

AMENDED IN ASSEMBLY MARCH 20, 2019

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 50

Introduced by Assembly Member Kalra

December 3, 2018

An act to add ~~Section 14132.265~~ *Sections 14132.265 and 14132.267* to the Welfare and Institutions Code, relating to Medi-Cal.

LEGISLATIVE COUNSEL'S DIGEST

AB 50, as amended, 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,~~ *submit* to the federal Centers for Medicare and Medicaid Services a request for ~~renewal~~ *amendment* 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: *program from the currently authorized 5,744 participants to 18,500, to be phased in, as specified. The bill would require the department to increase its provider reimbursement tiers to compensate for mandatory minimum wage increases, as specified.* The bill would require the department, before the submission of the waiver ~~renewal~~ *amendment* 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~~ *amendments* for stakeholder comment, as specified. *The bill would require the department to establish requirements and procedures to allow a person on the Assisted Living Waiver program’s waiting list to know their position on the waiting list. If the Assisted Living Waiver program is combined with, or converted to, another program or programs providing for Medicaid home and community-based services, the bill would require these requirements to apply to the combined or converted program.*

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

1 (ADA), thereby establishing the right of individuals with
2 disabilities to receive services in the most integrated setting.

3 (b) To meet the intent of the Olmstead decision, it is the state’s
4 obligation to ensure that individuals have access to an array of
5 necessary services and supports that meet each person’s needs and
6 preferences, regardless of age or degree of disability.

7 (c) The Assisted Living Waiver program has provided a valuable
8 alternative to institutionalization for individuals whose care needs
9 qualify them for Medicaid coverage of nursing facility care and
10 who meet the criteria for admission to a licensed residential care
11 facility for the elderly. Demand for the program has outpaced
12 supply and has operated with a significant waiting list across 15
13 counties: the Counties of Alameda, Contra Costa, Fresno, Kern,
14 Los Angeles, Orange, Riverside, Sacramento, San Bernardino,
15 San Diego, San Francisco, San Joaquin, San Mateo, Santa Clara,
16 and Sonoma.

17 (d) Despite the demand for the program, a number of challenges
18 prevent the program from realizing its potential, including a dearth
19 of available providers, little awareness of the program, low
20 reimbursement rates that hamper provider participation, lack of
21 availability across the remaining 43 counties that do not participate
22 in the program, and ineffective administrative requirements.

23 (e) According to the 2017 Long-Term Services and Supports
24 Scorecard, almost 11 percent of California’s 101,000 nursing home
25 residents, or 11,000 individuals, are identified as having low-care
26 needs. As an alternative to institutionalization, these individuals
27 could receive care in the community, or in assisted living settings.
28 However, for many of those individuals, either the opportunities
29 to transition do not exist or these individuals are unaware of the
30 alternatives.

31 (f) As part of California’s efforts to realize its commitment to
32 the Olmstead decision, the participant population of the Assisted
33 Living Waiver program should be increased, while also addressing
34 the programmatic issues impacting its effectiveness.

35 ~~SEC. 2. Section 14132.265 is added to the Welfare and~~
36 ~~Institutions Code, immediately following Section 14132.26, to~~
37 ~~read:~~

38 ~~14132.265. (a) In 2019, the department shall submit to the~~
39 ~~federal Centers for Medicare and Medicaid Services a request for~~
40 ~~renewal of the Assisted Living Waiver program described in~~

1 Section 14132.26, with all of the following amendments to the
2 program components:

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

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

11 (3) The department shall increase the geographic availability
12 of the program on a regional basis. The department shall outline
13 a process to expand the program beyond the 15 existing waiver
14 counties to enable the program's availability on a regional basis
15 in the state's northern, central, and southern regions that currently
16 are without access to the program. The regional expansion shall
17 be phased in throughout the program renewal's five-year term. As
18 part of the minimum 18,500 number of participants, participants
19 beyond those authorized for the 15 existing waiver counties shall
20 be phased in on a regional basis.

21 (4) Before submission of the waiver renewal request, the
22 department shall notify the appropriate fiscal and policy committees
23 of the Legislature of the methodology for allotting the number of
24 participants of the waiver among the 15 existing waiver counties
25 and the process for regional expansion, along with supporting data
26 for those numbers.

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

29 (A) Accommodations. The department shall consider the
30 appropriateness of requiring participating residential care facilities
31 for the elderly to provide private or semiprivate bedrooms and
32 bathrooms, and refrigerators and microwave ovens. The department
33 shall consider the program participant's quality of life, provider
34 participation in the program, and other relevant concerns.
35 Considerations related to accommodations shall be addressed in
36 the stakeholder process described in paragraph (6).

37 (B) Financial eligibility and exploration of expansion of the
38 waiver.

39 (i) In the 2019 waiver renewal request, the department shall
40 provide for financial eligibility standards that are no more

1 restrictive than the financial eligibility standards as set forth in the
2 currently applicable waiver application, effective since March 1,
3 2017, and as implemented through the current requirements of the
4 department's Medi-Cal Eligibility Procedures Manual.

5 (ii) As part of the stakeholder process described in paragraph
6 (6), the department shall provide written clarification regarding
7 the department's Assisted Living Waiver program financial
8 eligibility standards for all waiver eligibility categories indicated
9 on the federally approved current waiver document, including
10 eligibility for recipients under the Supplemental Security Income
11 program, recipients under the State Supplementary Payment
12 program, aged or disabled persons with eligibility based on the
13 federal poverty level, medically needy persons, and persons in the
14 special home and community-based waiver group under Section
15 435.217 of Title 42 of the Code of Federal Regulations.

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

22 (C) Provider reimbursement. The department shall modify its
23 provider reimbursement tiers to ensure sufficient participation
24 from providers, while also maintaining the program's
25 budget-neutral provisions.

26 (D) The department shall establish requirements and procedures
27 so that any person on the program's waiting list each month is able
28 to know his or her position on the waiting list and when he or she
29 is likely to reach the top of the waiting list. The department shall
30 clearly indicate all methodologies and prioritizations used in
31 selecting persons from the waiting list, including, but not limited
32 to, any priorities based on imminent risk of institutionalization,
33 current residence in a nursing home, care needs, or county of
34 residence.

35 (6) (A) As part of the waiver renewal process, the department
36 shall conduct open in-person meetings in the northern, central, and
37 southern areas of the state with stakeholders, including, but not
38 limited to, consumers, providers, and families of consumers, and
39 shall receive input on the design and oversight of the program.
40 The department shall also seek written feedback from stakeholders

1 on the provisions included within the program. The department
2 shall give at least a 30-day notice of each of the in-person meetings,
3 and at least a 30-day notice of the opportunity to submit written
4 feedback.

5 (B) Before submission of the waiver renewal request, the
6 department shall release a draft of the proposed waiver renewal
7 for stakeholder comment. The release of the draft shall allow for
8 at least a 30-day comment period, and shall precede the submission
9 of the waiver renewal request to the federal Centers for Medicare
10 and Medicaid Services by at least 60 days.

11 (b) (1) The department shall implement this section only to the
12 extent federal financial participation is available and only if any
13 necessary federal approvals have been obtained.

14 (2) Upon federal approval of the waiver renewal request with
15 the amendments described in this section, implementation of the
16 amended waiver program shall commence within six months of
17 the department receiving authorization for the necessary resources
18 to provide the services to additional program participants.

19 *SEC. 2. Section 14132.265 is added to the Welfare and*
20 *Institutions Code, immediately following Section 14132.26, to*
21 *read:*

22 *14132.265. (a) The department shall submit to the federal*
23 *Centers for Medicare and Medicaid Services a request for*
24 *amendment of the Assisted Living Waiver program described in*
25 *Section 14132.26, with all of the following amendments to the*
26 *program components:*

27 *(1) The department shall increase the number of participants*
28 *beyond the currently authorized 5,744 participants to 18,500 by*
29 *March 1, 2023. To reach this level, the number of participants*
30 *shall be increase by 5,000 on March 1, 2020, and then increased*
31 *by an additional 2,000 on March 1, 2021, and on March 1, 2022,*
32 *and increased by 1,756 on March 1, 2023. The initial phase of*
33 *additional participants shall be prioritized for the 15 existing*
34 *waiver counties.*

35 *(2) The department shall increase the geographic availability*
36 *of the program on a regional basis. The department shall outline*
37 *a process to expand the program beyond the 15 existing waiver*
38 *counties to enable the program's availability on a regional basis*
39 *in the state's northern, central, and southern regions that currently*
40 *are without access to the program. The regional expansion shall*

1 *be phased in throughout the Assisted Living Waiver program's*
2 *current five-year term, which ends on February 29, 2024. As part*
3 *of the 18,500 participant minimum, participants beyond those*
4 *authorized for the 15 existing waiver counties shall be phased in*
5 *on a regional basis.*

6 (3) *Before submission of the waiver amendment request, the*
7 *department shall notify the appropriate fiscal and policy*
8 *committees of the Legislature of the methodology for allotting the*
9 *number of participants of the waiver amendment among the 15*
10 *existing waiver counties and the process for regional expansion,*
11 *along with supporting data for those numbers.*

12 (4) *The department shall increase its provider reimbursement*
13 *tiers to compensate for mandatory minimum wage increases that*
14 *came into effect in 2007, 2008, 2014, and 2016, that were not*
15 *reflected in the reimbursement tiers. The department shall continue*
16 *to adjust the reimbursement tiers to compensate for future*
17 *mandatory minimum wage increases to ensure sufficient*
18 *participation from providers.*

19 (b) *If, before March 1, 2024, the Assisted Living Waiver*
20 *program is combined with, or converted to, another program or*
21 *programs providing for Medicaid home and community-based*
22 *services, the requirements of this section shall be applied to the*
23 *combined or converted program in a way that maintains, at a*
24 *minimum, the overall participation numbers required by this*
25 *section and by the other programs involved in the combination or*
26 *conversion, and shall provide for provider reimbursement at no*
27 *less than the level required under this section.*

28 (c) (1) *The department shall implement this section only to the*
29 *extent federal financial participation is available and only if any*
30 *necessary federal approvals have been obtained.*

31 (2) *Upon federal approval of the waiver amendment request*
32 *with the amendments described in this section, implementation of*
33 *the amended waiver program shall commence within six months*
34 *of the department receiving authorization for the necessary*
35 *resources to provide the services to additional program*
36 *participants.*

37 *SEC. 3. Section 14132.267 is added to the Welfare and*
38 *Institutions Code, to read:*

39 *14132.267. (a) The department shall establish requirements*
40 *and procedures so that any person on the Assisted Living Waiver*

1 program's waiting list each month is able to know their position
2 on the waiting list and when they are likely to reach the top of the
3 waiting list. The department shall clearly indicate all
4 methodologies and prioritizations used in selecting persons from
5 the waiting list, including, but not limited to, any priorities based
6 on imminent risk of institutionalization, current residence in a
7 nursing home, care needs, or county of residence. If the Assisted
8 Living Waiver program is combined with, or converted to, another
9 program or programs providing for Medicaid home and
10 community-based services, the requirements of this subdivision
11 shall be applied to the combined or converted program.

12 (b) (1) As part of the federal waiver application or renewal
13 process for the Assisted Living Waiver program, the department
14 shall conduct open in-person meetings in the northern, central,
15 and southern areas of the state with stakeholders, including, but
16 not limited to, consumers, providers, and families of consumers,
17 and shall receive input on the design and oversight of the program.
18 The department shall also seek written feedback from stakeholders.
19 The department shall give at least a 30-day notice of each of the
20 in-person meetings, and at least a 30-day notice of the opportunity
21 to submit written feedback.

22 (2) Before submission of a waiver application or renewal
23 request, the department shall notify the public and release a draft
24 of the proposed application or renewal request for stakeholder
25 comment. The release of the draft shall allow for at least a 30-day
26 comment period, and shall precede the submission of the
27 application or renewal request to the federal Centers for Medicare
28 and Medicaid Services by at least 60 days. At the same time that
29 an application or renewal request is submitted to the federal
30 Centers for Medicare and Medicaid Services, the department shall
31 notify the public and release a copy of the application or renewal
32 request.

33 (3) If the Assisted Living Waiver program is combined with, or
34 converted to, another program or programs providing for Medicaid
35 home and community-based services, the requirements of this
36 subdivision shall be applied to the combined or converted program.

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