Date of Hearing: April 21, 2015

ASSEMBLY COMMITTEE ON AGING AND LONG-TERM CARE
Cheryl Brown, Chair
AB 332 (Calderon) – As Introduced February 13, 2015

SUBJECT: Long-term care insurance: task force on statewide long-term care insurance program.

SUMMARY: Would require the Insurance Commissioner to convene a task force ("Task Force") to study the components necessary to design a statewide long-term care insurance program and submit a report to the Commissioner, the Governor, and the Legislature by July 1, 2017. Specifically, **this bill**:

1) Establishes legislative findings and declarations that:

    a. Public opinion polls show that Californians are worried about the costs of growing older.

    b. That they are apprehensive about being able to pay for the costs of long-term care.

    c. They worry about long-term care as much as they do about their regular health care.

    d. A majority of respondents in a survey indicate that they could not afford three months of care in a skilled nursing facility; and that a significant number, though not a majority, could not afford even one month of skilled nursing facility costs.

    e. Concerns about paying for long-term care cut across all income levels and across all affiliations.

2) Would require the Insurance Commissioner to convene a task force composed of specified stakeholders and representatives of government agencies to examine the components necessary to design a statewide long-term care insurance program, as specified.

3) Would require the task force to recommend options for establishing this program and to comment on their respective degrees of feasibility in a report submitted to the Commissioner, the Governor, and the Legislature by July 1, 2017.

4) Allows the Commissioner to seek private funding to support the task force, and repeals the task force authorization on July 1, 2019.

EXISTING LAW:

1) Provides for the regulation of long-term care insurance by the Insurance Commissioner and prescribes various requirements and conditions governing the delivery of individual or group long-term care insurance in the state.

2) Establishes the California Partnership for Long-Term Care Program to link private long-term care insurance and health care service plan contracts that cover long-term care with the In-Home Supportive Services program and Medi-Cal and to provide Medi-Cal benefits to certain individuals who have income and resources above the eligibility levels for receipt of

medical assistance, but who have purchased certified private long-term care insurance policies and subsequently exhausted the benefits of these private policies.

FISCAL EFFECT: Unknown.

COMMENTS:

Purpose of the bill: The author raises a critical concern about California's preparedness for the care needs, along with the economic, workforce, and policy implications, of a rapidly growing cohort of older, mostly non-working people with a high likelihood of disability living amongst a shrinking cohort of younger, working-age people. The “baby-boom” generation, those born between 1946 and 1964, began turning 65 in 2011. Today, roughly 13 percent (5,109,207 of 38,926,281) of California's population is age 65 or older, with about 1,000 people turning 65 each day, for about the next 14 years. By 2030, about 20 percent of the state’s population will be age 65 or older (8,382,458 of 44,279,354). The 85+ population in California, the population most likely to require long-term care, services, and supports, currently stands at about 676,000 people, making up about 1.7 percent of the population, but will grow by 32 percent to over 993,000 by 2030, comprising of 2.7 percent of the total statewide population. The “baby-boom” population will begin turning 85 in 2031. The 85+ cohort will eventually grow to 5.4 percent of the total population by 2060 (2,851,396 of 52,693,383), according to the California Department of Finance’s “Report P-1; State and County Population Projections July 1, 2010-2060.” Continued medical and public health advances may contribute to even larger cohorts of the 65+ and 85+ populations.

A worker is considered to be at risk for serious economic hardship in old age if his or her retirement income falls under 200 percent of the poverty threshold for individuals. A study of retirement readiness published in 2011 by the UC Berkeley Center for Labor Research and Education found that 47 percent of Californians are projected to have retirement incomes below 300 percent of the poverty level ($34,470 in 2013). Individuals who have not been able to save enough to provide adequate retirement income are unlikely to be able to support the added cost of LTC insurance premiums either before or, especially, during retirement. Individuals with low retirement incomes who need long-term care (LTC) services are most likely going spend-down their assets and rely on Medi-Cal to pay for those services.

The author notes that California does not have a reliable option for middle class seniors and persons with disabilities to obtain affordable long-term care. By liquidating and exhausting personal resources, seniors and persons with disabilities may access programs such as In-Home Supportive Services (IHSS), or skilled nursing facility care, for free, or with a share of cost if income levels demand. The other option, for those who have sufficient income, belongings and other financial resources, is to hire a private home, or home-health care aide – often exceeding $30 per hour depending on the level of, or length of time of the service.

Based on information presented during a recent joint informational hearing on financing long-term care, baby-boomers are not like their parents. In comparison to their parents, baby-boomers, particularly women, have fewer savings and fewer assets than previous generations. With the recession and the massive loss of home equity fresh in people’s minds, it should be no surprise that baby-boomers are less likely to own a home, more likely to have moved frequently, and thus, less tied to a neighborhood or community. Baby-boomers are generally less healthy, and afflicted with more obesity, diabetes, and heart diseases (i.e., high cholesterol, high blood pressure). Boomers are more likely to have been divorced, more likely to live alone, and more likely to have fewer, or no children.

Background on LTC Insurance: Information provided by the Assembly and Senate Committees on Insurance describe long-term care insurance (LTCI) as a policy which covers the costs of some or all long-term care services when insureds are unable to take care of themselves. Coverage is triggered when an insured develops a "chronic illness" typically defined as an inability to perform a set number of "activities of daily living" such as ambulating, toileting, feeding, dressing, and bathing; or a cognitive impairment, such as dementia caused by Alzheimer's, Parkinson's or Huntington's disease. A policy may cover care within a facility, or home/home-health care, or both. Approximately 599,000 policies are currently in force in California, up from about 497,000 five years ago. 115,000 Californians own long-term care insurance policies through the state's Partnership for Long-Term Care. LTCI is a relatively new form of insurance though it has a volatile history. Insurers first sold LTCI policies covering nursing homes in the 1970s and expanded coverage in the 1980s to cover a wider variety of settings. Unfortunately, those insurers failed to accurately estimate future costs and losses. Increasing life expectancies, faulty assumptions on lapse rates (policies dropped before benefits are triggered), and the cost of care, coupled with poor performance of insurer investments and other insurer marketing practices have all contributed to dramatic increases in LTCI premiums. Attempts in the 1990s and early 2000s to stabilize rates have had some impact, but some carriers are still requesting and waiting on approval for additional rate hikes as they are informed by more recent loss data.

State-based innovation: California supports an innovative strategy to help citizens avoid dependence upon Medi-Cal through LTCI policies sold by a program of the Department of Health Care Services known as the California Partnership for Long-Term Care. The Partnership program is dedicated to educating Californians on the need to plan ahead for their future long-term care and to consider private insurance as a vehicle to fund that care through a select group of insurers. These companies have agreed to offer high quality policies that must meet stringent requirements set by the Partnership and the State of California. These special policies are commonly called "Partnership policies," and do not discriminate based upon the gender of the insured as many private market policies do. In the last 6 years, about 46,000 people have opted for a partnership product, though sales have dropped precipitously since 2010 when over 12,000 policies were sold; in 2014, only 848 policies were sold.

CalPERS: CalPERS is a recent example of an LTC insurer that underestimated the cost of insuring LTC. It has pushed through multiple premium increases (30 percent in 2003, 43.8 percent in 2007, and 85 percent in 2015) in an effort to correct inaccurate, decades-old assumptions. While premium increases of this size are difficult to absorb for those who are still working, it can be impossible for retirees on a fixed income and narrower range coping skills to counteract economic variations and absorb the higher premiums. CalPERS administers its LTCI product using resources that the giant retirement program owns, so as a self-funded product, it is exempt from regulation by the Department of Insurance It is, nonetheless, a component of state government and a recognized partner in addressing needs, though multiple statewide public referendums have affirmed the entity's independence from legislative and administrative influences.

Previous Federal effort: Community Living Assistance Services and Supports program (CLASS Act). The federal Patient Protection and Affordable Care Act established the

Community Living Assistance Services and Supports program (CLASS). The CLASS program was intended to be a national, voluntary insurance program designed to provide assistance to qualified individuals to obtain help with many basic daily living activities. On October 14, 2011, the federal Department of Health and Human Services transmitted the CLASS report and letter to Congress stating that CLASS implementation would not be viable. The CLASS Act was repealed January 1, 2013. Key provisions included monthly premium through payroll deduction, guaranteed-issue, and eligibility within five years. Enrollees would have received a lifetime cash benefit after meeting eligibility criteria.

Proposed Long-Term Care Task Force: Given the growing recognition of California's demographic shifts, chaos in the private insurance market, and under exploited state innovations like the California Partnership for long-term care, it is widely regarded as an opportune time to focus upon the strategies available to a dynamic and diverse market like California's, to begin to chart a successful path to long-term care economic stability. AB 332 would require the Commissioner of the California Department of Insurance to convene a task force to study how to best design a statewide long-term care insurance program for Californians. These policy experts and state officials will examine the components necessary to design a long-term care insurance program, including eligibility, enrollment, financing, administration, work-force needs, and interaction with the state's Medicaid program. One year later, the task force would report to the Insurance Commissioner, the Legislature, and the Governor on the options for statewide long-term care insurance programs. This task force would be comprised of expert long-term care insurance stakeholders, as well as representatives from the following offices or agencies:

a. **Insurance Commissioner**. The Insurance Commissioner oversees the California Department of Insurance (CDI). The CDI enforces insurance-related laws and regulates industry practices.
b. **Department of Health Care Services (DHCS)**. The DHCS houses the California Partnership for Long-Term Care Program which links private long-term care insurance and health care service plan contracts that cover long-term care with the In-Home Supportive Services program and Medi-Cal.
c. **Employment Development Department (EDD)**. The EDD administers the State Disability Insurance (SDI), a partial wage-replacement insurance plan for California workers. The SDI programs are state-mandated, and funded through employee payroll deductions. The author's office has indicated in part that EDD may provide some guidance on how to administer an employee payroll deduction program.
d. **Labor Union Representing Long-Term Care Workers.** Workers in the In-Home Supportive Services program, some private home and home-health workers, state-workers working within state supported long-term care institutional settings, and others are often represented for purposes of advancing career development and training, achieving fair working conditions, and other protections in what can be a volatile industry. As needs rise for a well-trained, culturally competent workforce, so will partnerships to assure an adequate supply of workers.
e. **Other Relevant Federal, State, and Local Government Agencies.** AB 332 does not specify what other state or local agencies may be involved, nor does it provide any criteria or specific appointment powers.

QUESTIONS:

1. In addition to feasibility of developing a statewide insurance program, should AB 332 be amended to explicitly include implementation strategies of a statewide LTCI program as a topic for the task force to address?

2. The Assembly Committee on Aging and Long-Term Care recently completed a year-long series of informational hearings assessing the state's preparedness for the cultural competencies necessary among California's aging and long-term care programs and services. Significant disparities exist from one culture or ethnic group to the next in terms of available caregivers, likelihood of disability and what type, life expectancy, and competencies necessary to meet diverse needs and expectations. To what extant are cultural competencies necessary when developing and/or implementing a broad-based insurance program?

Related Legislation:

SB 1438 (Alquist, 2012): Called for a Long-Term Care Task force convened by the Commissioner of the Department of Insurance, similar to AB 332. SB 1438 was held in Senate Appropriations Committee in 2012.

AB 999 (Yamada, Chapter 627, Statutes of 2012): Revised long-term care (LTC) insurance oversight to enhance consumer information and revise rate calculation requirements.

AB 1553 (Yamada, 2014): Prohibited the use of gender as a factor to determine the premium for LTC insurance. AB 1553 was held in the Assembly Insurance Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California State Council of the Service Employees International Union (SEIU) – Sponsor
California Health Advocates
Older Women's League (OWL)
United Domestic Workers of America-UDW/AFSCME Local 3930
Numerous individuals.

Opposition

None on file.

Suggested amendments:

1. **On page 2, lines 17-20:**

(c) It is the intent of the Legislature to enact legislation establishing a task force to explore the feasibility of developing **and implementing** a **culturally competent** statewide insurance program for long-term care**,** services**,** and

20 supports.

2. On page 2, lines 26-29

26 (1) Explore how a statewide long-term care insurance program

27 could be designed **and implemented** to expand ~~the~~ options for people **interested in insuring themselves against the risk of costs associated with** ~~who become~~

28 functional~~ly~~ or cognitive~~ly~~ ~~disabled~~ **disability** and require long-term care**,**

29 services**,** and supports.

Analysis Prepared by: Robert MacLaughlin / AGING & L.T.C. / (916) 319-3990