

Date of Hearing: July 2, 2019

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Eloise Gómez Reyes, Chair

SB 512 (Pan) – As Amended April 25, 2019

SENATE VOTE: 35-1

SUBJECT: Long-term services and supports

SUMMARY: Establishes the “California Long-Term Services and Supports Benefits Board” (LTSS Board), the “California Long-Term Services and Supports Benefits Trust Fund” (LTSS Trust), and the “California Long-Term Services and Supports Advisory Committee,” and requires the California Long-Term Services and Supports Advisory Committee to provide advice and recommendations to the LTSS Board which is, in turn, charged with managing and investing revenue deposited into the LTSS Trust, designed to help finance long-term services and supports (LTSS) for eligible older adults and for individuals with disabilities in California. Specifically, **this bill:**

- 1) Makes a number of Legislative findings and declarations related to: the size, growth, increasing diversity, and varied needs of the population of older adults and individuals with disabilities living in California; the need for and important role that LTSS play for older adults and individuals with disabilities; the costs associated with LTSS, and the stress these costs place on individuals, family members, and certain public programs; California’s need for additional LTSS resources, and the need to better support the healthcare workforce; and the state’s continued commitment to promoting the ability of older adults and individuals with disabilities to live independently in their own homes and their communities, as specified.
- 2) States Legislative intent to, consistent with the United States Supreme Court Olmstead decision, as specified, advance its commitment to older adults and individuals with disabilities by creating a funding stream and a program to provide for LTSS for eligible Californians.
- 3) Creates within state government the LTSS Board, to consist of the following nine individuals: the Treasurer (to serve as Chair), the Secretary of California Health and Human Services (to serve as vice chair), the Director of Finance (or designee), the Controller (or designee), two individuals with expertise in LTSS provision and financing (with one each to be appointed by the Senate Committee on Rules and the Speaker of the Assembly, respectively), a consumer of LTSS who is 60 years of age or older (to be appointed by the Governor), an individual who has lived with a disability and/or chronic condition for most of their life (to be appointed by the Governor), and an unpaid family caregiver to an older adult or individual with a disability (to be appointed by the Governor).
- 4) Creates the LTSS Trust in the State Treasury and establishes the following requirements regarding the LTSS Trust:
 - a) Requires the LTSS Board to manage and invest revenue deposited in the LTSS Trust;

- b) Requires moneys in the LTSS Trust to be available, upon appropriation by the Legislature, to finance LTSS for eligible older adults and for individuals with disabilities in California; and,
 - c) Requires all costs of administration to be paid out of funds in the LTSS Trust, once sufficient funds are deposited in the LTSS Trust to be self-sustaining.
- 5) Creates within state government the California Long-Term Services and Supports Advisory Committee, required to provide ongoing advice and recommendations to the LTSS Board and to consist of nine members (with three each appointed by the Senate Committee on Rules, the Speaker of the Assembly, and the Governor), with at least one member of the advisory committee being each of the following: a provider of LTSS, a consumer of publicly financed LTSS, a representative of a labor union that is the designated representative of in-home supportive services (IHSS) providers, an advocate for older adults, and advocate for persons with disabilities who rely upon LTSS, and a family caregiver.
- 6) Repeals the provisions of this bill establishing the California Long-Term Services and Supports Advisory Committee as of January 1, 2025.

EXISTING LAW:

- 1) Reauthorizes the Older Americans Act of 1965 to, among other things, protect vulnerable seniors and promote the delivery of evidence-based programs. (Public Law [PL] 114-144)
- 2) Establishes the “Mello-Granlund Older Californians Act” to reflect the policy mandates and directives of the Older Americans Act of 1965, as amended, and sets forth California’s commitment to its older population and other populations served by programs administered by the California Department of Aging (CDA). (Welfare and Institutions Code [WIC] Section 9000 *et seq.*)
- 3) Establishes the “Aging and Disability Resource Connection” (ADRC) program to provide information to consumers and their families regarding available LTSS programs and to assist older adults, caregivers, and persons with disabilities in accessing local LTSS programs, and sets forth requirements related to the administration and responsibilities of an ADRC program. (WIC 9120)
- 4) Describes, within the federal Patient Protection and Affordable Care Act, the “No Wrong Door – Single Entry Point System” as the development of a statewide system to enable consumers to access all LTSS through an agency, organization, coordinated network, or portal, in accordance with state-established standards, that provides information regarding the availability of such services, how to apply for such services, referral for services and supports otherwise available in the community, and determinations of financial and functional eligibility for such services and supports, or assistance with assessment processes for financial and functional eligibility. (PL 111-148 Section 10202 (c)(5)(A))
- 5) Establishes the “California Residential Care Facilities for the Elderly Act” to provide for the licensure and regulation of residential care facilities for the elderly (RCFEs) as a separate category within the existing licensing structure of the California Department of Social Services (CDSS). (Health and Safety Code [HSC] 1569 *et seq.*)

- 6) Defines “residential care facility for the elderly” to mean a housing arrangement chosen voluntarily by individuals ages 60 and older, or their authorized representative, where varying levels and intensities of care and supervision, protective supervision, personal care, or health-related services are provided, based upon their varying needs, as determined in order to be admitted and to remain in the facility. (HSC 1569.2(p)(1))
- 7) Provides for the licensure and regulation of health facilities, including skilled nursing facilities (SNFs), by the Department of Public Health. (HSC 1250 *et seq.*)
- 8) Defines a “skilled nursing facility” to mean a health facility that provides skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis. (HSC 1250 (c))
- 9) Establishes the “In-Home Supportive Services” (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. (WIC 12300 *et seq.*)

FISCAL EFFECT: According to the Senate Appropriations Committee on May 13, 2019, this bill may result in the following costs:

- Staff support for the LTSS Board would require costs in the hundreds of thousands of dollars, likely to the State Treasurer, who would serve as a chair of the Board. (General Fund [GF])
- Staff support for the LTSS Advisory Committee would require costs in the hundreds of thousands of dollars, likely to the California Health and Human Services Agency. (GF)
- Potentially significant cost pressure to implement any recommendations that the Committee develops. (GF)

COMMENTS:

California’s aging population and associated needs: CDA reports that the portion of California’s population over the age of 60 is anticipated to grow by 166% between 2010 and 2060. The number of Californians in this age group will grow three times as fast as the state’s overall population in the coming decades. The population of Californians over the age of 85 will grow at an even faster rate, with an estimated overall increase of 489% between the years 2010 and 2060.

A 2015 report by the Public Policy Institute of California pointed to higher population growth rates among certain racial/ethnic groups:

“The number of seniors in every major racial/ethnic group will increase by 2030. Whites will remain the largest group and are projected to grow by 53 percent (1.5 million people). However, the fastest rates of growth will occur among nonwhite populations, especially Latinos (170%, or 1,430,000 people) and Asians (118% or 765,000 people). The African American senior population will increase by 96 percent, or 230,000 people.

“Because Latino and Asian senior populations are growing so quickly, they will make up an increasing share of the total over-65 population going forward. Since 1990, there has been a steady decline in the percent of seniors who are white, and by 2030 that fraction is

expected to dip to just below 50 percent. At that point, no ethnic group will constitute a majority of the senior population. Latinos will have increased from 18 percent in 2012 to 26 percent by 2030; Asians will grow from 14 percent to 16 percent. The fraction of seniors who are African American will hold constant at 5 percent.”

Legislative and other efforts in past years have pointed to the need to meet the growing demand for culturally competent services and supports older adults and individuals with disabilities and to the need for better coordination of service availability and delivery across the myriad programs and services in the state. For example, in 2015, the Senate Select Committee on Aging and Long-Term Care released a report that stated that,

“To date, California has not responded to the increase in the aging population or the rich cultural and ethnic diversity of the state. We are plagued by a lack of capacity – especially in rural areas – in services, supports, and workforce across a range of disciplines.

“The challenge before us is two-fold. First, over 5.1 million persons age 65 and over will call California home by 2015. Due to aging Baby Boomers and migration patterns, that number will grow to 8.4 million by 2030 – or nearly one fifth of the population. Second; as the Baby Boom population ages, it will become more ethnically diverse, driving demand for culturally competent service delivery.

“Reliance upon our existing patchwork of programs and services to serve our growing aging and disabled population will result in unnecessary expenditures, inequitable access, and irrelevant services. Furthermore, under the existing fragmented structure there is no leader to oversee or coordinate the entire range of services, and no mechanism for accountability or improvement.”

Long-term services and supports: LTSS include a wide array of health services, health-related services, and other forms of assistance for individuals – including older adults and individuals with disabilities or chronic illnesses – who need help completing their daily routines over an extended period of time. According to the Congressional Research Service, “The need for LTSS affects persons of all ages and is generally measured by limitations in an individual’s ability to perform daily personal care activities such as eating, bathing, dressing, or walking, and activities that allow individuals to live independently in the community, including shopping, housework, and meal preparation. The probability of needing LTSS increases with age. As the nation’s population aged 65 and older continues to increase in size, and individuals continue to live longer post-retirement, the demand for LTSS is also expected to increase.”

LTSS spending comprises a substantial portion of all personal health care spending: in 2016, close to \$366 billion was spent on LTSS in the U.S. – this represents 12.9% of the total cost of personal health expenditures (\$2.8 trillion). Costs associated with LTSS include: residential services (such as assisted living facilities and nursing homes); services to maintain an individual in their own home (such as in-home personal care assistance and homemaker services); and an array of community-based services (including adult day health care services). The costs of LTSS are also likely underreported, considering the significant amount of unpaid care provided by family, friends, and others.

For the \$366 billion in LTSS costs recorded in 2016, public sources of funding paid for over 70%. The two largest public payers were Medicaid (over 42% of total nationwide costs) and Medicare (almost 22% of total costs). The remaining portion of total LTSS costs – about 6%

– that is paid for by public programs comes from sources like the Veterans Health Administration and Children’s Health Insurance Program.

Individuals who do not have access to public funding for LTSS are left to rely on private sources, which in 2016 accounted for almost 30% of all LTSS expenditures. The largest component of private sources, at almost 16% of total nationwide costs, was out-of-pocket spending. Private insurance (including health insurance and long-term care insurance) made up the next largest source at almost 8%. The remaining portion (almost 7% of total costs) of private funding came largely from philanthropic contributions.

Accompanying the high costs of LTSS can be confusion regarding, lack of preparation for, and pessimism about long-term care options and affordability among the general public. A 2017 long-term care poll conducted by The Associated Press-NORC Center for Public Affairs found that 67% of older Americans have done little or no planning for long-term care. Two-thirds of Americans age 40 and older felt that the country is not prepared for the rapid growth of the older adult population, and a large percentage (86%) of respondents reported believing that the government should devote some amount of effort into helping people with the costs of ongoing living assistance. An older poll from 2015 found that 34% of respondents erroneously believed that Medicare would pay for nursing home care, and another 39% were unclear; only 27% knew that Medicare is not a viable long-term option for covering LTSS costs.

Need for this bill: This bill seeks to create a structure for beginning to address the long-term care needs of Californians as the state’s population of older adults grows and as need remains among the state’s population of individuals with disabilities. According to the author, “This bill...creates the framework and roadmap for a new program that would provide older Californians and Californians living with a disability with access to long-term services and supports. These are things like help in the home with day-to-day tasks and health maintenance, and help provided in assisted living and other supportive housing settings.

“California needs a new LTSS program that provides flexible benefits responsive to each person’s unique needs. This program must preserve dignity, choice, and intentionality for individuals and families with service and support needs, and be linked to a new, sustainable funding source. This would help relieve the increasing demographic and financial pressure on our Medi-Cal system.”

Recommended amendments: In order to correct an incorrect cross-reference to the Olmstead decision, ***committee staff recommends the following amendments beginning on line 36 of page 4 of the bill:***

- 31 (13) As California seeks new options for funding long-term
32 services and supports, it will continue its commitment to promote
33 the ability of California’s older adults and individuals with physical
34 and mental disabilities to live independently in their homes and
35 their communities, consistent with the United States Supreme
36 Court’s decision in *Olmstead v. L.C.* ~~(1998) 525 U.S. 1062~~, 527 U.S. 581 (1999).
37 (b) It is the intent of the Legislature to, consistent with the
38 principles of the United States Supreme Court’s decision in
39 *Olmstead v. L.C.* ~~(1998) 525 U.S. 1062~~, 527 U.S. 581 (1999), advance its commitment
40 to older adults and individuals with physical and mental disabilities

Double referral: This bill passed out of the Assembly Aging and Long Term Care Committee on June 11, 2019, with a 7-0 vote.

RELATED LEGISLATION:

AB 1136 (Nazarian) of 2019 would have created the “California Department of Community Living” to better coordinate and guide a person-centered system for delivering services to older adults, people with disabilities, and their caregivers. AB 1136 was held on the Assembly Appropriations Committee suspense file.

AB 1287 (Nazarian) of 2019 would require the development of a plan and strategy for the statewide implementation of the No Wrong Door system and the development of a universal assessment tool to assist older adults, people with disabilities, and caregivers in obtaining accurate information and appropriate community services and supports. AB 1287 is set to be heard on July 8, 2019, in the Senate Human Services Committee.

AB 1382 (Aguilar-Curry) of 2019 would require that the Master Plan for Aging include an implementation plan specifying objectives, and timelines relative to both the paid workforce and unpaid family caregiver workforce. AB 1382 is set to be heard on July 8, 2019, in the Senate Human Services Committee.

SB 228 (Jackson) of 2019 would require the Governor to appoint a Master Plan Director and establish an Aging Task Force to work together with the Master Plan Director to develop a Master Plan for an Aging California that meets a number of specified criteria and that empowers older adults and individuals with disabilities to age with dignity, choice, and independence. SB 228 is set to be heard on July 2, 2019, in the Assembly Human Services Committee.

SB 611 (Caballero) of 2019 would require the Governor to establish the Master Plan for Aging Housing Task Force to assess the housing issues affecting California’s aging population. SB 611 is set to be heard on July 9, 2019, in the Assembly Aging and Long-Term Care Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Disability Rights California (Sponsor)

UDW/AFSCME Local 3930 (Sponsor)

AARP

American Federation of State, County and Municipal Employees, AFL-CIO

California Aging & Disability Alliance

California Assisted Living Association

California Association for Adult Day Services

California Association for Health Services At Home

California Association of Health Facilities

California Commission on Aging

California Domestic Workers Coalition

California Long-Term Care Ombudsman Association

CalPACE

Congress of California Seniors

Disability Rights Education and Defense Fund

Hand in Hand: The Domestic Employers Network
Justice in Aging
LeadingAge California
State Council on Developmental Disabilities
State Independent Living Council
The Arc of California
United Cerebral Palsy California Collaboration

Opposition

None on file

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