Pursuant to Elections Code section 9001, we are hereby submitting the enclosed initiative measure entitled the "Fair Wages and Training for Home Care Workers Act of 2014" and request the Attorney General to prepare a circulating title and summary for the measure.

A check for \$200 and the certifications by the official proponents, as required by sections 9001(b) and 9608, are also enclosed.

Please direct all future communications to:

Lance H. Olson
OLSON, HAGEL & FISHBURN, LLP
555 Capitol Mall, Suite 1425
Sacramento, CA 95814
PH: 916/442-2952 / FX: 916/442/1280

Very truly yours,

Chris Salm
ProponentMalik Bennett
Proponent

Enclosures: as stated above

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8, of the California Constitution.

This initiative measure adds sections to the Welfare and Institutions Code; therefore, new provisions proposed to be added are printed in *italic* type to indicate that they are new.

SEC. 1. Name

This act shall be known as the "Fair Wages and Training for Home Care Workers Act of 2014."

SEC. 2. Findings and Purpose

This act, adopted by the People of the State of California, makes the following Findings and has the following Purpose:

A. The People make the following findings:

(1) The state has an interest in providing quality care to elderly Californians and Californians with disabilities.

(2) Providing elderly Californians and Californians with disabilities with in-home supportive services through the Medi-Cal program is critical to helping those individuals stay in their homes by providing appropriate and necessary medical and supportive care. Home care workers provide assistance with essential and often intimate daily tasks like bathing, toileting, hygiene, and meal preparation, which enables elderly individuals and individuals with disabilities to continue living safely in their own homes and to avoid unnecessary and unwanted institutionalization.

(3) Elderly Californians and Californians with disabilities often face physical, cognitive, cultural or structural obstacles to receiving the right care at the right time. As a result, the elderly and individuals with disabilities use a disproportionate amount of costly institutional health care services such as hospitals and nursing homes, often for preventable conditions. Home care providers, because of their daily one-on-one interactions with consumers, are in a unique position to reduce some of these barriers. Although home care providers generally assist consumers with activities of daily living, with a small amount of training home care providers could also play a greater role in coordinating and tailoring health care to the individual needs of consumers, including, for example, assisting consumers in navigating a complex health care system to get needed services, observing and communicating changes in health status, providing paramedical services, and coaching consumers with respect to complex diet or medication regimes. A home care provider who is trained in this manner can improve the consumer's care while reducing costs to taxpayers.

(4) State support for home care workers saves the state substantial funds. Allowing elderly Californians and Californians with disabilities to stay living safely in their homes by providing in-home supportive services through home care workers is much less expensive than paying for full-time care in nursing homes and other institutions.

(5) Home care worker turnover is caused both by preventable workplace injuries and by uncompetitive wages. Home care work often requires heavy and repetitive lifting and exposure to infection and bodily fluids, among other physical workplace hazards. These conditions can lead to workplace injuries. Providing training in basic workplace safety precautions will reduce turnover. Payment of fair wages to home care workers is also key to stabilizing the home care workforce so that home care consumers do not suffer gaps in care and high rates of turnover.

(6) Reducing turnover will improve the quality of care consumers receive. It takes time and effort for a consumer to train a home care worker to understand his or her needs and preferences, and it takes even more time to build the level of trust that results in high quality home care. Turnover often leads to gaps in care due to difficulty consumers have recruiting and hiring home care providers. Gaps in care and high rates of provider turnover tend to force consumers to utilize costly sources of medical care, such as emergency rooms, and cause some home care consumers to be forced into nursing homes.

(7) In recent years, home care workers' pay has not kept up with the rising cost of living. Linking the pay of home care workers to increases in the state-mandated minimum wage will maintain home care workers' wages at a level that enhances workforce stability and quality, without causing wages to increase at a greater rate than necessary for maintaining a stable and high-quality home care workforce.

(8) Because of these factors, modest increases in home care workers' wages will tend to save state resources over time. California thus has an interest in developing and expanding the home care worker workforce, including by ensuring that home care workers who provide this critical service are paid a fair wage.

(9) The state also has an interest in ensuring that all home care workers providing care to elderly Californians and Californians with disabilities pursuant to the Medi-Cal program receive training designed to improve the quality of home care services provided.

(10) Training home care workers to assist and care for individuals with common and chronic diseases will result in reduced costs to the state and to families associated with providing acute and long-term institutionalized care.

(11) The wage supplement and training requirements provided for in this measure will enhance the home care worker workforce's stability and quality in a manner consistent with the state's interests in efficiency, economy, and quality care.

- B. In enacting this measure, the purpose of the People is to improve access to and the quality of home care services provided by the state to elderly individuals and individuals with disabilities within the state, in a manner consistent with efficiency and economy, by ensuring that home care workers receive a fair wage and appropriate training.

SEC. 3. Sections 12331, 12331.1, 12331.2, and 12331.3 are added to Article 7 of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:

12331. Fair Wages for Home Care Workers.

(a) (1) *Home care workers shall be paid a "minimum wage supplement" by the state, which shall be an amount equivalent to any increase in the state-mandated hourly minimum wage.*

(2) *As of the effective date of this section, the minimum wage supplement shall be calculated as the difference between the state-mandated hourly minimum wage for all industries in effect on the effective date of this section and the state-mandated hourly minimum wage for all industries in effect on January 1, 2014.*

(3) *After the effective date of this section, each time the state-mandated hourly minimum wage for all industries or for workers in domestic, health, or related service industries increases, the minimum wage supplement shall increase by an amount equivalent to the increase in the state-mandated hourly minimum wage. In the event there is a decrease in the state-mandated hourly minimum wage, there shall be no corresponding decrease in the amount of the minimum wage supplement.*

(b) *The minimum wage supplement shall be paid on an hourly basis for all hours worked or for which wages are otherwise due.*

(c) *Provision of the supplement provided for in this section shall not be deemed to reduce, interfere with, or modify other obligations the state and counties have to provide wages and benefits to home care workers, including but not limited to obligations to provide negotiated, mediated, or imposed increases in wages and benefits to home care workers, and obligations pursuant to Sections 10101.1, 12306, 12306.1, 12306.15, or the Coordinated Care Initiative, as defined in Section 34(c)(3) of Chapter 37 of the Statutes of 2013. Nor shall provision of the supplement provided for in this section count in any way toward fulfillment of the obligations of the state and counties to pay home care workers wages not less than the state-mandated hourly minimum wage.*

12331.1. Home Care Worker Training.

(a) *Nothing in this section shall interfere with the right of a consumer to hire, fire, or supervise the work of any home care worker, or to provide training for a home care worker beyond that provided for in this section.*

(b) No later than June 30, 2015, the department, in consultation with the Department of Health Care Services, and in collaboration with stakeholders including but not limited to consumers and recognized representatives of home care workers, shall develop a mandatory, basic training curriculum for home care workers and shall identify appropriate modes of training. The basic training curriculum shall address core competencies. Appropriate modes of training identified by the department shall include an in-person component and shall incorporate best practices for adult education.

(c) All individuals providing care as home care workers shall complete seventy-five hours of basic training, subject to the following:

- (1) Any person working as a home care worker and who did not work as a home care worker during either the 2014 or 2015 calendar year must complete the basic training required by this paragraph by June 30, 2016 or within 180 days from the person's date of hire, whichever is later.
- (2) Any person working as a home care worker and who worked as a home care worker during either the 2014 or 2015 calendar year must complete basic training required by this paragraph by December 31, 2020, or within 180 days from the person's date of hire, whichever is later.
- (3) Home care workers who hold current and valid licenses as registered nurses, licensed vocational nurses, certified nurse assistants, or home health aides, are not required to complete the basic training required by this section.

(d) The department shall make arrangements for qualified individuals or organizations to provide the training required by this section. The trainings shall be available no later than January 1, 2016.

(e) All home care workers shall be paid for all hours spent completing training required by this section based on the same terms on which they are paid for other working hours, including the state supplement provided for in Section 12331. Home care workers shall not be charged for any part of the training, and hours necessary for the training required by this section shall not be deducted from the consumer's authorized hours of services. The training and payment for time spent completing the training required by this section shall be funded through the Medi-Cal program to the extent possible given applicable federal requirements and shall otherwise be paid for by the state.

(f) The department shall create a form for home care workers to use to certify that they have completed the basic training required by this section.

(g) No person may practice or, by use of any title or description, represent himself or herself as a home care worker providing in-home supportive services without complying with the basic training requirements in this section.

(h) The Department of Health Care Services shall promulgate any necessary regulations for implementation of this section.

12331.2. Definitions.

For purposes of Sections 12331 and 12331.1:

(a) *“Consumer” shall mean a recipient of in-home supportive services.*

(b) *“Core competencies” means basic training topics, including but not limited to, managing common chronic diseases; personal care; nutrition, diet and physical activities; universal precautions and workplace safety; consumer and provider roles and rights; understanding the health care system; and communication and teamwork skills.*

(c) *“Department” shall mean the State Department of Social Services.*

(d) *“Home care workers” shall mean all persons providing in-home supportive services pursuant to this article (commencing with Section 12300) and Sections 14132.95, 14132.952, 14132.956, or any provision of the Coordinated Care Initiative, as defined in Section 34(c)(3) of Chapter 37 of the Statutes of 2013, including individual providers and persons providing in-home supportive services through managed care, consortia, agencies, contracts, or through any other arrangement authorized by law.*

12331.3. Implementation and Federal Approvals.

The Department of Health Care Services shall make any necessary and appropriate amendments to the state’s Medicaid State Plan and shall seek any and all necessary and appropriate federal approvals and waivers pursuant to Title XIX of the federal Social Security Act (Subchapter XIX of Chapter 7 of Title 42 of the United States Code (commencing with Section 1396)), to ensure continued compliance with any applicable federal requirements. The Department of Health Care Services, in consultation with the department, shall seek federal financial participation, to the extent possible, in the costs of implementing Sections 12331 and 12331.1. Sections 12331 and 12331.1 shall be effective immediately.

SEC. 3. Amendment

Pursuant to subdivision (c) of Section 10 of Article II of the California Constitution, this act may be amended either by a subsequent measure submitted to a vote of the people at a statewide election; or by statute validly passed by the Legislature and signed by the Governor, but only to further the purposes of this act.

SEC. 4. Competing Measures

In the event that this measure and another measure that provides for lower wages for home care workers than those provided for in this measure, or that establishes mandatory training requirements for home care workers, shall appear on the same statewide ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. Another measure that otherwise regulates the provision of home care workers or in-home supportive services shall not be deemed to be in conflict with this measure. In the event this

measure receives a greater number of affirmative votes than a measure deemed to be in conflict with it, the provisions of this measure shall prevail in their entirety, and the other measure or measures shall be null and void.

SEC. 5. Severability

It is the intent of the People that the provisions of this act are severable and that if any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other provision or application of this act which can be given effect without the invalid provision or application.