

Date of Hearing: April 30, 2015

ASSEMBLY COMMITTEE ON AGING AND LONG-TERM CARE

Cheryl Brown, Chair

AB 1518 Committee on Aging and Long-Term Care – As Amended April 27, 2015

SUBJECT: Medi-Cal: nursing facilities.

SUMMARY: Expands opportunities to participate in the Nursing Facility/Acute Hospital (NF/AH) waiver program, and stabilizes service for younger, disabled Californians participating in the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program. Specifically, **this bill:**

- 1) Increases the number of waiver participants in the NF/AH waiver program by 5,000.
- 2) Adjusts the cost-cap associated with the NF/AH waiver to coincide with skilled nursing facility care costs, and increases those waiver limitations when skilled nursing facility reimbursements are increased.
- 3) Provides for a smooth transition for participants of the EPSDT at age 21 into equitable medically necessary, in-home nursing provided through adult Medi-Cal, or a regional center.
- 4) Conditions implementation upon obtaining the necessary approvals and receipt of federal financial participation from the Federal Centers for Medicare and Medicaid Services (CMS).
- 5) Directs implementation to commence within six months of the department receiving authorization for the necessary resources.

EXISTING LAW:

- 1) Medicaid 1915(c) waivers allow states to provide long term care services in home and community based settings under the Medicaid Program.
- 2) California's NF/AH waiver provides case management/coordination, habilitation, home respite, waiver personal care services, community transition, continuous nursing and supportive services, environmental accessibility adaptations, facility respite, family/caregiver training, medical equipment operating expense, PERS-installation and testing, PERS, private duty nursing including home health and shared services, and, transitional case management for medically fragile and technology dependent individuals.
- 3) For Medi-Cal eligible children under age 21, Early and Periodic Screening, Diagnosis and Treatment (EPSDT) funds this nursing. Home nursing hours are calculated based on the appropriate institutional level of care equivalent.

FISCAL EFFECT: This measure has not been analyzed by a fiscal committee.

COMMENTS:

Author's Statement: California's NF/AH Waiver program does not currently meet the needs of seniors and youth with disabilities who wish to receive services at home, and avoid nursing homes and other institutions. The author states that home-based services are typically less

expensive, more desirable to the clients and their families, and consistent with state and federal priorities; however, current state policies and limited funding and flexibility prevent individuals from being moved from institutions to home-based care. In addition, the author asserts that upon turning 21, many individuals, who received home care prior to their 21st birthday, are forced into institutions because they become ineligible due to age restrictions for specified services.

Background on NF/AH Waiver: “Medicaid waivers” allow states to deliver and pay for health care services while the federal government “waives” some of the usual Medicaid rules. For instance, Medicaid 1915(c) waivers allow states to provide long-term care services in home and community based settings, instead of licensed health care facilities. California’s NF/AH waiver supports case management, habilitation, home respite, personal care services, community transition assistance, continuous nursing, and other supportive services, environmental accessibility adaptations, caregiver training for family members, private duty nursing such as home health care, and special case management for medically fragile and technology-dependent individuals.

Even as Medi-Cal long-term services and supports transition into managed care through the Coordinated Care Initiative, the NF/AH “waiver” provides comprehensive home and community-based alternative to nursing facility care for people who require services beyond those offered by such long-term care mainstays as In-Home Supportive Services (IHSS). While the NF/AH waiver has great potential to assist the state with meeting the directive of the Olmstead decision (which guarantees access to the least restrictive, most “integrated,” or home-like settings for care, if not cost-prohibitive), California significantly limits the NF/AH waiver utilization, thus creating barriers to less-costly community living for eligible individuals. The current NF/AH waiver has an enrollment cap of 3,792 persons in 2015 and 3,964 in 2016, yet there are approximately 70,000 people on Medi-Cal in nursing homes on any given day, 25% of whom express an interest in leaving the facility and living in the community. Since waivers are applied for, and initiated by states, with CMS granting approval, AB 1518 directs the California Department of Health Care Services (DHCS) to seek permission to serve more than the 3,792 clients this year, and 3,964 next year.

Cost-Cap Inadequate: Besides the limitation upon the number of participants, federal requirements for home and community-based waivers include cost-neutrality provisions. Federal cost-neutrality means that providing home and community-based waiver services to an individual, or a group of individuals, cannot cost the Medi-Cal program more than serving that individual, or that group of individuals, in an institutional setting. Currently, California applies a more rigorous standard that limits waiver participation and favors institution placements. Despite a federal option to utilize an “aggregate” cost-cap, California has opted instead to utilize an “individual” cost-cap, which does not permit the State to offset the waiver costs of higher need individuals with the lower costs individuals with less intensive needs. Interestingly, the waiver which supports developmentally disabled Californians home and community-based services utilizes an aggregate cost-cap with great success.

Background on EPSDT: The Early and Periodic Screening, Diagnostic and Treatment (EPSDT) benefit provides comprehensive and preventive health care services for children under age 21 who are enrolled in Medi-Cal. EPSDT is key to ensuring that children and adolescents receive appropriate preventive, dental, mental health, developmental, and specialty services. Children with the most significant medical needs can live at home with the support of home

nursing. For Medi-Cal eligible children under age 21, EPSDT funds those services. Home nursing hours are calculated based on the appropriate institutional level of care equivalent.

At age 21, Medi-Cal recipients should transition from EPSDT to home nursing funded by the NF/AH Waiver, the Developmental Disabilities (DD) Waiver, or regional center services. Unless needs have changed, this transition should be seamless and services should not decrease. However, some individuals have experienced a reduction in service because of the different way the NF/AH program operates, including lower caps on hours and more restrictive eligibility criteria.

Recent Amendments: AB 1518 requires DHCS, in determining the need for additional waiver spots, to consider the needs identified by programs that assist people to leave nursing homes. Recent amendments recommended by the Assembly Committee on Health specifies which local and/or state programs must be considered by DHCS when considering the number of Waiver slots; clarifies which entity has the authority to decide if an individual is at imminent risk, and what factors must be considered by that entity in making that determination, and; specifies the time range by which the provisions must be implemented upon approval of the waiver by Centers for Medicare and Medicaid Services.

Dual Referral: AB 1518 was previously heard in the Assembly Health Committee where it passed 19-0 on April 21, 2015.

REGISTERED SUPPORT / OPPOSITION:

Support

American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO
California Advocates for Nursing Home Reform (CANHR)
California Association of Public Authorities (CAPA)
California Commission on Aging
Congress of California Seniors
Disability Rights California
United Domestic Workers of America (UDW)/AFSCME Local 3930
Three individuals.

Opposition

None on file.

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