

ASSEMBLY BILL

No. 50

Introduced by Assembly Member Kalra

December 3, 2018

An act to add Section 14132.265 to the Welfare and Institutions Code, relating to Medi-Cal.

LEGISLATIVE COUNSEL'S DIGEST

AB 50, as introduced, Kalra. Medi-Cal: Assisted Living Waiver program.

Existing law establishes the Medi-Cal program, which is administered by the State Department of Health Care Services and 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 law requires the State Department of Health Care Services to develop a federal waiver program, known as the Assisted Living Waiver program, to test the efficacy of providing an assisted living benefit to beneficiaries under the Medi-Cal program. Existing law requires that the benefit include, but not be limited to, the care and supervision activities specified for residential care facilities for the elderly. Existing law requires implementation of the program only to the extent federal financial participation is available and funds are appropriated or otherwise available for the program.

This bill would require the department to submit, in 2019, to the federal Centers for Medicare and Medicaid Services a request for renewal of the Assisted Living Waiver program with specified amendments. The bill would require, as part of the amendments, the department to increase the number of participants in the program, as

specified, in the 15 existing waiver counties, expansion of the program beyond those counties on a regional basis, and modification to the provider reimbursement tiers while also maintaining the program's budget-neutral provisions. The bill would require the department, before the submission of the waiver renewal request, to notify specified legislative committees about certain information relating to the increase in the participant population and the regional expansion, to conduct open in-person meetings with stakeholders, and to release a draft of the proposed waiver renewal for stakeholder comment, as specified.

The bill would condition implementation of the waiver amendments on obtaining the necessary federal approvals and on the availability of federal financial participation. The bill would require implementation of the waiver amendments to commence within 6 months of the department's receipt of authorization for the necessary resources, as specified.

The bill would also make legislative findings and declarations relating to the Assisted Living Waiver program.

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. The Legislature finds and declares all of the
- 2 following:
- 3 (a) In 1999, the United States Supreme Court ruled in the case
- 4 of *Olmstead v. L.C.* (1999) 527 U.S. 581, finding that the
- 5 unnecessary institutionalization of people with disabilities is a
- 6 violation of the federal Americans with Disabilities Act of 1990
- 7 (ADA), thereby establishing the right of individuals with
- 8 disabilities to receive services in the most integrated setting.
- 9 (b) To meet the intent of the *Olmstead* decision, it is the state's
- 10 obligation to ensure that individuals have access to an array of
- 11 necessary services and supports that meet each person's needs and
- 12 preferences, regardless of age or degree of disability.
- 13 (c) The Assisted Living Waiver program has provided a valuable
- 14 alternative to institutionalization for individuals whose care needs
- 15 qualify them for Medicaid coverage of nursing facility care and
- 16 who meet the criteria for admission to a licensed residential care
- 17 facility for the elderly. Demand for the program has outpaced
- 18 supply and has operated with a significant waiting list across 15

1 counties: the Counties of Alameda, Contra Costa, Fresno, Kern,
2 Los Angeles, Orange, Riverside, Sacramento, San Bernardino,
3 San Diego, San Francisco, San Joaquin, San Mateo, Santa Clara,
4 and Sonoma.

5 (d) Despite the demand for the program, a number of challenges
6 prevent the program from realizing its potential, including a dearth
7 of available providers, little awareness of the program, low
8 reimbursement rates that hamper provider participation, lack of
9 availability across the remaining 43 counties that do not participate
10 in the program, and ineffective administrative requirements.

11 (e) According to the 2017 Long-Term Services and Supports
12 Scorecard, almost 11 percent of California's 101,000 nursing home
13 residents, or 11,000 individuals, are identified as having low-care
14 needs. As an alternative to institutionalization, these individuals
15 could receive care in the community, or in assisted living settings.
16 However, for many of those individuals, either the opportunities
17 to transition do not exist or these individuals are unaware of the
18 alternatives.

19 (f) As part of California's efforts to realize its commitment to
20 the Olmstead decision, the participant population of the Assisted
21 Living Waiver program should be increased, while also addressing
22 the programmatic issues impacting its effectiveness.

23 SEC. 2. Section 14132.265 is added to the Welfare and
24 Institutions Code, immediately following Section 14132.26, to
25 read:

26 14132.265. (a) In 2019, the department shall submit to the
27 federal Centers for Medicare and Medicaid Services a request for
28 renewal of the Assisted Living Waiver program described in
29 Section 14132.26, with all of the following amendments to the
30 program components:

31 (1) The department shall increase the number of participants
32 beyond the currently authorized 5,500 to at least 18,500. At least
33 60 percent of the expanded participant population shall be reserved
34 for persons transitioning from an institutional setting.

35 (2) The department shall phase in the 18,500 participants over
36 the program renewal's five-year term, with the initial phase of
37 additional participants prioritized for the 15 existing waiver
38 counties.

39 (3) The department shall increase the geographic availability
40 of the program on a regional basis. The department shall outline

1 a process to expand the program beyond the 15 existing waiver
2 counties to enable the program's availability on a regional basis
3 in the state's northern, central, and southern regions that currently
4 are without access to the program. The regional expansion shall
5 be phased in throughout the program renewal's five-year term. As
6 part of the minimum 18,500 number of participants, participants
7 beyond those authorized for the 15 existing waiver counties shall
8 be phased in on a regional basis.

9 (4) Before submission of the waiver renewal request, the
10 department shall notify the appropriate fiscal and policy committees
11 of the Legislature of the methodology for allotting the number of
12 participants of the waiver among the 15 existing waiver counties
13 and the process for regional expansion, along with supporting data
14 for those numbers.

15 (5) The department shall address all of the following components
16 within the waiver renewal process:

17 (A) Accommodations. The department shall consider the
18 appropriateness of requiring participating residential care facilities
19 for the elderly to provide private or semiprivate bedrooms and
20 bathrooms, and refrigerators and microwave ovens. The department
21 shall consider the program participant's quality of life, provider
22 participation in the program, and other relevant concerns.
23 Considerations related to accommodations shall be addressed in
24 the stakeholder process described in paragraph (6).

25 (B) Financial eligibility and exploration of expansion of the
26 waiver.

27 (i) In the 2019 waiver renewal request, the department shall
28 provide for financial eligibility standards that are no more
29 restrictive than the financial eligibility standards as set forth in the
30 currently applicable waiver application, effective since March 1,
31 2017, and as implemented through the current requirements of the
32 department's Medi-Cal Eligibility Procedures Manual.

33 (ii) As part of the stakeholder process described in paragraph
34 (6), the department shall provide written clarification regarding
35 the department's Assisted Living Waiver program financial
36 eligibility standards for all waiver eligibility categories indicated
37 on the federally approved current waiver document, including
38 eligibility for recipients under the Supplemental Security Income
39 program, recipients under the State Supplementary Payment
40 program, aged or disabled persons with eligibility based on the

1 federal poverty level, medically needy persons, and persons in the
2 special home and community-based waiver group under Section
3 435.217 of Title 42 of the Code of Federal Regulations.

4 (iii) During the same stakeholder process, the department shall
5 also explore and explain options to expand financial eligibility to
6 include persons not currently eligible, or to make participation in
7 the program more financially feasible to persons who, under current
8 eligibility rules, may be eligible but are without adequate resources
9 to pay for room and board and other essential expenses.

10 (C) Provider reimbursement. The department shall modify its
11 provider reimbursement tiers to ensure sufficient participation
12 from providers, while also maintaining the program's
13 budget-neutral provisions.

14 (D) The department shall establish requirements and procedures
15 so that any person on the program's waiting list each month is able
16 to know his or her position on the waiting list and when he or she
17 is likely to reach the top of the waiting list. The department shall
18 clearly indicate all methodologies and prioritizations used in
19 selecting persons from the waiting list, including, but not limited
20 to, any priorities based on imminent risk of institutionalization,
21 current residence in a nursing home, care needs, or county of
22 residence.

23 (6) (A) As part of the waiver renewal process, the department
24 shall conduct open in-person meetings in the northern, central, and
25 southern areas of the state with stakeholders, including, but not
26 limited to, consumers, providers, and families of consumers, and
27 shall receive input on the design and oversight of the program.
28 The department shall also seek written feedback from stakeholders
29 on the provisions included within the program. The department
30 shall give at least a 30-day notice of each of the in-person meetings,
31 and at least a 30-day notice of the opportunity to submit written
32 feedback.

33 (B) Before submission of the waiver renewal request, the
34 department shall release a draft of the proposed waiver renewal
35 for stakeholder comment. The release of the draft shall allow for
36 at least a 30-day comment period, and shall precede the submission
37 of the waiver renewal request to the federal Centers for Medicare
38 and Medicaid Services by at least 60 days.

- 1 (b) (1) The department shall implement this section only to the
2 extent federal financial participation is available and only if any
3 necessary federal approvals have been obtained.
- 4 (2) Upon federal approval of the waiver renewal request with
5 the amendments described in this section, implementation of the
6 amended waiver program shall commence within six months of
7 the department receiving authorization for the necessary resources
8 to provide the services to additional program participants.