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**GOVERNMENT CODE
TITLE 23**

**IN-HOME SUPPORTIVE SERVICES
EMPLOYER-EMPLOYEE RELATIONS ACT**

**CHAPTER 1
GENERAL PROVISIONS**

110000. Short title

This title shall be known and may be cited as the In-Home Supportive Services Employer-Employee Relations Act.

110001. Purpose

It is the purpose of this title to promote full communication between the California In-Home Supportive Services Authority (the Statewide Authority) and the recognized employee organization representing individual providers by providing a reasonable method of resolving disputes regarding wages, benefits, and other terms and conditions of employment, as defined in Section 110023, between the Statewide Authority for in-home supportive services and recognized employee organizations. It is also the purpose of this title to promote the improvement of personnel management and employer-employee relations within the Statewide Authority by providing a uniform basis for recognizing the right of individual providers to join organizations of their own choice and be represented by those organizations for purposes of collective bargaining with the Statewide Authority. This title is intended to strengthen methods of administering employer-employee relations through the establishment of uniform and orderly methods of communication between the recognized employee organizations and the Statewide Authority. Except as expressly provided herein, this title is not intended to require changes in existing bargaining units or memoranda of agreement or understanding.

110002. Employee rights

Except as otherwise provided by the Legislature, employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters within the scope of representation. Employees also shall have the right to refuse to join or participate in the activities of employee organizations.

110003. Definitions

As used in this title:

(a) “Board” means the Public Employment Relations Board established pursuant to Section 3541.

(b) “Employee” or “individual provider” means any person authorized to provide in-home supportive services pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code, and Sections 14132.95, 14132.952, and 14132.956 of the Welfare and Institutions Code, pursuant to the individual provider mode, as referenced in Section 12302.2 of the Welfare and Institutions Code. As used in this title, “employee” or “individual provider” does not include any person providing in-home supportive services pursuant to the county-employed homemaker mode or the contractor mode, as authorized in Section 12302 of the Welfare and Institutions Code. Individual providers shall not be deemed to be employees of the Statewide Authority for any other purpose, except as expressly set forth in this title.

(c) “Employee organization” means an organization that includes employees, as defined in subdivision (b), and that has as one of its primary purposes representing those employees in their relations with the Statewide Authority.

(d) “Employer” means, for the purposes of collective bargaining, the Statewide Authority established pursuant to Section 6531.5. The in-home supportive services recipient shall be the employer of an individual in-home supportive services provider with the unconditional and exclusive right to hire, fire, and supervise his or her provider.

(e) “In-home supportive services” or “IHSS” means services provided pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code, and Sections 14132.95, 14132.952, and 14132.956 of the Welfare and Institutions Code.

(f) “In-home supportive services recipient” means the individual who receives the in-home supportive services provided by the individual provider. The in-home supportive services recipient is the employer for the purposes of hiring, firing, and supervising his or her respective individual provider.

(g) “Mediation” means effort by an impartial third party to assist in reconciling a dispute regarding wages, benefits, and other terms and conditions of employment, as defined in Section 110023, between representatives of the employer and the recognized employee organization or recognized employee organizations through interpretation, suggestion, and advice.

(h) “Meet and confer in good faith” means that the employer, or those representatives as it may designate, and representatives of recognized employee organizations, shall have the mutual obligation personally to meet and confer promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation prior to the adoption of the annual Budget Act.

(i) “Predecessor agency” means a county or an entity established pursuant to Section 12301.6 of the Welfare and Institutions Code before the effective date of this title.

(j) “Recognized employee organization” means an employee organization that has been formally acknowledged as follows:

(1) Before the county implementation date as described in subdivision (a) of Section 12300.7 of the Welfare and Institutions Code, by a county or an entity established pursuant to Section 12301.6 of the Welfare and Institutions Code, as the representative of individual providers in its jurisdiction.

(2) On or after the county implementation date as described in subdivision (a) of Section 12300.7 of the Welfare and Institutions Code, by the Statewide Authority, as the representative of individual providers subject to this title.

(k) “Statewide Authority” means the California In-Home Supportive Services Authority established pursuant to Section 6531.5.

CHAPTER 2 TRANSITIONAL PROVISIONS

110004. Legislative intent

It is the intent of the Legislature to stabilize the labor and employment relations of individual providers in order to provide continuity of care and services to the maximum extent possible, and consistent with the responsibilities of the Statewide Authority under the act adding this title.

110005. County implementation date

For the purposes of this title, the county implementation date is defined in subdivision (a) of Section 12300.7 of the Welfare and Institutions Code.

110006. Employer of record

For purposes of collective bargaining, and as expressly set forth in subdivision (d) of Section 110003, the Statewide Authority is deemed to be the employer of record of individual providers in each county as of the county implementation date. In-home supportive services recipients shall retain the right to hire, fire, and supervise the work of the individual providers providing services to them.

110007. Individual providers employed by predecessor agency; clearance

Individual providers employed by any predecessor agency as of the county implementation date shall retain employee status and shall not be required by the Statewide Authority to requalify to receive payment for providing services pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code. In the same manner as set forth in subdivision (e) of Section 12305.86 of the Welfare and Institutions Code, the Statewide Authority shall accept a clearance that was obtained or accepted by any predecessor agency pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code. Existence of a clearance shall be determined by verification through the case management, information, and payroll system of the predecessor agency that the predecessor agency has deemed the provider to be eligible to receive payment for providing services pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code.

110008. Creation of separate bargaining units

On the county implementation date, separate bargaining units shall be created consistent with the bargaining units that have been recognized by predecessor agencies. Bargaining units consisting of employees in a single county shall be the only appropriate unit for collective bargaining under this title. In those counties where no recognized employee organization exists as of the county implementation date, a bargaining unit consisting of all employees in that county shall be deemed an appropriate unit for collective bargaining.

110009. Successor employer of predecessor agency

If, on the county implementation date, individual providers are represented by a recognized employee organization, the Statewide Authority shall be deemed the successor employer of the predecessor agency for the purposes of negotiating a collective bargaining agreement, and shall be obligated to recognize and to meet and confer in good faith with the recognized employee organization on all matters within the scope of representation, as defined in Section 110023, as to those individual providers.

110010. Manner of conducting negotiations

Negotiations between the Statewide Authority and recognized employee organizations shall be conducted only in the following manner:

- (a) As of July 1, 2012, all recognized employee organizations affiliated with the same national parent union shall negotiate as a coalition on behalf of all bargaining units they represent. If recognized employee organizations are affiliated with two or more different national parent unions, those recognized employee organizations shall also negotiate as a coalition on behalf of all bargaining units they represent.
- (b) An employee organization obtaining recognition after July 1, 2012, which is affiliated with the same national parent union or unions as the coalitions described in subdivision (a), shall become a part of the coalition affiliated with its same national parent union or unions.
- (c) An employee organization not affiliated with a national parent union covered by subdivision (a), that obtains recognition after July 1, 2012, and represents fewer than 100,000 employees subject to this title, shall negotiate as a member of a coalition, separate from the coalitions described in subdivision (a) and comprised of all those recognized employee organizations on behalf of all units they collectively represent. If that employee organization represents 100,000 or more employees subject to this title, it shall have the right to negotiate as its own coalition on behalf of all bargaining units it represents.
- (d) Each coalition negotiating with the Statewide Authority may enter into supplemental bargaining of unit-specific issues for inclusion in, or as an addendum to, collective bargaining agreements, subject to the parties' agreement regarding the issues

and procedures for supplemental bargaining. This section does not prohibit coordination of bargaining between two or more bargaining coalitions.

110011. Effect of enacting title on existing memorandum of understanding or agreement

(a) Except as otherwise expressly provided in this title, the enactment of this title shall not be a cause for the employer or any predecessor agency to modify or eliminate any existing memorandum of agreement or understanding, or to modify existing wages, benefits, or other terms and conditions of employment. Except to the extent set forth in this title, the enactment of this title shall not prevent the modification of existing wages, benefits, or terms and conditions of employment through the meet and confer in good faith process or, in those situations in which the employees are not represented by a recognized employee organization, through appropriate procedures.

(b) On the county implementation date, subject to Section 12306.15 of the Welfare and Institutions Code, the Statewide Authority shall assume the predecessor agency's rights and obligations under any memorandum of understanding or agreement between the predecessor agency and a recognized employee organization that is in effect on the county implementation date for the duration thereof. Absent mutual consent to reopen, the terms of any transferred memorandum of understanding or agreement shall continue until the memorandum of understanding or agreement has expired. If a memorandum of understanding or agreement between a recognized employee organization and a predecessor agency has expired and has not been replaced by a successor memorandum of understanding or agreement as of the county implementation date, the Statewide Authority shall assume the obligation to meet and confer in good faith with the recognized employee organization.

(c) Notwithstanding any other provision of law, except to the extent set forth in this chapter and as limited by Section 110023, the terms and conditions of any memorandum of understanding or agreement between a predecessor agency and a recognized employee organization in effect on the county implementation date shall not be reduced, except by mutual agreement between the recognized employee organization and the Statewide Authority.

(d) Nothing in this title shall be construed to relieve any predecessor agency of its obligation to meet and confer in good faith with a recognized employee organization pursuant to the Meyers-Milias-Brown Act (Chapter 10 (commencing with Section 3500) of Division 4 of Title 1) until the county implementation date. Nothing in this title shall permit the predecessor agency to meet and confer after the Statewide

Authority assumes the predecessor agency's rights and obligations on the county implementation date.

(e) With the exception of all economic terms covered by Section 12306.15 of the Welfare and Institutions Code and notwithstanding any other provision of law, beginning July 1, 2012, and ending on the county implementation date as set forth in subdivision (a) of Section 12300.7 of the Welfare and Institutions Code, any alterations or modifications to either current or expired memoranda of understanding that were in effect on July 1, 2012, and any newly negotiated memoranda of understanding or agreements reached after July 1, 2012, shall be submitted for review to the State Department of Social Services, hereafter referred to as the department. This review requirement shall not begin until a county commences transition pursuant to subdivision (g) of Section 14132.275 of the Welfare and Institutions Code, and shall be performed by the department until the Statewide Authority becomes operational, after which date the Statewide Authority shall continue to perform this review requirement. If, upon review, but not later than 180 days after the county commences transition pursuant to subdivision (g) of Section 14132.275 of the Welfare and Institutions Code, the department or Statewide Authority reasonably determines that there are one or more newly negotiated or amended noneconomic terms in the memorandum of understanding or agreement to which it objects for a bona fide business-related reason, the department or Statewide Authority shall provide written notice to the signatory recognized employee organization of each objection and the reason for it. Upon demand from the recognized employee organization, the department, or the Statewide Authority, those parties shall meet and confer regarding the objection and endeavor to reach agreement prior to the county implementation date. If an agreement is reached, it shall not become effective prior to the county implementation date. If an agreement is not reached by the county implementation date, the objectionable language is deemed inoperable as of the county implementation date. All terms to which no objection is made shall be deemed accepted by the Statewide Authority. If the Statewide Authority or the department fails to provide the 180 days' notice of objection, it shall be deemed waived.

110012. Changes to locally administered health benefits; notice

If the Statewide Authority and the recognized employee organization negotiate changes to locally administered health benefits for individual providers, the Statewide Authority shall give 90 days' notice to the county and an entity established pursuant to Section 12301.6 of the Welfare and Institutions Code prior to implementation of the agreed-upon changes.

CHAPTER 3 ADMINISTRATION

110013. Legislative findings and declarations; applicability of title

The Legislature hereby finds and declares that collective bargaining for individual providers under this title constitutes a matter of statewide concern. Therefore, this title is applicable to all counties, notwithstanding charter provisions to the contrary, as set forth in Section 110005.

110014. Construction and application of language

Where the language of this title is the same or substantially the same as that contained in Chapter 10 (commencing with Section 3500) of Division 4 of Title 1, it shall be interpreted and applied by the board in a manner consistent with and in accordance with judicial interpretations of the same language.

110015. Powers and duties of board

Except as provided in this title, the powers and duties of the board described in Sections 3541.3 and 3541.5 shall also apply, as appropriate, to this title. Included among the appropriate powers of the board are the powers to order elections, to conduct any election the board orders, to order unit modifications consistent with Section 110008, and to adopt rules.

110016. Decision of administrative law judge; final order of board

Notwithstanding any other law, if a decision by an administrative law judge regarding the recognition, certification, decertification, or unit modification, consistent with Section 110008, of an employee organization is appealed, the decision shall be deemed the final order of the board if the board does not issue a ruling that supersedes the decision no later than 180 days after the appeal is filed.

110017. Petition for writ of extraordinary relief

(a) Any charging party, respondent, or intervener aggrieved by a final decision or order of the board in an unfair practice case, except a decision of the board not to issue a complaint in such a case, and any party to a final decision or order of the board in a unit determination consistent with Section 110008, or in a representation, recognition, or election matter that is not brought as an unfair practice case, may petition for a writ

of extraordinary relief from that decision or order. A board order directing an election shall not be stayed pending judicial review.

(b) A petition for a writ of extraordinary relief shall be filed in the district court of appeal having jurisdiction over the county where the events giving rise to the decision or order occurred. The petition shall be filed within 30 days from the date of the issuance of the board's final decision or order, or order denying reconsideration, as applicable. Upon the filing of the petition, the court shall cause notice to be served upon the board and thereafter shall have jurisdiction of the proceeding. The board shall file in the court the record of the proceeding, certified by the board, within 10 days after the clerk's notice unless that time is extended by the court for good cause shown. The court shall have jurisdiction to grant any temporary relief or restraining order it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as modified, or setting aside in whole or in part the decision or order of the board. The findings of the board with respect to questions of fact, including ultimate facts, if supported by substantial evidence on the record considered as a whole, shall be conclusive. Title 1 (commencing with Section 1067) of Part 3 of the Code of Civil Procedure relating to writs shall, except where specifically superseded by this section, apply to proceedings pursuant to this section.

(c) If the time to petition for extraordinary relief from a board decision or order has expired, the board may seek enforcement of any final decision or order in a district court of appeal or superior court having jurisdiction over the county where the events giving rise to the decision or order occurred. The board shall respond within 10 days to any inquiry from a party to the action as to why the board has not sought court enforcement of the final decision or order. If the response does not indicate that there has been compliance with the board's final decision or order, the board shall seek enforcement of the final decision or order upon the request of the party. The board shall file in the court the record of the proceeding, certified by the board, and appropriate evidence disclosing the failure to comply with the decision or order. If, after hearing, the court determines that the order was issued pursuant to the procedures established by the board and that the person or entity refuses to comply with the order, the court shall enforce the order by writ of mandamus or other proper process. The court may not review the merits of the order.

CHAPTER 4 LABOR RELATIONS

110018. Immunity for lawful action as representative

No individual provider shall be subject to punitive action or denied promotion, or threatened with any such treatment, for the exercise of lawful action as an elected, appointed, or recognized representative of any employee bargaining unit.

110019. Agency shop arrangements

(a) Notwithstanding Section 110002, any other provision of this title, or any other law, rule, or regulation, an agency shop agreement may be negotiated between the employer and a recognized public employee organization that has been recognized as the exclusive or majority bargaining agent, in accordance with this title. As used in this title, “agency shop” means an arrangement that requires an employee, as a condition of continued employment, either to join the recognized employee organization or to pay the organization a service fee in an amount not to exceed the standard initiation fee, periodic dues, and general assessments of the organization, to be determined by the organization in accordance with applicable law.

(b) In addition to the procedure prescribed in subdivision (a), an agency shop arrangement between the Statewide Authority and a recognized employee organization that has been recognized as the exclusive or majority bargaining agent shall be placed in effect, without a negotiated agreement, upon (1) a signed petition of 30 percent of the employees in the applicable bargaining unit requesting an agency shop agreement and an election to implement an agency fee arrangement, and (2) the approval of a majority of employees who cast ballots and vote in a secret ballot election in favor of the agency shop agreement. The petition may be filed only after the recognized employee organization has requested the Statewide Authority to negotiate on an agency shop arrangement and, beginning seven working days after the Statewide Authority received this request, the two parties have had 30 calendar days to attempt good faith negotiations in an effort to reach agreement. An election that shall not be held more frequently than once a year shall be conducted by the State Mediation and Conciliation Service in the event that the Statewide Authority and the recognized employee organization cannot agree within 10 days from the filing of the petition to select jointly a neutral person or entity to conduct the election. In the event of an agency fee arrangement outside of an agreement that is in effect, the recognized employee organization shall indemnify and hold the Statewide Authority harmless against any

liability arising from a claim, demand, or other action relating to the Statewide Authority's compliance with the agency fee obligation.

(c) An individual provider who is a member of a bona fide religion, body, or sect that has historically held conscientious objections to joining or financially supporting public employee organizations shall not be required to join or financially support a public employee organization as a condition of employment. The employee may be required, in lieu of periodic dues, initiation fees, or agency shop fees, to pay sums equal to the dues, initiation fees, or agency shop fees to a nonreligious, nonlabor charitable fund exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, chosen by the employee from a list of at least three of these funds, designated in a memorandum of understanding between the employer and the recognized employee organization, or if the memorandum of understanding fails to designate the funds, then to a fund of that type chosen by the employee. Proof of the payments shall be made on a monthly basis to the employer as a condition of continued exemption from the requirement of financial support to the public employee organization.

(d) An agency shop provision in a memorandum of understanding that is in effect may be rescinded by a majority vote of all the employees in the unit covered by the memorandum of understanding, provided that: (1) a request for that type of vote is supported by a petition containing the signatures of at least 30 percent of the employees in the unit, (2) the vote is by secret ballot, and (3) the vote may be taken at any time during the term of the memorandum of understanding, but in no event shall there be more than one vote taken during that term.

(e) A recognized employee organization that has agreed to an agency shop provision or is a party to an agency shop arrangement shall keep an adequate itemized record of its financial transactions and shall make available annually, to the employer with which the agency shop provision was negotiated, and to the employees who are members of the organization, within 60 days after the end of its fiscal year, a detailed written financial report thereof in the form of a balance sheet and an operating statement, certified as to accuracy by its president and treasurer or corresponding principal officer, or by a certified public accountant. An employee organization required to file financial reports under the federal Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. Sec. 401 et seq.) covering employees governed by this title, or required to file financial reports under Section 3546.5, may satisfy the financial reporting requirement of this section by providing the employer with a copy of the financial reports.

110020. Deductions of dues or service fees from salary or wages

(a) Nothing in this title shall affect the right of an employee to authorize a dues or service fees deduction from his or her salary or wages pursuant to Article 6 (commencing with Section 1150) of Chapter 1 of Division 4 of Title 1.

(b) Either the Controller or the State Department of Social Services shall deduct the payment of dues or service fees to a recognized employee organization as required by an agency shop arrangement between the recognized employee organization and the Statewide Authority.

(c) Agency fee obligations, including, but not limited to, dues or agency fee deductions on behalf of a recognized employee organization, shall continue in effect as long as the employee organization is the recognized bargaining representative, notwithstanding the expiration of any agreement between the employer and the recognized employee organization.

110021. Continuation of prior memorandum of understanding or agreement

If a predecessor agency is party to any memorandum of understanding or agreement with any bargaining unit that includes individual providers that contains an agency shop provision as of the effective date of this title, the predecessor agency and the employer shall be obligated to honor the terms of the agency shop provision, including indemnification provisions, if any, for the duration of the memorandum of understanding or agreement, and until the adoption of a successor memorandum of understanding or agreement. However, upon the request of a recognized employee organization, an agency shop provision in effect on the county implementation date may be reopened for the sole purpose of renegotiating the terms of that provision in accordance with this title. The implementation of this title shall not be a cause for a new agency shop election.

110022. Right to represent members in employment relations

Recognized employee organizations shall have the right to represent their members in their employment relations with the employer. Employee organizations may establish reasonable restrictions regarding who may join and may make reasonable provisions for the dismissal of individuals from membership. Nothing in this section shall prohibit an employee from appearing on his or her own behalf in his or her employment relations with the Statewide Authority.

110023. Scope of representation

(a) The scope of representation shall include all matters relating to wages, benefits, and other terms and conditions of employment. The scope of representation shall exclude the following functions performed by, or on behalf of, a county:

- (1) Determining an applicant's eligibility for IHSS benefits.
- (2) Assessing, approving, and authorizing an IHSS recipient's initial and continuing need for services.
- (3) Enrolling providers and conducting provider orientation.
- (4) Conducting criminal background checks on all potential providers.
- (5) Providing assistance to IHSS recipients in finding eligible providers through the establishment of a provider registry, as well as providing orientation to recipients.
- (6) Pursuing overpayment recovery recollection.
- (7) Performing quality assurance activities.
- (8) Providing assistance to IHSS recipients through the establishment of emergency backup services.
- (9) Performing any other function or responsibility required pursuant to statute or regulation to be performed by the county.

(b) The scope of representation shall also exclude the IHSS recipient's right to hire, fire, and supervise the individual provider.

110024. Rules, policies and procedures; notice to employee organizations

(a) Except in cases of emergency as provided in this section, the Statewide Authority shall give reasonable written notice to each recognized employee organization affected by any rule, practice, or policy directly relating to matters within the scope of representation proposed to be adopted by the Statewide Authority and shall give each recognized employee organization the opportunity to meet with the Statewide Authority.

(b) In cases of emergency when the Statewide Authority determines that any rule, policy, or procedure must be adopted immediately without prior notice or meeting with a recognized employee organization, the Statewide Authority shall provide notice and an opportunity to meet at the earliest practicable time following the adoption of the rule, policy, or procedure.

110025. Meet and confer requirements

(a) Consistent with Section 12300.5 of the Welfare and Institutions Code, the Statewide Authority shall meet and confer in good faith regarding matters within the scope of representation with representatives of recognized employee organizations and shall consider fully those presentations as are made by the employee organization on behalf of its members prior to arriving at a determination of policy or course of action.

(b) The process should include adequate time for the resolution of impasses pursuant to any impasse resolution procedure set forth in this title.

110026. Discrimination prohibited

The Statewide Authority and employee organizations shall not interfere with, intimidate, restrain, coerce, or discriminate against employees because of the exercise of their rights under Section 110002.

110027. Recognition of employee organizations

(a) The Statewide Authority shall grant exclusive recognition to employee organizations designated or selected pursuant to rules established by the board for employees of the Statewide Authority or an appropriate unit thereof, subject to the right of an employee to represent himself or herself. The board shall establish reasonable procedures for petitions and holding elections and determining appropriate units consistent with Section 110008. In a representation election, a majority of the votes cast by the employees in the appropriate bargaining unit shall be required.

(b) A bargaining unit in existence as of the effective date of this title shall remain in existence unless changed pursuant to subdivision (a).

110028. Memorandum of understanding; presentation for determination

If an agreement is reached by the representatives of the Statewide Authority and a recognized employee organization or recognized employee organizations, they shall jointly prepare a written memorandum of the understanding, which shall not be binding, and present it to the Legislature for determination by majority vote.

110029. Mediation

(a) If, after a reasonable period of time, representatives of the Statewide Authority and the recognized employee organization fail to reach agreement, the dispute shall be referred to mediation before a mediator mutually agreeable to the parties. If the parties are unable to agree upon the mediator, either party may request the board to appoint a mediator in accordance with rules adopted by the board.

(b) The costs of mediation shall be divided one-half to the Statewide Authority and one-half to the recognized employee organization or recognized employee organizations.

110030. Factfinding panel; procedures

(a) If the parties are unable to effect settlement of the controversy within 30 days after the appointment of a mediator, the parties shall submit their differences to a factfinding panel. Within five days after receipt of the written request, each party shall select a person to serve as its member of the factfinding panel. The board shall, within five days after the selection of panel members by the parties, select a chairperson of the factfinding panel.

(b) Within five days after the board selects a chairperson of the factfinding panel, the parties may mutually agree upon a person to serve as chairperson in lieu of the person selected by the board.

(c) The panel shall, within 10 days after its appointment, meet with the parties or their representatives, either jointly or separately, and may make inquiries and investigations, hold hearings, and take any other steps it deems appropriate. For the purpose of the hearings, investigations, and inquiries, the panel shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence. Any state agency, as defined in Section 11000, or any political subdivision of the state, shall furnish the panel, upon its request, with all records, papers, and

information in their possession relating to any matter under investigation by or in issue before the panel.

(d) In arriving at their findings and recommendations, the factfinders shall consider, weigh, and be guided by all the following criteria:

- (1) State and federal laws that are applicable to the employer.
- (2) Local rules, regulations, or ordinances.
- (3) Stipulations of the parties.
- (4) The interests and welfare of the public and the financial ability of the employer.
- (5) Comparison of the wages, benefits, and terms and conditions of employment of the employees involved in the factfinding proceeding with the wages, benefits, and terms and conditions of employment of other employees performing similar services in comparable counties.
- (6) The consumer price index for goods and services, commonly known as the cost of living.
- (7) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (8) Any other facts, not confined to those specified in paragraphs (1) to (7), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.

110031. Factfinding panel; findings of fact and recommendations; costs

(a) If the dispute is not settled within 30 days after the appointment of the factfinding panel, or, upon agreement by both parties within a longer period, the panel shall make findings of fact and recommend terms of settlement, which shall be advisory only. The factfinders shall submit, in writing, any findings of fact and recommended terms of settlement to the parties before they are made available to the public. The Statewide Authority shall make these findings and recommendations publicly available within 10 days after their receipt.

(b) The costs for the services of the panel chairperson, whether selected by the board or agreed upon by the parties, shall be equally divided between the parties, and shall include per diem fees, if any, and actual and necessary travel and subsistence expenses. The per diem fees shall not exceed the per diem fees stated on the chairperson's résumé on file with the board. The chairperson's bill showing the amount payable by the parties shall accompany his or her final report to the parties and the board. The chairperson may submit interim bills to the parties in the course of the proceedings, and copies of the interim bills shall also be sent to the board. The parties shall make payment directly to the chairperson.

(c) Any other mutually incurred costs shall be borne equally by the Statewide Authority and the employee organization. Any separately incurred costs for the panel member selected by each party shall be borne by that party.

(d) Nothing in this chapter shall be construed to prohibit the mediator appointed pursuant to Section 110029, upon mutual agreement of the parties, from continuing mediation efforts on the basis of the findings of fact and recommended terms of settlement made pursuant to Section 110031.

110032. Declaration of impasse; implementation of Statewide Authority's last, best and final offer

After the applicable mediation procedure has been exhausted, fact finding has been completed and made public, and no resolution has been reached by the parties, the Statewide Authority may declare an impasse and implement any or all of its last, best, and final offer. Any proposal in the Statewide Authority's last, best, and final offer that, if implemented, would conflict with existing statutes or require the expenditure of funds shall be presented to the Legislature for approval. The unilateral implementation of the Statewide Authority's last, best, and final offer shall not deprive a recognized employee organization of the right each year to meet and confer on matters within the scope of representation, whether or not those matters are included in the unilateral implementation, prior to the adoption of the annual budget or as otherwise required by law.

110033. Time off allowance to employee representatives

The Statewide Authority shall allow a reasonable number of representatives of recognized employee organizations reasonable time off without loss of compensation

or other benefits when formally meeting and conferring with representatives of the employer on matters within the scope of representation.

110034. Statewide Authority; prohibited actions

The Statewide Authority shall not do any of the following:

- (a) Impose or threaten to impose reprisals on individual providers, to discriminate or threaten to discriminate against individual providers, or otherwise to interfere with, restrain, or coerce individual providers because of their exercise of rights guaranteed by this title.
- (b) Deny to employee organizations the rights guaranteed to them by this title.
- (c) Refuse or fail to meet and negotiate in good faith with a recognized employee organization. For purposes of this subdivision, knowingly providing a recognized employee organization with inaccurate information regarding the financial resources of the Statewide Authority, whether or not in response to a request for information, constitutes a refusal or failure to meet and negotiate in good faith.
- (d) Dominate or interfere with the formation or administration of any employee organization, contribute financial or other support to any employee organization, or in any way encourage individual providers to join any organization in preference to another.
- (e) Refuse to participate in good faith in any applicable impasse procedure.

110034.5. Proceedings exempt from Bagley-Keene Open Meeting Act and Ralph M. Brown Act

All of the following proceedings are exempt from the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2) and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5), unless the parties agree otherwise:

- (a) Any meeting, negotiation, or discussion between the Statewide Authority or its designated representative and a recognized or certified employee organization.
- (b) Any meeting of a mediator with either party or both parties to the meeting and negotiation process described in subdivision (a).

(c) Any hearing, meeting, or investigation conducted by a factfinder or arbitrator in connection with the activities described in subdivision (a).

(d) Any executive session of the Statewide Authority or between the Statewide Authority and its designated representative, including, but not limited to, the Department of Human Resources, for the purpose of discussing its position regarding any matter within the scope of representation and its designated representatives.

110035. Adoption of rules and regulations; recognition of employee organizations; challenge to rules and regulations

(a) The Statewide Authority may adopt reasonable rules and regulations for all of the following:

(1) Registering employee organizations.

(2) Determining the status of organizations and associations as employee organizations or bona fide associations.

(3) Identifying the officers and representatives who officially represent employee organizations and bona fide associations.

(4) Any other matters that are necessary to carry out the purposes of this title.

(b) The board shall establish procedures whereby recognition of employee organizations formally recognized as majority representatives pursuant to a vote of the employees may be revoked by a majority vote of the employees only after a period of not less than 12 months following the date of recognition.

(c) The Statewide Authority shall not unreasonably withhold recognition of employee organizations.

(d) Employees and employee organizations may challenge a rule or regulation of the Statewide Authority as a violation of this title. This subdivision shall not be construed to restrict or expand the board's jurisdiction or authority as set forth in subdivisions (a) to (c), inclusive, of Section 3541.3.

110035.5. Emergency regulations

(a) The board and the Statewide Authority may adopt emergency regulations to implement this title. The initial adoption, amendment, or repeal of the regulations authorized by this section is deemed to address an emergency, for purposes of Sections 11346.1 and 11349.6, and the board and the Statewide Authority are hereby exempted for that purpose from the requirements of subdivision (b) of Section 11346.1. After the initial adoption, amendment, or repeal of an emergency regulation pursuant to this section, the board and the Statewide Authority shall not request approval from the Office of Administrative Law to readopt the regulation as an emergency regulation pursuant to Section 11346.1.

(b) The adoption, amendment, or repeal of a regulation authorized by this section is hereby exempted from subdivision (d) of Section 11346.1 and Section 11349.6, and the board or Statewide Authority shall transmit the regulations directly to the Secretary of State for filing. The regulations shall become effective immediately upon filing with the Secretary of State.

(c) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

110036. Severability

The provisions of this title are severable. If any provision of this title or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

