

File No. 190155

Committee Item No. _____

Board Item No. 33

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: _____

Date: _____

Board of Supervisors Meeting

Date: February 12, 2019

Cmte Board

<input type="checkbox"/>	<input type="checkbox"/>	Motion
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Resolution
<input type="checkbox"/>	<input type="checkbox"/>	Ordinance
<input type="checkbox"/>	<input type="checkbox"/>	Legislative Digest
<input type="checkbox"/>	<input type="checkbox"/>	Budget and Legislative Analyst Report
<input type="checkbox"/>	<input type="checkbox"/>	Youth Commission Report
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Introduction Form
<input type="checkbox"/>	<input type="checkbox"/>	Department/Agency Cover Letter and/or Report
<input type="checkbox"/>	<input type="checkbox"/>	MOU
<input type="checkbox"/>	<input type="checkbox"/>	Grant Information Form
<input type="checkbox"/>	<input type="checkbox"/>	Grant Budget
<input type="checkbox"/>	<input type="checkbox"/>	Subcontract Budget
<input type="checkbox"/>	<input type="checkbox"/>	Contract/Agreement
<input type="checkbox"/>	<input type="checkbox"/>	Form 126 – Ethics Commission
<input type="checkbox"/>	<input type="checkbox"/>	Award Letter
<input type="checkbox"/>	<input type="checkbox"/>	Application
<input type="checkbox"/>	<input type="checkbox"/>	Public Correspondence

OTHER

<input type="checkbox"/>	<input checked="" type="checkbox"/>	California State Assembly Bill 50 - 12/03/18
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
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Prepared by: Lisa Lew

Date: February 8, 2019

Prepared by: _____

Date: _____

1 [Supporting California State Assembly Bill 50 (Kalra) - Expansion of the State Assisted Living
2 Waiver Program]

3 **Resolution urging the Board of Supervisors to support California State Assembly Bill**
4 **50, Medi-Cal: Assisted Living Waiver program expansion statewide and advocate for**
5 **greater slots to be allocated to San Francisco residents, authored by Assembly**
6 **Member Ash Kalra.**

7
8 WHEREAS, In 1999, the United States Supreme Court ruled in the case of Olmstead v.
9 L.C. (1999) 527 U.S. 581, finding that the unnecessary institutionalization of people with
10 disabilities is a violation of the federal Americans with Disabilities Act of 1990 (ADA), thereby
11 establishing the right of individuals with disabilities to receive services in the most integrated
12 setting; and

13 WHEREAS, To meet the intent of the Olmstead decision, it is the state's obligation to
14 ensure that individuals have access to an array of necessary services and supports that meet
15 each person's needs and preferences, regardless of age or degree of disability; and

16 WHEREAS, The Assisted Living Waiver (ALW) program has provided a valuable
17 alternative to institutionalization for individuals whose care needs qualify them for Medicaid
18 coverage of nursing facility care and who meet the criteria for admission to a licensed
19 residential care facility for the elderly; and

20 WHEREAS, The Assisted Living Waiver is a Medi-Cal Home and Community-Based
21 Services waiver program that supports individuals who require skilled nursing level of care to
22 delay placement in skilled nursing facilities; and

23 WHEREAS, Demand for the ALW program has outpaced supply and has operated with
24 a significant waiting list across 15 counties: the Counties of Alameda, Contra Costa, Fresno,
25

1 Kern, Los Angeles, Orange, Riverside, Sacramento, San Bernardino, San Diego, San
2 Francisco, San Joaquin, San Mateo, Santa Clara, and Sonoma; and

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

8 WHEREAS, According to the 2017 Long-Term Services and Supports Scorecard,
9 almost 11% of California's 101,000 nursing home residents, or 11,000 individuals, are
10 identified as having low-care needs; and

11 WHEREAS, As an alternative to institutionalization, these individuals could receive
12 care in the community, or in assisted living settings; and

13 WHEREAS, However, for many of those individuals, either the opportunities to
14 transition do not exist or these individuals are unaware of the alternatives; and

15 WHEREAS, In San Francisco, seniors age 60 and older account for 20% (165,138)
16 and adults with disabilities account for 4% (35,101) of the City's total population, according to
17 San Francisco's Human Services Agency 2016 assessment; and

18 WHEREAS, San Francisco's older adult population is the fastest age group and will
19 grow to nearly 30% of the City's total population by 2030; and

20 WHEREAS, A majority of San Francisco's older adults live on fixed incomes, with 14%
21 living below the federal poverty level; and

22 WHEREAS, The average Social Security benefits are \$15,214 a year; and

23 WHEREAS, The average cost needed for a single older renter to meet basic needs is
24 \$31,488; and
25

1 WHEREAS, The average cost needed for a single older homeowner to meet basic
2 needs is \$42,024; and

3 WHEREAS, Nearly 30% of San Francisco's older adults are living alone and social
4 isolation increases the risk of exacerbating physical, mental and emotional health issues; and

5 WHEREAS, The average cost for in-home support services in San Francisco is
6 \$32,880 and becoming increasingly expensive; and

7 WHEREAS, Assisted Living Facilities provide a critical type of community-based
8 housing as part of the City's continuum of care; and

9 WHEREAS, Providing an adequate supply of affordable Assisted Living Facilities and
10 publicly funded subsidies are critical to supporting seniors to age in place; and

11 WHEREAS, Assisted Living, particularly affordable assisted living facilities have
12 declined by 26% in San Francisco since 2012, due to high costs of operation and other
13 factors; and

14 WHEREAS, The average monthly rate for an assisted living facility placement is
15 \$4,382; and

16 WHEREAS, Average daily ALW subsidies range from \$65 to \$102 depending on level
17 of care; and

18 WHEREAS, The ALW slots are allocated on a first come, first served basis; and

19 WHEREAS, It currently takes an average 12-15 months to reach the top of the waitlist;
20 and

21 WHEREAS, Currently there are only five San Francisco assisted living facilities with
22 ALW-certified beds; and

23 WHEREAS, As part of California's efforts to realize its commitment to the Olmstead
24 decision, the participant population of the Assisted Living Waiver program should be
25 increased, while also addressing the programmatic issues impacting its effectiveness; and

1 WHEREAS, The Assisted Living Waiver program reached its capacity of 3,700
2 participants in March 2017; and

3 WHEREAS, As of January 2019, there were about 4,000 people on the centralized
4 ALW waitlist; and

5 WHEREAS, In Fiscal Year 2018-2019, the program will be expanded by an additional
6 2,000 slots, from 3,744 to 5,744 slots, as authorized by Governor Brown; and

7 WHEREAS, The available waitlist data suggests at least 103 individuals have
8 expressed a need for subsidized Assisted Living Facility placement through City-funded
9 Department of Health, Department of Aging and Adult Services, and the state-funded Assisted
10 Living Waiver program; and

11 WHEREAS, Last year, Assembly Member Ash Kalra (AD-27, San Jose) introduced
12 legislation to expand the ALW program by an additional 12,800 over five years, totaling
13 18,500 slots state-wide; and

14 WHEREAS, Though the state legislature passed the bill, it was vetoed by Governor
15 Brown on the basis of allowing time for the 2,000 slot expansion to be first implemented and
16 evaluated; and

17 WHEREAS, On December 3, 2018, Assembly Member Kalra reintroduced his
18 legislation as Assembly Bill 50; and

19 WHEREAS, The Assisted Living Facilities Workgroup convened by Mayor London
20 Breed and Supervisor Norman Yee produced a report this January 2019 recommending that
21 the City and County of San Francisco support and advocated for the state passage of AB 50;
22 and

23 WHEREAS, The Workgroup advises the City should explore further options to
24 advocate for a significant number of slots to be assigned to San Francisco and for
25

1 reimbursement rates to be regionally-based to account for higher costs in urban counties; ;
2 now, therefore, be it

3 RESOLVED, That the Board of Supervisors of the City and County of San Francisco
4 supports AB50 as a strategy to mitigate the number of out-of-county placements and
5 preventing homelessness of older adults and adults with disabilities; and, be it

6 FURTHER RESOLVED, That the Board of Supervisors of the City and County of San
7 Francisco urges our local delegation who represent San Francisco in the State Legislature to
8 support AB50 – the Medi-Cal: Assisted Living Waiver program; and, be it

9 FURTHER RESOLVED, That the Clerk of the Board be directed to send a copy of this
10 resolution to the office of Assembly Member Ash Kalra; Assembly Members Jim Wood and
11 Chad Mayes, Chairs of the Assembly Health Committee; and Governor Gavin Newsom.

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.

O

Introduction Form

By a Member of the Board of Supervisors or Mayor

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO2019 FEB -5 PM 4:52
BY _____ Time stamp
or meeting date AK

I hereby submit the following item for introduction (select only one):

- ☐ 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- ☒ 2. Request for next printed agenda Without Reference to Committee.
- ☐ 3. Request for hearing on a subject matter at Committee.
- ☐ 4. Request for letter beginning : "Supervisor [] inquiries"
- ☐ 5. City Attorney Request.
- ☐ 6. Call File No. [] from Committee.
- ☐ 7. Budget Analyst request (attached written motion).
- ☐ 8. Substitute Legislation File No. []
- ☐ 9. Reactivate File No. []
- ☐ 10. Topic submitted for Mayoral Appearance before the BOS on []

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- ☐ Small Business Commission ☐ Youth Commission ☐ Ethics Commission
- ☐ Planning Commission ☐ Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Yee, Mandelman

Subject:

Urging the Board of Supervisors to support Assembly Bill 50 and the expansion of the state Assisted Living Waiver program

The text is listed:

[]

Signature of Sponsoring Supervisor: []

For Clerk's Use Only

