

Date of Hearing: March 12, 2019

ASSEMBLY COMMITTEE ON HUMAN SERVICES  
Eloise Gómez Reyes, Chair  
AB 426 (Maienschein) – As Introduced February 7, 2019

**SUBJECT:** In-Home Supportive Services program: medical certification

**SUMMARY:** Delete in-home supportive services (IHSS) medical certification requirements and require, in certain circumstances, the reduction of an IHSS recipient's authorized number of hours to be based solely on one of a specified number of factors. Specifically, **this bill:**

- 1) Requires, in instances where there has been a county-initiated reassessment of an IHSS recipient's need for services due to a social worker having obtained information indicating that such need is expected to decrease in less than a year, that any reduction of the recipient's monthly authorized number of hours be based solely on: a verified change of the recipient's medical condition; a change in the recipient's living arrangements, functionality, or circumstances; a change in the law; or an error in computing the recipient's monthly authorized number of services hours.
- 2) Removes IHSS medical certification requirements by deleting provisions of current law that, as specified:
  - a) Require an IHSS applicant or recipient to, as a condition of receiving IHSS, obtain certification from a licensed health care professional that: contains certain information, including a description of any condition or functional limitation that has contributed to or resulted in the individual's need for assistance; declares the applicant's or recipient's inability to independently perform some activities of daily living; and states that, without services to assist them with such activities, the applicant or recipient is at risk of placement in out-of-home care.
  - b) Require the county to consider the medical certification as one indicator of need of IHSS, but prohibit the certification from being the sole determining factor.
  - c) Require the California Department of Social Services (CDSS), in consultation with the Department of Health Care Services (DHCS) and stakeholders, to develop a standard medical certification form for use in all counties, to contain certain information and, further, prohibit this form from requiring a health care professional to certify an applicant's or recipient's need for each individual IHSS service.
  - d) Require CDSS, in consultation with DHCS and stakeholders, to identify alternative documentation to be accepted by counties as a way to meet medical certification requirements and, further, require CDSS to develop a letter for counties to use to inform IHSS recipients about the medical certification requirements.
  - e) Require DHCS to provide notice directing all Medi-Cal managed care plans to assess all Medi-Cal recipients who are applying for or receiving IHSS in order to make the required medical certifications.
- 3) Makes technical amendments.

**EXISTING LAW:**

- 1) Establishes the IHSS program to provide supportive services, including domestic, protective supervision, personal care, and paramedical services as specified, 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 Institutes Code [WIC] Section 12300 *et seq.*)
- 2) Authorizes counties to choose to contract with a nonprofit consortium or establish a public authority for the provision of IHSS services. Requires nonprofit consortia and public authorities to, among other things, establish a registry to assist recipients in locating IHSS providers, and to investigate the background and qualifications of potential providers, as specified. (WIC 12301.6)
- 3) Maintains an IHSS recipient's right to hire, fire, and supervise the work of any IHSS provider, regardless of the employer responsibilities of a public authority or nonprofit consortium, as specified. (WIC 12301.6 (c))
- 4) Requires an IHSS applicant to, as a condition of receiving IHSS, obtain certification from a licensed health care professional that: contains certain information, including a description of any condition or functional limitation that has contributed to or resulted in the individual's need for assistance; declares the applicant's or recipient's inability to independently perform some activities of daily living; and states that, without services to assist them with such activities, the applicant or recipient is at risk of placement in out-of-home care. Further, requires the county to consider the medical certification as one indicator of need for IHSS, but prohibits the certification from being the sole determining factor. (WIC 12309.1)
- 5) Requires CDSS to adopt regulations establishing a uniform range of services available to all eligible IHSS recipients based on individual needs. (WIC 12301.1 (a))
- 6) Requires a county welfare department to assess each IHSS recipient's ongoing monthly need for services at least once every 12 months in order to establish a recipients weekly authorized number of hours of IHSS, as specified. (WIC 12301.1 (b))
- 7) Authorizes a county to reassess a recipient's need for services at a time interval of less than 12 months from a recipient's initial intake or last reassessment if the county social worker has information indicating that the recipient's need for services is expected to decrease in under 12 months. (WIC 12301.1 (c)(3)(A))

**FISCAL EFFECT:** Unknown.

**COMMENTS:**

***In-home supportive services:*** 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 during home visits 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 recipients have their needs reassessed by county social workers on at least an annual basis. However, a recipient may request a reassessment at any time if their circumstances or needs change. Additionally, should a social worker have information indicating that the recipient's need for services is expected to decrease in under 12 months, the county may reassess a recipient's need for services at a time interval of less than 12 months.

IHSS recipients are responsible for selecting, hiring, firing, directing, and supervising their IHSS workers, and for certain administrative duties, such as scheduling and signing timesheets – however, the state handles payroll. There are currently almost 507,000 IHSS providers in California; 71.6% of these providers are relatives and 53.3% of these providers live in the same residence as the recipient.

***Medical certification for IHSS:*** SB 72 (Senate Committee on Budget and Fiscal Review), Chapter 8, Statutes of 2011, the human services trailer bill, established the requirement that an individual applying for IHSS obtain certification from a licensed health care professional declaring that they are unable to perform one or more activities of daily living independently, and that without one or more IHSS services, the individual is at risk of placement in out-of-home care (this requirement also applied to recipients already receiving IHSS who had not yet obtained this medical certification). For purposes of complying with this requirement, applicants may obtain medical certification from a broad range of licensed health care professionals including, but not limited to, a physician, physician assistant, regional center clinician or clinician supervisor, occupational therapist, physical therapist, psychiatrist, psychologist, optometrist, ophthalmologist, or public health nurse.

***Need for this bill:*** This bill seeks to repeal the medical certification requirement as a condition of initial IHSS eligibility. It also seeks to ensure that, in instances where a social worker initiates a reassessment triggered by that worker having obtained information indicating that need is expected to decrease in less than 12 months, any resulting reduction in an IHSS recipient's authorized hours be based on certain factors, such as a change in the recipient's functionality.

Writing in support, Disability Rights California (DRC) states that, "Requiring medical approval is inappropriate for several reasons. First, there is a delay for the necessity of obtaining the approval. Second is the cost of the medical visit in order to obtain the approval. Third is the burden of a medical visit for a person who may find it difficult (if not impossible) to leave home for an office visit. Fourth, a person's home is the best place from which to assess needs. Are there stairs? Are the kitchen, bathroom, and other parts of the home usable and accessible so that it can be determined whether the applicant needs assistance with cooking, toileting, and related functions? The list goes on. Finally, DRC supports a requirement that hours not be reduced or eliminated absent a verified justification."

According to the author, "The SOC 873 form [the IHSS health care certification form] is not used as a sole determining factor in determining if an applicant is eligible for IHSS. Requiring that applicants consult their doctors to attain the form acts as an unnecessary financial burden on the applicant, and clogs up the system with additional paperwork."

**Recommended amendments:** As currently written, the provisions of this bill that establish necessary bases for a reduction in a recipient's authorized number of IHSS hours leave a few implementation questions unanswered, including: Is verifying a recipient's medical condition appropriate for this purpose? Who would request this verification, and who would complete it? Would this verification take place in the recipient's home? Additionally, these provisions could benefit from additional clarity intended to: require that only changes in household composition or other household members' use of services that would impact prorated services (e.g., domestic services and heavy cleaning, related services, and protective supervision) could provide a basis for reduction in hours; require change in functionality to be documented; delete "a change in the recipient's circumstances" as a basis because it is vague and unclear what additional circumstances might apply; clarify that "a change in law" includes only those changes in law that impact the assessment of need for services; and clarify that "an error in computing a recipient's monthly authorized number of service hours" needs to have been documented by the county. In order to address the questions and need for clarification described above, *committee staff recommend the following amendments beginning on line 12 of page 5 of the bill:*

- 6 (3) (A) A county may reassess a recipient's need for services  
 7 at a time interval of less than 12 months from a recipient's initial  
 8 intake or last assessment if the county social worker has  
 9 information indicating that the recipient's need for services is  
 10 expected to decrease in less than 12 months.
- 11 (B) A reduction of a recipient's monthly authorized number of  
 12 service hours shall be based solely on ~~a verified change of a~~  
 13 ~~recipient's medical condition, a change in the recipient's living~~  
 14 ~~arrangements~~ household composition or other household member's or members' use  
 15 of services that impacts the calculation of prorated services, a documented change in  
 16 the recipient's functionality, a change  
 17 in the recipient's circumstances, a change in the law that affects assessment of need for  
services, or an error  
in computing a recipient's monthly authorized number of service  
hours that has been documented by the county.

#### **PRIOR LEGISLATION:**

*SB 72 (Senate Committee on Budget and Fiscal Review), Chapter 8, Statutes of 2011*, the human services trailer bill that, among many other changes, adopted the requirement that applicants for and recipients of IHSS obtain certification from a licensed health care professional, as specified, declaring that the applicant or recipient is unable to perform one or more activities of daily living independently, and that without one or more IHSS services, the applicant or recipient is at risk of placement in out-of-home care.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

Coalition of California Welfare Rights Organizations, Sponsor  
 Disability Rights California  
 Educate. Advocate.  
 Empower Family California

United Domestic Workers of America-AFSCME Local 3930/AFL-CIO

**Opposition**

None on file

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