

AMENDED IN ASSEMBLY APRIL 27, 2015

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1518

**Introduced by Committee on Aging and Long-Term Care (Assembly
Members Brown (Chair), Gipson, Levine, and Lopez)**

March 10, 2015

An act to amend and renumber Section 14132.99 of the Welfare and Institutions Code, relating to Medi-Cal.

LEGISLATIVE COUNSEL'S DIGEST

AB 1518, as amended, Committee on Aging and Long-Term Care. Medi-Cal: nursing facilities.

Existing law provides for the Medi-Cal program, administered by the State Department of Health Care Services, under which qualified low-income individuals receive health care services. The Medi-Cal program is, in part, governed and funded by federal Medicaid Program provisions. Existing federal law authorizes the state to obtain waivers for home- and community-based services. Existing law authorizes the department to seek an increase in the scope of these waivers, in order to enable additional nursing facility residents to transition into the community, subject to implementation of these amended waivers upon obtaining federal financial participation, and to the extent it can demonstrate fiscal neutrality within the overall department budget.

This bill would authorize the department to seek additional increases in the scope of the home- and community-based Nursing Facility/Acute Hospital Waiver. The bill would ~~require~~, *require the department to*, by ~~July 1~~, *February 1*, 2016, *apply for* an additional 5,000 slots beyond

those currently authorized for the ~~waiver to be added~~. *waiver*. The bill would require that the department consider specified factors, consult with stakeholders, calculate the need for additional slots, and seek federal approval to add those slots to the waiver each year beginning January 1, 2016. Prior to submitting the annual request for additional waiver slots and the waiver renewal request, the bill would require the department to notify the appropriate fiscal and policy committees of the Legislature of the number of waiver slots included in the waiver renewal request along with data supporting that number of slots.

The bill would require the department to make an eligibility and level of care determination, and inform the individual about available waiver services, within three business days of receipt of the individual's application for those patients who are in acute care hospitals and who are pending placement in a nursing facility and for those individuals who are more likely than not to be placed in a hospital or nursing facility within 30 days. The bill would require an individual residing in an institutional setting at a level of care included in the waiver to be determined to qualify for a waiver level of care that is no lower than the level of care he or she receives in the institution in which he or she resides, and would prohibit the department from using more stringent eligibility criteria for a waiver level of care than for the corresponding institutional level of care.

~~The bill would require the department, by July 1, 2016, to take all necessary steps so that individuals who are clients of a regional center for individuals with developmental disabilities and who receive private duty nursing through the Early Periodic Screening, Diagnosis, and Treatment Program (EPSDT) seamlessly transition from receipt of private duty in-home nursing provided through EPSDT to medically necessary in-home nursing provided through adult Medi-Cal or a regional center when the individual reaches 21 years of age.~~ *provide that an individual who enrolls in the waiver upon attaining 21 years of age who is no longer eligible to receive services through the Early and Periodic Screening, Diagnosis, and Treatment Program (EPSDT) shall receive the same level of services under the waiver that he or she received through the EPSDT program.*

The bill would require the department to adjust the cost limitation category of the waiver to use an aggregate cost limit formula, as specified. The bill would require the department to implement its provisions only if the department has obtained the necessary approvals and receives federal financial participation.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. Section 14132.99 of the Welfare and Institutions
2 Code, as added by Section 3 of Chapter 551 of the Statutes of
3 2005, is amended and renumbered to read:

4 14132.991. (a) For the purposes of this section, “facility
5 residents” means individuals who are currently residing in a nursing
6 facility and whose care is paid for by Medi-Cal either with or
7 without a share of cost. The term “facility residents” also includes
8 individuals who are hospitalized and who are or will be waiting
9 for transfer to a nursing facility.

10 (b) ~~By July 1, February 1, 2016, the department shall apply for~~
11 ~~an additional 5,000 slots beyond those currently authorized for the~~
12 ~~home- and community-based Nursing Facility/Acute Hospital~~
13 ~~Waiver shall be added~~ *Waiver*, to ensure that individuals residing
14 in, or at risk of, out-of-home placements, including nursing
15 facilities, can be considered for, and, if eligible, receive services
16 from the waiver without delay.

17 (c) (1) Each year, the department shall consider the factors
18 listed in paragraph (2), consult with stakeholders, *including, but*
19 *not limited to, individuals who use or would like to use waiver*
20 *services, programs with state contracts to divert people from or*
21 *help people leave nursing homes, the designated protection and*
22 *advocacy organization, independent living centers, area agencies*
23 *on aging, staff providing services available under Article 7*
24 *(commencing with Section 12300) of Chapter 3, known as the*
25 *In-Home Supportive Services program, and managed care plans*
26 *providing Medi-Cal long-term services and support, calculate the*
27 *need for additional slots, and seek federal approval to add those*
28 *slots to the Nursing Facility/Acute Hospital Waiver.*

29 (2) The factors considered by the department pursuant to
30 paragraph (1) shall include, but not be limited to, all of the
31 following:

32 (A) Any waiting list for Nursing Facility/Acute Hospital Waiver
33 services, including, but not limited to, waiting lists for a particular
34 level of care.

1 ~~(B) The needs identified by programs that assist people to leave~~
2 ~~nursing homes.~~

3 ~~(C)~~

4 (B) The results of surveys of nursing home residents, including,
5 but not limited to, the Minimum Data Sets (MDS), which identify
6 residents who want to leave nursing homes.

7 (3) Prior to submitting the annual request for additional waiver
8 slots and the waiver renewal request, the department shall notify
9 the appropriate fiscal and policy committees of the Legislature of
10 the number of waiver slots included in the waiver renewal request
11 along with data supporting that number of slots.

12 (d) (1) For those patients who are in acute care hospitals and
13 who are pending placement in a nursing facility, and for those
14 individuals who are at imminent risk of placement in a hospital or
15 nursing facility, the department shall expedite the processing of
16 waiver applications in order to facilitate remaining in a community
17 setting and hospital discharges into the community rather than to
18 nursing facilities. ~~For~~

19 (2) For purposes of this section, both of the following definitions
20 apply:

21 ~~(1)~~

22 (A) “Imminent risk” means more likely than not to occur within
23 ~~30 days.~~ 60 days, as determined by a treating professional,
24 including, but not limited to, a physician, a licensed clinical social
25 worker, or a nurse.

26 ~~(2)~~

27 (B) “Expedite the processing of waiver applications” means that
28 the department shall make an eligibility and level of care
29 determination, and inform the individual about available waiver
30 services, within three business days of receipt of the application.

31 (e) An individual residing in an institutional setting at a level
32 of care included in the Nursing Facility/Acute Hospital Waiver
33 shall be determined to qualify for a waiver level of care that is no
34 lower than the level of care he or she receives in the institution in
35 which he or she resides. The department shall not use more
36 stringent eligibility criteria for a waiver level of care than for the
37 corresponding institutional level of care.

38 (f) (1) ~~By July 1, 2016, the department shall take all necessary~~
39 ~~steps so that individuals who are clients of a regional center for~~
40 ~~individuals with developmental disabilities pursuant to the~~

1 ~~Lanterman Developmental Disabilities Services Act (Division 4.5~~
2 ~~(commencing with Section 4500)) and who receive private duty~~
3 ~~nursing through the Early Periodic Screening, Diagnosis, and~~
4 ~~Treatment Program (EPSDT), as described in Section 1396d of~~
5 ~~Title 42 of United State Code, seamlessly transition from receipt~~
6 ~~of private duty in-home nursing provided through EPSDT to~~
7 ~~medically necessary in-home nursing provided through adult~~
8 ~~Medi-Cal or a regional center when the individual reaches 21 years~~
9 ~~of age. An individual who enrolls in the Nursing Facility/Acute~~
10 ~~Hospital Waiver upon attaining 21 years of age who is no longer~~
11 ~~eligible to receive services under the Early and Periodic Screening,~~
12 ~~Diagnosis, and Treatment (EPSDT) program shall be eligible for~~
13 ~~at least the same level of services under the Nursing Facility/Acute~~
14 ~~Hospital Waiver that he or she received through the EPSDT~~
15 ~~program unless the individual, and his or her authorized~~
16 ~~representative, as applicable, agree that the individual's needs~~
17 ~~have decreased and a lower level of service is needed.~~

18 ~~(2) The individuals described in paragraph (1) shall be eligible~~
19 ~~for at least the same level of services received through the EPSDT~~
20 ~~program unless the individual, and his or her authorized~~
21 ~~representative, as appropriate, agree that the individual's needs~~
22 ~~have decreased and less service is needed.~~

23 ~~(3)~~

24 (2) The department shall maximize federal financial participation
25 to meet the identified level of need for in-home nursing to ensure
26 that a consumer does not experience a reduction in in-home nursing
27 when he or she reaches 21 years of age.

28 (g) The Nursing Facility/Acute Hospital Waiver shall be
29 amended to add the following services:

30 (1) One-time community transition services as defined and
31 allowed by the federal Centers for Medicare and Medicaid Services,
32 including, but not limited to, security deposits that are required to
33 obtain a lease on an apartment or home, essential furnishings, and
34 moving expenses required to occupy and use a community
35 domicile, set-up fees, or deposits for utility or service access,
36 including, but not limited to, telephone, electricity, and heating,
37 and health and safety assurances, including, but not limited to, pest
38 eradication, allergen control, or one-time cleaning prior to
39 occupancy. These costs shall not exceed five thousand dollars
40 (\$5,000).

1 (2) Habilitation services, as defined in Section 1915(c)(5) of
2 the federal Social Security Act (42 U.S.C. Sec. 1396n(c)(5)), and
3 in attachment 3-d to the July 25, 2003, State Medicaid Directors
4 Letter re Olmstead Update No. 3, to mean services designed to
5 assist individuals in acquiring, retaining, and improving the
6 self-help, socialization, and adaptive skills necessary to reside
7 successfully in home- and community-based settings.

8 (h) By July 1, 2016, the department shall adjust the cost
9 limitation category of the Nursing Facility/Acute Hospital Waiver
10 to use an aggregate cost limit formula.

11 (i) By July 1, 2016, the aggregate cost limit formula described
12 in subdivision (h) shall be based on 100 percent of the actual
13 current rates for the corresponding institutional levels of care
14 specified in the Nursing Facility/Acute Hospital Waiver. Any cost
15 increase in an institutional level of care shall be matched by an
16 increase in the cost limitation of the corresponding Nursing
17 Facility/Acute Hospital Waiver level of care.

18 (j) (1) The department shall implement this section only to the
19 extent it can demonstrate fiscal neutrality within the overall
20 department budget, and federal fiscal neutrality as required under
21 the terms of the federal waiver, and only if the department has
22 obtained the necessary approvals and receives federal financial
23 participation from the federal Centers for Medicare and Medicaid
24 Services. Contingent upon federal approval of the waiver
25 expansion, implementation shall commence within six months of
26 the department receiving authorization for the necessary resources
27 to provide the services to additional waiver participants.

28 (2) The department shall implement the amendments made to
29 this section by the act that added this paragraph only to the extent
30 it can demonstrate fiscal neutrality within the overall department
31 budget, and federal fiscal neutrality as required under the terms of
32 the federal waiver, and only if the department has obtained the
33 necessary approvals and receives federal financial participation
34 from the federal Centers for Medicare and Medicaid Services.
35 Contingent upon federal approval of the waiver expansion,
36 implementation shall commence within six months of the
37 department receiving authorization for the necessary resources to
38 provide the services to additional waiver participants.

O