

Date of Hearing: April 25, 2023

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Corey A. Jackson, Chair

AB 1005 (Alvarez) – As Amended April 18, 2023

SUBJECT: In-home supportive services: terminal illness diagnosis

SUMMARY: Requires a patient diagnosed with a terminal illness to be provided with certain information about the in-home supportive services (IHSS) program prior to being discharged, requires a health care provider to provide and complete certain information for purposes of aiding the individual apply to the IHSS program, and enumerates the process by which a terminally ill patient can elect to have the application expedited by a county human services department, as specified. Specifically, **this bill:**

- 1) Requires, before the discharge of a patient diagnosed with a terminal illness, the diagnosing healthcare provider to 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 program. Further requires if the patient or authorized person expresses interest in receiving the IHSS information, the diagnosing health care provider must 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 IHSS provider enrollment.
- 2) Requires, if a patient or authorized person who expresses interest in receiving the IHSS information, the health care provider to provide the patient or authorized person with a physical application for the IHSS program, and further, requires the provider to inform the patient or authorized person of the option for the health care provider to send a digital copy of the application if the patient or authorized person identifies a family member whom they would like to be the patient's IHSS provider.
- 3) Requires, if the patient seeks to apply for services under the IHSS program, the health care provider to provide a copy of the health care certification form, and, further, requires the provider to complete the health care providers' portion of that form before the patient's discharge.
- 4) Makes legislative findings and declarations related to providing a more streamlined IHSS application process for patients with a terminal illness.
- 5) Defines "terminal illness" as having the same meaning as it is interpreted by current law, as specified.
- 6) Permits, if a patient who is diagnosed with a terminal illness and seeks to apply for services under the IHSS program and receive a healthcare certification form, as specified, the patient to elect to have the application process expedited by the county in accordance with all of the following requirements:
 - a) The IHSS application and the health care certification form be submitted and processed before the patient is discharged by the health care provider who diagnosed the patient with a terminal illness;

- b) The health care certification must be either approved or denied within one business day after the county receiving it;
 - c) If the patient is approved for IHSS services, the county welfare department or its designee must prioritize the patient with regard to assigning, and providing them with, an IHSS provider; and,
 - d) If the patient becomes an IHSS recipient, they are afforded a total of number hours of in-home supportive services not to exceed existing maximum limit of hours, as a preliminary allotment, as deemed appropriate by the county welfare department or its designee until a final determination is made based on the needs assessment. The county welfare department or its designee consider the terminal illness diagnosis of the patient, any other relevant information available to the county at that point about the patient's individualized circumstances, and the county's available IHSS resources.
- 7) Permits CDSS to implement, interpret, or make specific, certain provisions of this bill 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 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) States legislative intent that the provisions of this bill related to disclosure of IHSS-related information to patients diagnosed with a terminal illness be implemented in conjunction with provisions of this bill requiring an application for IHSS by an individual with a terminal diagnosis be expedited.

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. (Welfare and Institutions Code Section [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. Personal care services shall 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) Defines “personal care services” as: assistance with ambulation; bathing, oral hygiene, and grooming; dressing; care and assistance with prosthetic devices; bowel, bladder, and menstrual care; repositioning, skin care, range of motion exercises, and transfers; feeding and assurance of adequate fluid intake; respiration; and, assistance with self-administration of medications. (WIC 12300(c))
- 4) Requires, as a condition of receiving IHSS, an applicant for or recipient of services, to obtain a certification of a licensed health care professional, as specified, declaring that the applicant or recipient is unable to perform some activities of daily living independently, and that without services to assist the applicant or recipient with activities of daily living, the applicant or recipient is at risk of placement in out-of-home care. (WIC 12309.1)
- 5) 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))
- 6) Defines the following terms:
- a) “Actively dying” as the phase of terminal illness when death is imminent;
 - b) “Disease-targeted treatment” as 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” as 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” as 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;
 - e) “Palliative care” as medical treatment, interdisciplinary care, or consultation provided to a patient or family members, or both, that has as its primary purpose the prevention of, or relief from, suffering and the enhancement of the quality of life, rather than treatment

aimed at investigation and intervention for the purpose of cure or prolongation of life; and,

- f) “Refusal or withdrawal of life-sustaining treatment” as forgoing treatment or medical procedures that replace or support an essential bodily function, including, but not limited to, cardiopulmonary resuscitation, mechanical ventilation, artificial nutrition and hydration, dialysis, and any other treatment or discounting any or all of those treatments after they have been used for a reasonable time. (HSC 442(a)-(f))

FISCAL EFFECT: Unknown, this bill has not been analyzed by a fiscal committee.

COMMENTS:

Background: *In-Home Supportive Services Program.* Eligible low-income individuals in California who are at least 65 years old, living with disabilities, or blind, may access services through the IHSS program that enable them to remain in their own homes. IHSS program providers are paid to assist with personal care services (such as bathing, toileting, and grooming), domestic and related services (meal preparation, housecleaning, and the like), paramedical services, and protective supervision. There are currently over 593,000 Californians who receive IHSS; over 98% of these individuals receive IHSS services as a Medicaid benefit.

CDSS oversees the IHSS program, but it is administered at the county level. Once individuals apply for IHSS, they are assessed by a county social worker for eligibility and need. If an individual is determined to be eligible for IHSS, they are authorized for certain services and for a specified number of hours of care. IHSS clients self-direct their care, which allows them to choose and hire their own provider, including friends and family.

When an individual is determined eligible for IHSS services by a county social worker, they are authorized for a certain number of hours of care per week. IHSS recipients are responsible for hiring, firing, directing, and supervising their IHSS workers. These responsibilities include some administrative duties, such as scheduling and signing timesheets; however, the state handles payroll. Providers must complete an enrollment process, including submitting fingerprint images for a criminal background check and participating in a provider orientation prior to receiving payment for services.

Prospective IHSS providers are also required to participate in an on-site orientation developed by CDSS and the counties prior to receiving payment for services. As of February 2023, there were 613,410 IHSS providers in California; 95.5% of providers are a relative, spouse, or parent of the recipient, and 55.6% of providers live in the same residence as the recipient, according to data provided by CDSS.

One of the eligibility criteria for receiving IHSS is submission of a completed Health Care Certification Form (referred to as a SOC 873) with information provided by the individual’s licensed healthcare professional. The exception to this requirement is if a county determines that an applicant is at imminent risk of out-of-home placement; applicants who are granted this exception may be temporarily authorized to receive IHSS pending the county’s receipt of the SOC 873.

The provisions of this bill require, prior to the discharge of a patient diagnosed with a terminal illness, the diagnosing health care provider to disclose certain IHSS-related information to the

patient, or another person authorized to make health care decisions for the patient. The provisions of this bill also require the healthcare provider to provide the patient or other qualified individual with an IHSS application, and, if the patient seeks to apply for the IHSS program, requires the health care provider to provide a copy of, and complete the necessary portion of the SOC 873. Finally, the provisions of this bill require an application by a patient diagnosed with a terminal illness for the IHSS program to be expedited in accordance with the processes and timelines enumerated in the bill.

Hospital discharge planning. State law requires that every hospital have a written discharge planning policy and process. Hospitals are required to make arrangements for post-hospital care which includes care at home, in a skilled nursing facility, or intermediate care facility, and made prior to discharge for patients who are likely to suffer adverse health consequences upon discharge if there is no adequate discharge planning. The discharge planning is not typically done with the diagnosing physician as prescribed in this bill; instead, a discharge planner who is knowledgeable in programs such as IHSS helps with this planning. Current law also requires that patients are allowed to identify one family caregiver who may assist in post-hospital care. The discharge information that is required to be given includes if someone is discharged and might be eligible for IHSS services. Therefore, this bill would not change information disseminated, but who would be giving the information.

Author's Statement: 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 In-Home Supportive Services program, in which an eligible patient is assigned an IHSS provider who assists them with daily tasks. This important resource is offered to terminal and non-terminal patients. Despite having radically different timelines, terminal and non-terminal patients are put through the same process. [This bill] expedites the process for terminal patients so that we mitigate the possibility of the process outliving them."

Need for this bill: The provisions of this bill seek to ensure patients with a terminal illness have adequate access to the end-of-life care and services for which they may be eligible. Specifically, this bill would require a patient diagnosed with a terminal illness to be provided with certain information about the IHSS program prior to being discharged, requires a health care provider to provide and complete certain information for purposes of aiding the individual apply to the IHSS program, and enumerates the process by which a terminally ill patient can elect to have the application expedited by a county human services department.

Equity Implications: The IHSS program serves people who are low-income and enables them to remain independently in their home. By requiring patients diagnosed with a terminal illness be given information about IHSS eligibility criteria before the patient is discharged, the provisions of this bill seek to ensure that individuals who are low-income and who have been diagnosed with a terminal illness have access to the supportive services provided through the IHSS program. Additionally, this bill seeks to ensure equity for individuals diagnosed with a terminal illness by ensuring this vulnerable population can access adequate, dignified end-of-life care in a timely manner.

Policy Considerations: The provisions of this bill seek to ensure patients diagnosed with a terminal illness are given expedited access to IHSS by creating an expedited registration process

for patients with a terminal illness. While this is certainly a worthy goal, and it is crucial that patients with a terminal illness be afforded appropriate and timely end-of-life care, the timelines provided in this bill may not be implementable given the nature of the IHSS program by which a county human services agency must either approve or deny a patient's IHSS application. This bill would also require, if approved, a patient with a terminal illness receive a guaranteed preliminary number of hours for IHSS services until a final determination is made; however, in the event that a final determination is delayed, this bill does not address the varying needs of terminally ill patients, which may warrant more or fewer hours than what would be statutorily guaranteed.

Finally, while the provisions of this bill would require a health care provider to offer certain information about IHSS to a patient prior to discharge, this bill does not require a discussion with an individual who is familiar with the IHSS program in order to answer questions about the program, eligibility rules and services provided under the program. As previously discussed, IHSS provides personal care types of services not medical or any end-of-life/hospice-like services. Under the provisions of this bill, a health care provider is tasked with explaining this information; however, it is unclear whether these providers are the most appropriate to discuss the IHSS program.

RELATED AND PRIOR LEGISLATION:

AB 1375 (Ting) of the current legislative session, establishes a grant program to encourage immigrants to become in-home supportive services (IHSS) providers. *AB 1375 is pending before the Assembly Committee on Appropriations.*

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Opposition

None on file

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