



CWDA
 Advancing Human Services
 for the Welfare of All Californians



IHSS Wages and Bargaining Provisions Brief

November 2019

A new County In-Home Supportive Services (IHSS) Maintenance of Effort (MOE) was established by SB 80 (Chapter 27, Statutes of 2019). The new IHSS MOE creates a more sustainable fiscal structure for counties to manage IHSS costs and continue to deliver vital services on behalf of the state. Please see CSAC’s *Overview of 2019-20 County IHSS MOE* for the full details on the major provisions of the new IHSS MOE including the new MOE amount, inflation factor, and State General Fund commitment. 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. This resource provides an overview of these tools and procedures, some of which continue from the 2017 IHSS MOE legislation and others that change. CSAC, CWDA, and CAPA will continue working with the Department of Finance and the California Department of Social Services (CDSS) on implementation and guidance related to these provisions.

Overview of Changes under SB 80

SB 80 continues many of the new collective bargaining tools and MOE adjustment provisions that were established by the 2017 IHSS MOE legislation. However, there are some notable differences. Below is a table providing brief highlights of the key consistencies and changes. The full details about all of the below items can be found throughout this document.

Consistent with 2017 IHSS MOE legislation	<ul style="list-style-type: none"> • State approval of rate increases • Wage supplement tool • MOE adjustment calculations
Changes in 2019	<ul style="list-style-type: none"> • MOE adjustments for increases in health benefit premiums • Impasse procedures/Realignment withholding
No immediate changes, but changes in 2022	<ul style="list-style-type: none"> • State/County share of costs in local wage/benefit increases • State participation cap • State participation above the cap tool

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 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

Currently, the state will participate in 65 percent of the non-federal share of costs of wages and health benefits up to \$13.10 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. 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 \$12.60 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 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.

Starting January 1, 2022

On the date that state minimum wage reaches \$15.00 per hour, currently scheduled for January 1, 2022, there will be changes to the state participation level. The state participation in the non-federal share of a wage, health benefit, or non-health benefit increase will decrease to 35 percent and the county will then be responsible for 65 percent of the non-federal share of costs. Also on this date, the state participation cap will be eliminated. The state will participate in all approved wage and health benefit increases, no matter how far above the state minimum wage. However, state participation will be at the reduced level of 35 percent of the non-federal share of costs. This change in state participation applies to all increases in wages or benefits that go into effect on or after January 1, 2022. Increases that are negotiated prior to January 1, 2022, but that go into effect on that date or later will be subject to the new reduced state participation level. Below is a table that shows the state minimum wage and state sharing through 2022.

Year	State Minimum Wage	State Participation Cap	State Share of Non-Federal Costs Under the Cap
January 1, 2019	\$12.00 per hour	\$13.10	65%
January 1, 2020	\$13.00 per hour	\$14.10	65%
January 1, 2021	\$14.00 per hour	\$15.10	65%
January 1, 2022	\$15.00 per hour	No cap	35%

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. The annual four percent inflation factor will apply to any MOE adjustments. CSAC, CWDA, and CAPA are engaged in ongoing discussions with the Administration related to guidance on MOE adjustments for wage increases.

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 does not make any changes to a counties' 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, if the county is using a tool to garner state participation above the cap, and if the wage supplement goes into effect prior to January 1, 2022 (when the state participation level changes).

Example of Wage Supplement

In 2020, if a county's provider wage is \$13.10 per hour and the county negotiates a \$0.50 wage supplement, the amount the IHSS provider is paid would increase to \$13.60 per hour (\$13.10 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 \$14.00 per hour in 2021, it passes the provider wage absent the wage supplement of \$13.10 per hour and the wage supplement would be subsequently applied, bringing the total wage to \$14.50 per hour (\$14.00 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.

	1/1/2020	1/1/2021	1/1/2022
State minimum wage	\$13.00	\$14.00	\$15.00
County provider wage	\$13.10	\$14.00	\$15.00
Wage supplement	\$0.50	\$0.50	\$0.50
Total amount IHSS provider is paid	\$13.60	\$14.50	\$15.50

State Participation Above the Cap (10 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 above the state participation cap continues under SB 80. Under the 2017 IHSS MOE legislation, there was already a requirement that a three year period must be started prior to January 1, 2022. The 2019 IHSS MOE legislation continues that requirement, but the SB 80 provision that changes the state participation level on January 1, 2022 does have implications for the use of this tool, which are discussed further in this section.

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 10 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 10 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. The second three-year period must begin after the first three-year period has ended. Counties that utilized a three-year period starting under the 2017 MOE must wait for the entire three-year period to end before commencing a second three-year period. The county will be responsible for the entire non-federal costs of any increases above the ten percent amount in a three-year period prior to January 1, 2022. If the first three-year period ends prior to January 1, 2022 and no second three-year period is utilized, the county will pay the entire non-federal share of costs of provider wage and/or health benefit increases above the state participation cap that take effect after the end of the three-year period and prior to January 1, 2022.

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

In 2020, the state participation cap is \$14.10. If a county's provider wage is \$13.00 per hour and health benefits are \$0.75 per hour, the total wages and benefits are \$13.75 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 \$14.10 and the county would then be eligible to use this tool to secure state participation up to an additional \$1.41 of an increase in wages or health benefits over three years. Below is a table demonstrating this example.

State Participation Cap in 2020	\$14.10
County Wage in 2020	\$13.00
County Health Benefits in 2020	\$0.75
County Total	\$13.75
Amount Available for State Participation from Being Under Cap	\$0.35
Amount Available for State Participation from 10 Percent Over Three Years Provision	\$1.41

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 2020, if a county's provider wage is \$14.50 per hour and health benefits are \$0.50 per hour, the total wages and benefits are \$15.00 per hour, which is above the \$14.10 state participation cap. This means the county could secure state participation in up to a \$1.50 increase (10 percent of \$15.00) over three years. Below is a table demonstrating this example.

State Participation Cap in 2020	\$14.10
County Wage in 2020	\$14.50
County Health Benefits in 2020	\$0.50
County Total	\$15.00
Amount Available for State Participation from 10 Percent Over Three Years Provision	\$1.50

Starting January 1, 2022

On this date, assuming the state minimum wage reaches \$15.00 per hour, the state participation cap is eliminated meaning there will no longer be a limit on wage and health benefit increases that the state participates in. The practical effect of this is that any three-year period that is started under the 2019-20 MOE will not be a full three years, but rather will go from the implementation date of the increase that initiates the use of the tool until December 31, 2021. This also means that for any increases that go into effect on January 1, 2022 or later, whether they were negotiated to use the ten percent over three years tool or not, the state participation will be 35 percent of the non-federal share and the county share will be 65 percent of the non-federal share.

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. Consistent with the change on wages, the state participation in a locally negotiated health benefit increase will decrease to 35 percent of the non-federal share on January 1, 2022 and there will be no state participation cap on that date.

Under the prior MOEs, there was an MOE adjustment each time there was an 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. CSAC, CWDA, and CAPA are engaged in ongoing discussions with the Administration related to MOE adjustments for health benefits.

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. On January 1, 2022, consistent with the change for wages and health benefits, the state participation in non-health benefits will be reduced to 35 percent of the non-federal share.

Typically, non-health benefits have included transportation passes, training stipends, and safety equipment. SB 80 outlines that CDSS can determine that the state does not participate in certain non-health benefits, but must do so in consultation with CSAC. CSAC, CWDA, and CAPA are engaged in ongoing discussions with the Administration on MOE adjustments and state financial participation for non-health benefits.

Procedures to Resolve Differences in Collective Bargaining

SB 80 continues 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). 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-Miliias-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

SB 80 creates a one-time 1991 Realignment withholding related to IHSS collective bargaining that could potentially apply to counties without a collective bargaining agreement in place. 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 that authorizes the withholding went into effect on October 1, 2019 and will become inoperative on January 1, 2021. For any county that has already gone through mediation and factfinding with recommended settlement terms issued prior to June 30, 2019, the county will have 90 days to reach an agreement or the withholding will occur on October 1, 2019. The withholding will be equivalent to one percent of a county's 2018-19 IHSS MOE amount prior to any of the offsets that were received. The withholding will occur through an adjustment to the county's Social Services Realignment base. The Social Services Realignment base will be restored by the amount of the withholding in the next fiscal year. 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.

Reports on the Status of Collective Bargaining

SB 80 also requires CDSS to report to the Legislature on the status of IHSS collective bargaining contracts in every county. These reports must be submitted to the fiscal committees of the Legislature by January 10, 2020 and May 14, 2020. CDSS must consult with both CSAC and IHSS provider unions when determining the status of bargaining in each county.