



## **IHSS Wages and Bargaining Provisions Brief**

*September 2023*

A new County In-Home Supportive Services (IHSS) Maintenance of Effort (MOE) was established in 2019 by SB 80 (Chapter 27, Statutes of 2019). The new IHSS MOE created a more sustainable fiscal structure for counties to manage IHSS costs and continue to deliver vital services on behalf of the state. SB 80 also contained several significant provisions related to MOE adjustments for locally negotiated wage and benefit increases, as well as impasse procedures for collective bargaining between counties and IHSS provider unions. More recently, AB 135 (Chapter 85, Statutes of 2021) and AB 120 (Chapter 43, Statutes of 2023) enacted several updates to these provisions. Specifically, AB 135 maintained the existing state/county sharing ratio for wage and benefit increases, extended the tool to allow state participation above the cap, and reenacted a Realignment withholding related to collective bargaining, while AB 120 made further changes to the Realignment withholding. This resource provides an overview of these tools and procedures, some of which continue from the 2017 IHSS MOE legislation and others that have changed in 2019, 2021, and 2023.

### **State Approval for Changes in IHSS Provider Wages and Benefits**

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. 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. The same procedures and funding requirements apply for any wage or benefit change that is locally negotiated, mediated, imposed, or adopted by ordinance. The state does not have the authority to approve or deny locally negotiated wages and benefits, but can review the rate change request for compliance with state and federal law. It is important to note that the state has never denied a rate increase. Counties must provide the Department of Social Services (CDSS) with documentation of the County Board of Supervisors' approval of the proposed public authority or nonprofit consortium rate.

Increases to the hourly wage and benefits will not take effect until both CDSS and the Department of Health Care Services have determined that the increase is consistent with federal law to ensure federal financial participation and CDSS has reviewed 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. 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.

### **State Financial Participation in Wages and Benefits**

The state will participate in 65 percent of the non-federal share of costs of wages and health benefits up to \$16.60 per hour, which is the current state participation cap. As the state minimum wage continues to increase, the cap on state participation will continue to rise to \$1.10 above the increased state minimum wage. In 2024, the state minimum wage will increase to

\$16.00 per hour and the state participation cap will rise to \$17.10. 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 \$16.10 per hour and provides health benefits of \$0.50 per hour, then the county would be at the current state participation cap. Counties will pay the entire non-federal share of costs for any wage or health benefit increase that is above this cap. However, there is a provision that will allow limited state participation above this cap and that is detailed in the *State Participation Above the Cap* section.

Prior to the enactment of AB 135, the sharing ratio for locally negotiated wage and benefit increases was set to flip to 65% county/35% state of the non-federal share on January 1, 2022, the date the state minimum wage reached \$15.00 per hour, and the state participation cap was set to be eliminated. However, AB 135 eliminated that provision from statute and the sharing ratio will now continue indefinitely at 35% county/65% state. In addition, the state participation cap will be maintained and continue to rise to \$1.10 above the increased state minimum wage.

### **MOE Adjustments for Wage Increases**

The County IHSS MOE will be adjusted for the annualized cost of increases in provider wages that are locally negotiated, mediated or imposed on or after July 1, 2019, 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 increase. The annualized MOE adjustment will be calculated based on the county's 2019-20 paid IHSS hours, any inflation factors that have occurred to that point, and the appropriate cost-sharing ratio. All MOE adjustments become an ongoing part of the county's MOE and the annual four percent inflation factor will apply to any MOE adjustments.

### **Wage Supplement**

Counties have the ability to negotiate a wage increase as a wage supplement, which is a specified amount that is in addition to the county provider wage and is subsequently applied on future dates. Consistent with the 2017 IHSS MOE legislation, SB 80 and AB 135 did not make any changes to a county's ability to negotiate a wage supplement, how the wage supplement works, or create an end date for use or applications of the wage supplement. All counties, whether at minimum wage, above minimum wage, or above the state participation cap can use the wage supplement tool. The wage supplement can also be used in conjunction with the state participation above the cap tool. When submitting a rate increase for approval, counties must specify in both the collective bargaining agreement and in the rate change request that the wage increase is a wage supplement.

When a wage supplement is first negotiated and applied, there is an adjustment to the County IHSS MOE for the county share of the wage supplement. A wage supplement will be subsequently applied when the state minimum wage equals or exceeds the county provider wage absent the wage supplement amount. For subsequent applications of the wage supplement, there is no new adjustment to the County IHSS MOE. The state participation level in the non-federal costs of the wage supplement depends on if the county is below the state participation cap and if the county is using the tool to garner state participation above the cap.

### **Example of Wage Supplement**

In 2023, if a county's provider wage is \$15.50 per hour and the county negotiates a \$0.50 wage supplement, the amount the IHSS provider is paid would increase to \$16.00 per hour (\$15.50 provider wage plus \$0.50 supplement) and there would be an MOE adjustment for the county share of the \$0.50 increase. When the state minimum wage increases to \$16.00 per hour in

2024, it equals or passes the provider wage absent the wage supplement of \$15.50 per hour and the wage supplement would be subsequently applied, bringing the total wage to \$16.50 per hour (\$16.00 provider wage from new minimum wage plus \$0.50 supplement). There would be no new MOE adjustment for this subsequent application of the \$0.50 wage supplement. Below is a table that demonstrates how this example would work.

		<b>1/1/2023</b>	<b>1/1/2024</b>
State minimum wage		\$15.50	\$16.00
County provider wage		\$15.50	\$16.00
Wage supplement		\$0.50	\$0.50
Total amount IHSS provider is paid		\$16.00	\$16.50

### **State Participation Above the Cap (Ten Percent Over Three Years)**

The tool that was established by the 2017 IHSS MOE legislation and allows the county to secure state participation in the non-federal share of costs of a wage or health benefit increase for counties that are at or above the state participation cap continued under SB 80. Under the 2017 IHSS MOE legislation, there was a requirement that a three-year period must be started prior to January 1, 2022. AB 135 now allows a county to utilize the ten percent over three years tool on or after January 1, 2022.

All counties that have individual provider wages and health benefits currently equal to or above the state participation cap or that will increase to an amount equal to or above the cap, are eligible to utilize the ten percent over three years state participation provision. 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. 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.

The state will participate in a cumulative total of up to a ten percent increase in the sum of the combined total of changes in wages or health benefits, or both over a three-year period. The state will participate in the non-federal costs of provider wage and/or health benefit increases for no more than two three-year periods that begin prior to January 1, 2022. AB 135 allows all counties, regardless of how many times they used the tool prior to January 1, 2022, to utilize the tool up to two more times for three-year periods that begin on or after January 1, 2022. A subsequent three-year period must begin after the prior three-year period has ended. The county will be responsible for the entire non-federal costs of any increases above the ten percent amount in a three-year period.

### Example of State Participation Above the Cap for County not yet at Cap

In 2023, the state participation cap is \$16.60. If a county's provider wage is \$16.00 per hour and health benefits are \$0.25 per hour, the total wages and benefits are \$16.25 per hour. Prior to utilizing this tool, the county could secure state participation up to a \$0.35 increase in wages or health benefits. At that point, the county would be at the state participation cap of \$16.60 and the county would then be eligible to use this tool to secure state participation up to an additional \$1.66 of an increase in wages or health benefits over three years. Below is a table demonstrating this example.

State Participation Cap in 2023	\$16.60
County Wage in 2023	\$16.00
County Health Benefits in 2023	\$0.25
County Total	\$16.25
Amount Available for State Participation from Being Under Cap	\$0.35
Amount Available for State Participation from 10 Percent Over Three Years Provision	\$1.66

**Example of State Participation Above the Cap for County Already Above the Cap**

The ten percent amount is not ten percent of the state participation cap, but rather ten percent of the total county wages and health benefits at the time the tool is used. This is relevant for a county that is already above the state participation cap. In 2023, if a county's provider wage is \$17.50 per hour and health benefits are \$0.50 per hour, the total wages and benefits are \$18.00 per hour, which is above the \$16.60 state participation cap. This means the county could secure state participation in up to a \$1.80 increase (ten percent of \$18.00) over three years. Below is a table demonstrating this example.

State Participation Cap in 2023	\$16.60
County Wage in 2023	\$17.50
County Health Benefits in 2023	\$0.50
County Total	\$18.00
Amount Available for State Participation from 10 Percent Over Three Years Provision	\$1.80

**MOE Adjustments for Health Benefits**

The County IHSS MOE will be adjusted for the annualized cost of increases in health benefits that are locally negotiated, mediated or imposed on or after July 1, 2019, including those increases that result from being adopted by a local ordinance. The hourly rate for health benefits is included in the calculation for the state participation cap. For a county to secure state participation in 65 percent of the non-federal share of a health benefit increase, the increase must be under the state participation cap or the county must utilize the ten percent over three years tool that is detailed above.

Under the prior MOEs, there was an MOE adjustment each time there was a negotiated, mediated, or imposed increase in either the fixed total amount or fixed hourly rate for health benefits. There was no MOE adjustment when the cost of health benefits went up due to an increase in the capitated amount paid to a health plan. SB 80 contained language that requires MOE adjustments for the county share of costs for any future cost increases in health benefit premiums. When the cost of health benefits that are included in a collective bargaining agreement increase and the county submits a rate increase to reflect that increase, there will be an MOE adjustment for the county share of these increased health benefit costs. For any collective bargaining agreement that was submitted to CDSS for approval prior to July 1, 2019, this provision does not apply and there will not be a county MOE adjustment for increases in the cost of health benefit premiums through the end date of the collective bargaining agreement.

**MOE Adjustments for Non-Health Benefits**

The County IHSS MOE will be adjusted for the annualized cost of increases in certain non-health benefits that are locally negotiated, mediated or imposed on or after July 1, 2019, including those increases that result from being adopted by a local ordinance. Non-health

benefits are not included in the state participation cap. The state will participate in 65 percent of the non-federal share of the increase in non-health benefits.

SB 80 outlined that CDSS can determine that the state does not participate in certain non-health benefits, but must do so in consultation with CSAC. Subsequent CDSS guidance that resulted from consultation with CSAC, CWDA, and CAPA has outlined that the state will participate in the following non-health benefits: transportation vouchers, tuberculosis testing, job related safety equipment, vacation/holiday pay, and life insurance.

### **Procedures to Resolve Differences in Collective Bargaining**

AB 135 reinstated the procedures that were created under the 2017 IHSS MOE legislation to help the county and provider union reach agreement on a new Memorandum of Understanding (MOU). Note that these procedures were also reinstated under SB 80 but became inoperative on January 1, 2021. 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. 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. The findings of fact and recommended settlement terms will not be made public until mediation has finished. The County Board of Supervisors is required to hold a public hearing within 30 days after the public release of the factfinding panel's recommended settlement terms.

### **Realignment Withholding**

AB 120 increased and made ongoing the 1991 Realignment withholding related to IHSS collective bargaining that could potentially apply to counties without a collective bargaining agreement in place. Note that a Realignment withholding was originally enacted by SB 80, which became inoperative on January 1, 2021, and then reenacted by AB 135. A county would be subject to the withholding only if all of the following four conditions are met: (1) A county and provider union have completed the full IHSS mediation and factfinding process described in the previous section; (2) the factfinding panel has issued recommended settlement terms that are more favorable to the union; (3) the county has an expired IHSS collective bargaining agreement; and (4) the county and union have not reached an agreement within 90 days after the release of the factfinding recommendations.

The language in AB 120 that authorizes the new withholding goes into effect on October 1, 2023. While AB 120 changed the withholding amount, it did not alter the four conditions that must occur before a withholding is applied. When those four conditions are met, the withholding will be equivalent to ten percent of a county's prior year IHSS MOE amount. The withholding will occur through an adjustment to the county's Social Services Realignment base monthly payments and be distributed at the end of the year as one-time general growth to the other subaccounts for all counties. A withholding will occur every year until a collective bargaining agreement is reached. In the year following an agreement, the Social Services Realignment base payments will be restored by the amount of the withholding. Please note the withholding impacts how much funding the county receives of the base amount in that year, not the actual base amount itself. The county's overall Social Services base amount remains the same even when the withholding is occurring and any growth calculations that result from that base amount are not impacted by the withholding. The Public Employment Relations Board is required to notify the county, the provider union, the Department of Finance, and the State Controller of any withholding.