

AMENDED IN ASSEMBLY JUNE 28, 2011
AMENDED IN ASSEMBLY MARCH 25, 2011
AMENDED IN ASSEMBLY MARCH 14, 2011

SENATE BILL

No. 73

**Introduced by Senator DeSaulnier Committee on Budget and Fiscal
Review**

**(Principal coauthors: Senators Alquist, Hernandez, Leno, Liu, and
Steinberg)**

January 10, 2011

~~An act to add Chapter 8.65 (commencing with Section 14518) to Part 3 of Division 9 of the Welfare and Institutions Code, relating to Medi-Cal, and declaring the urgency thereof, to take effect immediately. An act to add Sections 4792, 12301.07, and 14105.09 to the Welfare and Institutions Code, relating to health and human services, and making an appropriation therefor, to take effect immediately, bill related to the budget.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 73, as amended, ~~DeSaulnier Committee on Budget and Fiscal Review. Adult day health care: community-based services. Health and human services.~~

(1) Existing law, the Lanterman Developmental Disabilities Services Act, authorizes the State Department of Developmental Services to contract with regional centers to provide services and supports to individuals with developmental disabilities.

This bill would, if a specified provision of the Budget Act of 2011 is operative, state the intent of the Legislature for the department to identify up to \$100 million in General Fund savings from the

developmental services system, as prescribed. This bill would authorize the department to utilize input from prescribed workgroups. This bill would require, as prescribed, the department to report to the Joint Legislative Budget Committee within 10 days of the specified reduction as directed within the Budget Act of 2011.

(2) Existing law provides for the In-Home Supportive Services (IHSS) program, under which, either through employment by the recipient, or by or through contract by the county, qualified aged, blind, and disabled persons receive services enabling them to remain in their own homes. Counties are responsible for the administration of the IHSS program. Under the Medi-Cal program, similar services are provided to eligible individuals, with these services known as personal care option services.

Existing law authorized an individual who was eligible for IHSS services in the 1992–93 fiscal year, and who had his or her services reduced pursuant to specified provisions, but who believed that he or she was at serious risk of out-of-home placement unless all or part of the reduced hours were restored, to apply for an IHSS Care Supplement, as prescribed.

Existing law established a similar reduction in authorized IHSS service hours, which becomes operative only if a specified medication machine pilot project does not achieve a designated amount of savings to the General Fund, as determined by the Department of Finance, and also authorizes an individual whose services have been reduced, and who believes that he or she is at serious risk of out-of-home placement, to submit an IHSS Care Supplement application, in accordance with specified provisions, in order to have all or part of the service hour reduction restored.

Existing law also requires the department to implement a 3.6% reduction in service hours to each IHSS recipient, until July 1, 2012.

This bill, effective January 1, 2012, would impose an additional 20% service hour reduction on IHSS recipients, which would be operative only if a designated provision of the Budget Act of 2011 becomes operative, and would establish an IHSS Care Supplement process for any individual who is notified of a reduction in service hours under the bill, but who believes he or she is at serious risk of out-of-home placement unless all or part of the reduction is restored.

Existing

(3) Existing law establishes the Medi-Cal program, administered by the State Department of Health Care Services, under which health care services are provided to qualified, low-income persons. The Medi-Cal

program is, in part, governed and funded by federal Medicaid Program provisions. Existing law, the Adult Day Health Medi-Cal Law, establishes adult day health care services as a Medi-Cal benefit for Medi-Cal beneficiaries who meet certain criteria.

This bill would require the department to submit an application, as prescribed, to the federal Centers for Medicare and Medicaid Services to implement the Keeping Adults Free from Institutions (KAFI) program, which would provide a well-defined scope of services for beneficiaries who meet a high medical acuity standard and are at a significant risk of institutionalization in the absence of community-based services. This bill would provide that it is the intent of the Legislature that the KAFI program allow former recipients of adult day health care services who meet certain high acuity measures to be given immediate priority to transition to the new program.

This bill would declare that it is to take effect immediately as an urgency statute.

This bill would, effective on or after January 1, 2012, if a specified provision of the Budget Act of 2011 is operative, apply specified payment reductions to managed care health plans that contract with the department and to other specified contracts.

(4) This bill would appropriate \$1,000 to the State Department of Health Care Services for administration.

(5) This bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.

Vote: $\frac{2}{3}$ -majority. Appropriation: ~~no~~-yes. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 4792 is added to the Welfare and
- 2 Institutions Code, to read:
- 3 4792. (a) This section of law shall only be operative if
- 4 subdivision (b) of Section 3.94 of the Budget Act of 2011 is
- 5 operative. It is the intent of the Legislature for the department to
- 6 identify up to one hundred million dollars (\$100,000,000) in
- 7 General Fund savings from within the overall developmental
- 8 services system, including any savings or reductions within state
- 9 administrative support, operation of the developmental centers,
- 10 and operation of the regional centers, including administration
- 11 and the purchase of services where applicable if subdivision (b)

1 of Section 3.94 of the Budget Act of 2011 is operative. A variety
2 of strategies, including, but not limited to, savings attributable to
3 caseload adjustments, changes in expenditure trends, unexpended
4 contract funds, or other administrative savings or restructuring
5 can be applied to this reduction with the intent of keeping
6 reductions as far away as feasible from consumer's direct needs,
7 services, and supports, including health, safety, and quality of life.

8 (b) The department may utilize input from workgroups
9 comprised of consumers and family members, consumer-focused
10 advocacy groups, service provider representatives, regional center
11 representatives, developmental center representatives, other
12 stakeholders, and staff of the Legislature, to develop General Fund
13 savings proposals as necessary.

14 (c) If subdivision (b) of Section 3.94 of the Budget Act of 2011
15 is operative, and the department is directed to identify up to one
16 hundred million dollars (\$100,000,000) in General Fund savings
17 from within the developmental services system, any savings or
18 reductions identified shall be reported to the Joint Legislative
19 Budget Committee within 10 days of the reduction as directed
20 within Section 3.94 of the Budget Act of 2011.

21 SEC. 2. Section 12301.07 is added to the Welfare and
22 Institutions Code, to read:

23 12301.07. (a) (1) Notwithstanding any other provision of law,
24 if Section 3.94 of the Budget Act of 2011 becomes operative, the
25 department shall implement a 20 percent reduction in authorized
26 hours of service to each in-home supportive services recipient as
27 specified in this section, effective January 1, 2012, which shall be
28 applied to the recipient's hours as authorized pursuant to his or
29 her most recent assessment.

30 (2) The reduction required by this section shall not preclude
31 any reassessment to which a recipient would otherwise be entitled.
32 However, hours authorized pursuant to a reassessment shall be
33 subject to the reduction required by this section.

34 (3) For those recipients who have a documented unmet need,
35 excluding protective supervision, because of the limitations
36 contained in Section 12303.4, this reduction shall be applied first
37 to the unmet need before being applied to the authorized hours. If
38 the recipient believes he or she will be at serious risk of
39 out-of-home placement as a consequence of the reduction, the

1 recipient may apply for a restoration of the reduction of authorized
2 service hours, pursuant to subdivision (f).

3 (4) A recipient of services under this article may direct the
4 manner in which the reduction of hours is applied to the recipient's
5 previously authorized services.

6 (5) The reduction in service hours made pursuant to paragraph
7 (2) shall not apply to in-home supportive services recipients who
8 also receive services under Section 9560, subdivision (t) of Section
9 14132, and Section 14132.99.

10 (b) The department shall work with the counties to develop a
11 process to allow for counties to preapprove IHSS Care
12 Supplements described in subdivision (f), to the extent that the
13 process is permissible under federal law. The preapproval process
14 shall be subject to the following conditions:

15 (1) The preapproval process shall rely on the criteria for
16 assessing IHSS Supplemental Care applications, developed
17 pursuant to subdivision (f).

18 (2) Preapproval shall be granted only to individuals who would
19 otherwise be granted a full restoration of their hours pursuant to
20 subdivision (f).

21 (3) With respect to existing recipients as of the effective date of
22 this section, all efforts shall be made to ensure that counties
23 complete the process on or before a specific date, as determined
24 by the department, in consultation with counties in order to allow
25 for the production, printing, and mailing of notices to be issued
26 to remaining recipients who are not granted preapproval and who
27 thereby are subject to the reduction pursuant to this section.

28 (4) The department shall work with counties to determine how
29 to apply a preapproval process with respect to new applicants to
30 the IHSS program who apply after the effective date of this section.

31 (c) The notice of action informing each recipient who is not
32 preapproved for an IHSS Care Supplement pursuant to subdivision
33 (b) shall be mailed at least 15 days prior to the reduction going
34 into effect. The notice of action shall be understandable to the
35 recipient and translated into all languages spoken by a substantial
36 number of the public served by the In-Home Supportive Services
37 program, in accordance with Section 7295.2 of the Government
38 Code. The notice shall not contain any recipient financial or
39 confidential identifying information other than the recipient's
40 name, address, and Case Management Information and Payroll

1 System (CMIPS) client identification number, and shall include,
2 but not be limited to, all of the following information:

3 (1) The aggregate number of authorized hours before the
4 reduction pursuant to paragraph (1) of subdivision (a) and the
5 aggregate number of authorized hours after the reduction.

6 (2) That the recipient may direct the manner in which the
7 reduction of authorized hours is applied to the recipient's
8 previously authorized services.

9 (3) How all or part of the reduction may be restored, as set forth
10 in subdivision (f), if the recipient believes he or she will be at
11 serious risk of out-of-home placement as a consequence of the
12 reduction.

13 (d) The department shall inform providers of any reduction to
14 recipient hours through a statement on provider timesheets, after
15 consultation with counties.

16 (e) The IHSS Care Supplement application process described
17 in subdivision (f) shall be completed before a request for a state
18 hearing is submitted. If the IHSS Care Supplement application is
19 filed within 15 days of the notice of action required by subdivision
20 (c), or before the effective date of the reduction, the recipient shall
21 be eligible for aid paid pending. A revised notice of action shall
22 be issued by the county following evaluation of the IHSS Care
23 Supplement application.

24 (f) Any aged, blind, or disabled individual who is eligible for
25 services under this chapter who receives a notice of action
26 indicating that his or her services will be reduced under subdivision
27 (a) but who believes he or she is at serious risk of out-of-home
28 placement unless all or part of the reduction is restored may submit
29 an IHSS Care Supplement application. When a recipient submits
30 an IHSS Care Supplement application within 15 days of receiving
31 the reduction notice or prior to the implementation of the reduction,
32 the recipient's in-home supportive services shall continue at the
33 level authorized by the most recent assessment, prior to any
34 reduction, until the county finds that the recipient does or does
35 not require restoration of any hours through the IHSS Care
36 Supplement. If the recipient disagrees with the county's
37 determination concerning the need for the IHSS Care Supplement,
38 the recipient may request a hearing on that determination.

39 (1) The department shall develop an assessment tool, in
40 consultation with stakeholders, to be used by the counties to

1 *determine if a recipient is at serious risk of out-of-home placement*
2 *as a consequence of the reduction of services pursuant to this*
3 *section. The assessment tool shall be developed utilizing standard*
4 *of care criteria for relevant out-of-home placements that serve*
5 *individuals who are aged, blind, or who have disabilities and who*
6 *would qualify for IHSS if living at home, including, but not limited*
7 *to, criteria set forth in Chapter 7.0 of the Manual of Criteria for*
8 *Medi-Cal Authorization published by the State Department of*
9 *Health Care Services, as amended April 15, 2004, and the IHSS*
10 *uniform assessment guidelines.*

11 (2) *Counties shall give a high priority to prompt screening of*
12 *persons specified in this section to determine their need for an*
13 *IHSS Care Supplement.*

14 (g) (1) *Notwithstanding the rulemaking provisions of the*
15 *Administrative Procedure Act (Chapter 3.5 (commencing with*
16 *Section 11340) of Part 1 of Division 3 of Title 2 of the Government*
17 *Code), the department may implement and administer this section*
18 *through all-county letters or similar instruction from the*
19 *department until regulations are adopted. The department shall*
20 *adopt emergency regulations implementing this section no later*
21 *than March 1, 2013. The department may readopt any emergency*
22 *regulation authorized by this section that is the same as or*
23 *substantially equivalent to an emergency regulation previously*
24 *adopted under this section.*

25 (2) *The initial adoption of emergency regulations implementing*
26 *this section and the one readoption of emergency regulations*
27 *authorized by this subdivision shall be deemed an emergency and*
28 *necessary for the immediate preservation of the public peace,*
29 *health, safety, or general welfare. Initial emergency regulations*
30 *and the one readoption of emergency regulations authorized by*
31 *this section shall be exempt from review by the Office of*
32 *Administrative Law. The initial emergency regulations and the*
33 *one readoption of emergency regulations authorized by this section*
34 *shall be submitted to the Office of Administrative Law for filing*
35 *with the Secretary of State and each shall remain in effect for no*
36 *more than 180 days, by which time final regulations may be*
37 *adopted.*

38 (h) *If the Director of Health Care Services determines that*
39 *federal approval is necessary to implement this section, this section*

1 shall be implemented only after any state plan amendments
2 required pursuant to Section 14132.95 are approved.

3 SEC. 3. Section 14105.09 is added to the Welfare and
4 Institutions Code, to read:

5 14105.09. Notwithstanding any other provision of law, if
6 subdivision (b) of Section 3.94 of the Budget Act of 2011 is
7 operative, effective on or after January 1, 2012, the payment
8 reductions in Sections 14105.07, 14105.192, 14126.033, 14131.05,
9 and 14131.07 shall apply to managed care health plans that
10 contract with the department pursuant to Chapter 8.75
11 (commencing with Section 14590) and to contracts with the Senior
12 Care Action Network and AIDS Healthcare Foundation, to the
13 extent that the services are provided through any of these contracts,
14 payments shall be reduced by the actuarial equivalent amount of
15 the payment reductions pursuant to contract amendments or change
16 orders effective on July 1, 2011, or thereafter.

17 SEC. 4. The sum of one thousand dollars (\$1,000) is hereby
18 appropriated from the General Fund to the State Department of
19 Health Care Services for administration.

20 SEC. 5. This act is a bill providing for appropriations related
21 to the Budget Bill within the meaning of subdivision (e) of Section
22 12 of Article IV of the California Constitution, has been identified
23 as related to the budget in the Budget Bill, and shall take effect
24 immediately.

25 SECTION 1. ~~Chapter 8.65 (commencing with Section 14518)~~
26 ~~is added to Part 3 of Division 9 of the Welfare and Institutions~~
27 ~~Code, to read:~~

28
29 CHAPTER 8.65. KEEPING ADULTS FREE FROM INSTITUTIONS
30

31 14518. ~~(a) The department shall submit an application to the~~
32 ~~federal Centers for Medicare and Medicaid Services (CMS) to~~
33 ~~implement the Keeping Adults Free from Institutions (KAFI)~~
34 ~~program, which shall provide a well-defined scope of services for~~
35 ~~beneficiaries who meet a high medical acuity standard and are at~~
36 ~~a significant risk of institutionalization in the absence of~~
37 ~~community-based services. The KAFI program shall achieve all~~
38 ~~of the following:~~

- 39 (1) ~~Promote home and community-based care.~~

1 ~~(2) Work in coordination with existing state programs to delay~~
2 ~~or prevent inappropriate or personally undesirable~~
3 ~~institutionalization.~~

4 ~~(3) Emphasize partnership between the participant, the family,~~
5 ~~the physician, and the community in working towards maintaining~~
6 ~~personal independence.~~

7 ~~(b) The department may implement this chapter by means of a~~
8 ~~state plan amendment or federal waiver, or a combination thereof,~~
9 ~~as necessary to accomplish the intent of this chapter. The~~
10 ~~department shall seek to maximize the availability of federal~~
11 ~~financial participation for implementation of this chapter under~~
12 ~~the terms of any existing waivers or state plan provisions, through~~
13 ~~amendment of any existing waivers or state plan provisions, or by~~
14 ~~means of a new waiver or state plan amendment, or any~~
15 ~~combination thereof.~~

16 ~~(e) In developing the application to CMS pursuant to this~~
17 ~~section, the department shall consult with interested stakeholders~~
18 ~~and the Legislature.~~

19 ~~(d) It is the intent of the Legislature that the KAFI program~~
20 ~~allow former recipients of adult day health care services who meet~~
21 ~~certain high acuity measures to be given immediate priority to~~
22 ~~transition to the new program.~~

23 ~~(e) Notwithstanding the Administrative Procedure Act (Chapter~~
24 ~~3.5 (commencing with Section 11340) of Part 1 of Division 3 of~~
25 ~~Title 2 of the Government Code), the department may implement~~
26 ~~the provisions of this chapter through all-county letters or similar~~
27 ~~instructions, without taking regulatory action. Prior to issuing any~~
28 ~~letter or similar instruction authorized pursuant to this subdivision,~~
29 ~~the department shall notify and consult with stakeholders, including~~
30 ~~advocates, providers, and beneficiaries, in implementing,~~
31 ~~interpreting, or making specific this chapter.~~

32 ~~SEC. 2. This act is an urgency statute necessary for the~~
33 ~~immediate preservation of the public peace, health, or safety within~~
34 ~~the meaning of Article IV of the Constitution and shall go into~~
35 ~~immediate effect. The facts constituting the necessity are:~~

36 ~~In order to ensure that health care for Californians is improved~~
37 ~~at the earliest possible time, it is necessary for this act to take effect~~
38 ~~immediately.~~

O