
SENATE COMMITTEE ON HUMAN SERVICES

Senator Alvarado-Gil, Chair

2023 - 2024 Regular

Bill No: AB 1005
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Version: May 18, 2023
Urgency: No
Consultant: Bridgett Hankerson
Hearing Date: June 19, 2023
Fiscal: Yes

Subject: In-home supportive services: terminal illness diagnosis.

SUMMARY

This bill would require diagnosing health care providers to provide information to patients who have been diagnosed with a terminal illness about the in-home supportive services (IHSS) program and provide certification documents, as specified. This bill also requires counties, to the extent feasible, to consider expediting the applications of these patients if they make a requested to expedite their application.

ABSTRACT

Existing Law:

- 1) Establishes the IHSS program to provide supportive services to individuals who are aged, blind, or living with disabilities, and who are unable to perform the services themselves or remain safely in their homes without receiving these services. (*WIC 12300 et seq.*)
- 2) Specifies that supportive services include: domestic services and services related to domestic services, heavy cleaning, personal care services, accompaniment by a provider when needed during necessary travel to health-related appointments or to alternative resource sites, yard hazard abatement, protective supervision, teaching and demonstration directed at reducing the need for other supportive services, and paramedical services which make it possible for the recipient to establish and maintain an independent living arrangement. Provides that personal care services mean all of the following:
 - a) Assistance with ambulation
 - b) Bathing, oral hygiene, and grooming
 - c) Dressing
 - d) Care and assistance with prosthetic devices
 - e) Bowel, bladder, and menstrual care

- f) Repositioning, skin care, range of motion exercises, and transfers
 - g) Feeding and assurance of adequate fluid intake
 - h) Respiration
 - i) Assistance with self-administration of medications. (*WIC 12300(b)*)
- 3) Requires, as a condition of receiving IHSS, an applicant for, or recipient of services to obtain a certification from a licensed health care professional, as specified, declaring that the applicant or recipient is unable to perform some activities of daily living (ADLs) independently, and that without services to assist the applicant or recipient with ADLs, the applicant or recipient is at risk of placement in out-of-home care. (*WIC 12309.1*)
- 4) Requires a county welfare department to assess each IHSS recipient's continuing monthly need for IHSS at varying intervals as necessary, but at least once every 12 months. Further, requires the results of the assessment to be divided by 4.33 to establish a recipient's weekly authorized number of hours of IHSS, subject to certain limitations, as specified. (*WIC 12301.1(b)*)
- 5) Provides that a skilled nursing facility must develop and implement an effective discharge planning process that focuses on the resident's discharge goals, the preparation of residents to be active partners and effectively transition them to post-discharge care, and the reduction of factors leading to preventable readmissions. The facility's discharge planning process must be consistent with the discharge rights set forth in federal law. (*42 Code of Federal Regulations 483.21(c) (1)*)
- 6) Requires that each hospital have a written discharge planning policy and process. (*HSC 1262.5*)
- 7) Defines the following terms:
- a) "Actively dying" to mean the phase of terminal illness when death is imminent;
 - b) "Disease-targeted treatment" to mean treatment directed at the underlying disease or condition that is intended to alter its natural history or progression, irrespective of whether or not a cure is a possibility;
 - c) "Health care provider" to mean an attending physician and surgeon, as well as a nurse practitioner or physician assistant practicing in accordance with standardized procedures or protocols developed and approved by the supervising physician and surgeon and the nurse practitioner or physician assistant;
 - d) "Hospice" to mean a specialized form of interdisciplinary health care that is designed to provide palliative care, alleviate the physical, emotional, social, and spiritual discomforts of an individual who is experiencing the last phases of life

due to the existence of a terminal disease, and provide supportive care to the primary caregiver and the family of the hospice patient. (*HSC 442(a)-(d)*)

This Bill:

- 1) Makes several Legislative finding and declarations that patients diagnosed with a terminal illness, who meets all of the IHSS eligibility criteria, and who is interested in receiving services under the IHSS program, be provided a more streamlined, automatic application process for IHSS.
- 2) Requires the diagnosing health care provider, before the discharge of a patient diagnosed with a terminal illness, to:
 - a) Ask the patient or another person authorized to make health care decisions for the patient, if they are interested in receiving information about the IHSS.
 - b) Disclose to the patient or authorized person the information, including the IHSS eligibility criteria and the option for a family member to provide care as an IHSS provider subject to the set IHSS provider enrollment conditions, if they express interest in receiving IHSS information.
- 3) Stipulates that if the patient seeks to apply for services under the IHSS program, for the health care provider to provide a copy of the health care certification form with the health care provider's portion completed before the patient's discharge.
- 4) Permits a patient to request to have their application expedited by the county if the patient diagnosed with a terminal illness seeks to apply for services under the IHSS program, and receives a completed health care certification form, as specified.
- 5) Requires counties, to the extent feasible, to consider expediting the applications of patients who have been diagnosed with a terminal illness and who have requested that their application be expedited.
- 6) Defines "terminal illness" to have the same meaning as it is interpreted by current law, as specified.
- 7) Allows CDSS to implement, interpret, or make specific this section by means of all-county letters or similar instructions, until regulations are adopted.
- 8) Requires the provisions of this bill pertaining to a streamlined IHSS application process for individuals diagnosed with a terminal illness to be implemented only to the extent that any necessary federal approvals are obtained and federal financial participation is available for the purposes of providing IHSS.
- 9) Provides, if the Commission on State Mandates determines that this act contains costs mandated by the state, that reimbursement to local agencies and school districts for those costs be made.

FISCAL IMPACT

According to an Assembly Appropriations Committee analysis dated May 17, 2023, this bill has local costs to counties, one-time and ongoing, to establish and administer a process for prioritizing IHSS applications. These costs are unknown, but likely greater than \$150,000 statewide. These costs are potentially reimbursable by the state, subject to a determination by the Commission on State Mandates.

BACKGROUND AND DISCUSSION

Purpose of the Bill:

According to the author, “Receiving a terminal diagnosis is a challenging moment for the patient and their friends and family. Recognizing this difficulty, the state offers resources and support to ensure that patients end of life care makes them as comfortable as possible. One of these resources is the IHSS program, in which an eligible patient is assigned an IHSS provider who assists them with daily tasks. This important resource is offered to [eligible] terminal and non-terminal patients. Despite having radically different timelines, terminal and non-terminal patients are put through the same process. AB 1005 expedites the process for terminal patients so that we mitigate the possibility of the process outliving them.”

In-Home Supportive Services (IHSS) program

The IHSS program provides personal care services to approximately 615,607 qualified low-income individuals who are blind, are at least 65 years old or older, or have disabilities. Personal Care Services include feeding, bathing, bowel and bladder care, meal preparation, and clean-up, laundry, and paramedical care. These services help program recipients avoid or delay more expensive and less desirable institutional care settings. Eligibility for IHSS may be tied to Medi-Cal or SSI eligibility, and all IHSS applicants and recipients must:

- Physically reside in the United States.
- Be a California resident.
- Have a Medi-Cal eligibility determination.
- Live at home or an abode of your own choosing (general acute care hospital, long-term care facilities, and licensed community care facilities are not considered "own home").
- Submit a completed Health Care Certification form (SOC 873 or its successor)

As of February 2023, there were 613,410 IHSS providers in California; 95.5 percent of providers are a relative, spouse, or parent of the recipient, and 55.6 percent of providers live in the same residence as the recipient, according to data provided by CDSS. Additionally, approximately 15 percent of IHSS consumers are 85 years of age or older, 40 percent are ages 65-84, 36 percent are ages 18-64, and eight percent are 17 years of age or younger. Recipients of IHSS select, hire, and manage their service providers.

IHSS Eligibility Determinations

CDSS oversees the IHSS program, but it is administered at the county level. County social workers determine IHSS eligibility and perform case management after conducting a standardized in-home assessment of an individual's ability to perform activities of daily living. In general, most social workers annually reassess recipients' need for services. Based on authorized hours and services, IHSS recipients are responsible for hiring, firing, and directing their IHSS provider(s). These responsibilities include some administrative duties, such as scheduling and signing timesheets; however, the state handles payroll. Providers also must complete an enrollment process that includes submitting fingerprint images for a criminal background check and participating in a provider orientation prior to receiving IHSS payments for services they provide. The average number of service hours provided to IHSS recipients in 2022-23 is estimated to be 116 hours per month.

In most cases services through IHSS are not started until the person returns to their home. Some applicants for IHSS, however, can't be released to their home unless hazards or other issues are resolved in the home first, i.e. deep cleaning of the home to remove hazardous debris or dirt. A county social worker would then complete a preliminary IHSS assessment for the applicant in the institution to determine the individual's needs before they return home. Once the hazards are resolved and the individual returns home, the social worker would then conduct a second assessment at the applicant's home. There currently is no system in place to expedite the IHSS determination process for any applicants. This bill would require counties to consider expediting IHSS applications upon the request of a terminally ill patient.

Discharge Planning

Discharge planning is the process of supporting a patient's transition from one level of care to the next. The discharge planning processes must address the individual patient's goals, needs and treatment preferences, and provide an opportunity for the patient and/or designated caregiver to engage in the discharge planning process. In the hospital setting, discharge planning must include an evaluation of a patient's likely need for post-hospital services, including post-acute medical care, extended care services, and non-health care services. The discharge planning evaluation must also include a determination of the availability of appropriate services and the patient's ability to access those services. The discharge planner is typically someone who is knowledgeable about post-hospital care programs, such as IHSS. State law requires every hospital to have a written discharge planning policy and process.

Medi-Cal beneficiaries who need assistance with ADLs in order to remain at home may be able to receive IHSS. In these cases, hospital-based case managers/discharge planners will provide information about the IHSS program including the application and county contact information, and may facilitate the patient's communication with their primary care physician or other qualified provider to complete required documentation. This bill would require the diagnosing health care provider, rather than a hospital-based case manager or discharge planner, to provide IHSS information to all discharging terminally ill patients.

Related/Prior Legislation:

AB 1387 (Ting, 2023) would have established a grant program to encourage immigrants to become IHSS providers. This bill was held in the Assembly Appropriations Committee.

COMMENTS

The IHSS program provides personal care services to qualified low-income individuals who are blind, are at least 65 years old or older, or have disabilities. This bill seeks to ensure that terminally ill patients, prior to discharging, receive information about and are able to apply to receive services through the IHSS program. Current law allows patients to identify one family caregiver who may assist in post-hospital care. The discharge information that is required to be provided to patients includes information about eligibility for IHSS services. Therefore, this bill would not change the information disseminated, but does change who would be required to provide the patient and their family information on the IHSS program.

As the bill is currently written, it is not clear which type of in-patient care facilities discharging terminally ill patients are included in the scope of the bill. The author may wish to add clarifying language to state the type of facility the bill’s provisions would affect i.e. a general acute care hospital.

The bill also requires diagnosing health care providers of terminally ill patients to ask all of their patients and their family if they are interested in receiving information about IHSS, and if they are, to provide this information, including IHSS eligibility criteria. Additionally, for those patients who wish to apply, the diagnosing health care provider must also complete a county Health Care Certification form prior to the patient’s discharge. Since discharge planners or other qualified staff, rather than a diagnosing health care provider, currently complete the discharge plans required by state and federal law, these new requirements may be problematic to implement. Diagnosing health care providers, such as physicians, often lack knowledge of the outside services and supports available to patients once they discharge. Requiring physicians to ask all of their terminally ill patients their interest in the IHSS program may lead to interested patients and/or their authorized caregivers being disappointed when they are denied services due to being ineligible.

The author’s office is actively working to address the issues raised by committee staff above and other stakeholders, including clarifying that the provision relating to an acute care hospital discharge and changing who provides the IHSS information to the patient and their family from the diagnosing health care provider to the hospital’s designated case manager or discharge planner. The author’s office states its commitment to continue to work on the bill should it pass out of this committee.

Double Referral: This bill has been double-referred. Should this bill pass out of this Committee, it will be referred to the Senate Committee on Health.

PRIOR VOTES

Assembly Floor:	80 - 0
Assembly Appropriations Committee:	12 - 0
Assembly Human Services Committee:	7 - 0

POSITIONS

Support:

None received

Oppose:

None received

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