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2011-2012 Mid-Session Legislative Summary

Assembly Committee on Aging & Long Term Care

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**Assembly Committee
on
Aging & Long-Term Care**

Mariko Yamada, Chair

2011-2012 Mid-Session Legislative Summary

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2011/2012 Mid-Session Legislative Summary

Assembly Committee on Aging & Long-Term Care October, 2011

The following is an update on legislation referred to, and heard by, the Assembly Committee on Aging and Long-Term Care during the first year of the 2011-2012 legislative session.

2011 Legislation

AB 40 (Yamada)

AB 40 calls for a dual, simultaneous report to both law enforcement and the Long-Term Care Ombudsman when abuse is either suspected, or known to have occurred in a skilled nursing facility setting. A dual, simultaneous report overcomes competing and conflicting mandates between federal and state law upon the Long-Term Care Ombudsman program and its volunteer participants, related to acquiring written consent before reporting criminal-level abuse to law enforcement agencies.

Last Action: Two-year bill. Held in Senate Human Services

AB 138 (Beall)

AB 138 establishes the Elder Economic Security Act of 2011 and requires the Department of Aging to utilize the Elder Economic Security Standard Index (Index) for each service area in its state plan and use it as a reference when making decisions about allocating its existing resources. Each area agency on aging would be required to use the Index as a reference when making decisions about allocating existing resources to specify the costs in the private market of meeting the basic needs of elders in each planning and service area.

California has 33 Area Agencies on Aging (AAA) that provide a wide range of services designed to keep older adults and adults with disabilities independent and living in their



own homes and communities. To ensure that programs and services funded by the AAA adequately serve the older adults within each community, AAAs are required to conduct a needs assessment every four years to document the service needs of community residents and any gaps in the service network. The needs assessment process typically includes a community-wide survey, community meetings, and information received from stakeholders and key informants. California Code of Regulations (Title 22, Division 1.8, Chapter 3, Article 3) requires that each needs assessment include all of the following: the target populations, the types of existing and potential needs of older individuals in the community, the services or resources that currently are available, as well as any constraints (waiting lists, geographic limitations, quality), an estimate of unmet needs or barriers to access, demographic information, and data from other agencies. The information received through the needs assessment process guides the AAA in identifying the service priorities for the area plan.

Every four years, federal law requires the California Department of Aging (CDA) to submit a state plan on aging to the federal Administration on Aging. After the plan's approval, the department receives federal funds to administer the state plan. Beyond the minimum required information, California's 2009-2013 state plan on aging addresses key socio-demographic factors that will shape funding needs and priorities, unmet needs and promising practices identified by the department and the AAAs, and the department's objectives in working with the AAAs to provide cost-effective, high quality services to California's older adults and their informal caregivers.

Programs and services administered by the department and the AAAs do not require means-testing for eligibility; however, the Older Americans Act requires planning preference to be given to older adults with the greatest economic or social needs, with particular attention given to low-income minority individuals. To meet the federal requirements, the department and AAAs track data, including poverty data, on the number of older adults and people with disabilities within a given planning and service area.

AB 138 improves the state's ability to assess the true economic plight of elders by enhancing mandated procedures in the following ways:

- 1) It defines what is known as the "Elder Economic Security Standard Index" to mean an index that quantifies the costs that elders face as they attempt to meet their basic needs such as, food, shelter, health care, transportation, utilities, and essential household items, in the private market.
- 2) It states that the Index is calculated every-other year by the University of California, Los Angeles, Center for Health Policy Research, using publicly available data sources on the cost of living of each county in California.
- 3) It requires the CDA to report the Index score for each of its service areas in its state plan, and to use it as a reference when making decisions about allocating its existing resources. The state's 33 area agencies on aging (AAA) would be required to use the Index as a reference when making decisions about allocating existing resources to specify the costs of meeting basic needs for elders in each planning and service area.

Last Action: Chapter 668, Statutes of 2011

AB 332 (Butler)

AB 332 protects seniors and dependent adults by increasing fines for misdemeanor theft, embezzlement, forgery, fraud, identity theft, and other identity crimes against an elder or dependent adult. According to Assemblymember Betsy Butler, until AB 332, "...the penalties proscribed for theft, embezzlement, forgery, or fraud with respect to the property or personal identifying information of an elder or a dependent adult are far below any reasonable standard that would deter a criminal from committing multiple offenses." AB 332 enhances the fines imposed so that the punishment fits the crime. Elders and dependent adults are often not equipped to protect themselves from unscrupulous criminals who prey on those who are isolated and may not have families and friends watching out for them. Considering the current economic environment in California, it has never been more important to bolster protections for dependent seniors. "

AB 332 does so by increasing the fines in two ways. For crimes where the losses do not exceed \$950, the maximum fine is increased from \$1,000 to \$2,500 (other fees and assessments typically increase fine totals to 370% of the original fine, plus a \$103 flat fee). Additionally, AB 332 creates a fine not to exceed \$10,000 (\$37,103 with penalties and assessments) for felony theft, embezzlement, forgery, or fraud, and identity theft and identity crimes against an elder or dependent adult when the value of the loss exceeds \$950.

Last Action: Chapter 366, Statutes of 2011.

AB 367 (Smyth)

AB 367 requires county adult protective services agencies and local law enforcement agencies to accept a report of suspected elder or dependent adult abuse regardless of jurisdiction and immediately forward the report to the correct agency so action could be taken to protect these vulnerable members of our society.

Last Action: Held in Assembly Aging & LTC Committee – 2 Year Bill

AB 518 (Wagner)

AB 518 removes the repeal date of section 15630.1 of the Welfare and Institutions Code. By doing so, AB 518 would extend the requirement that officers and employees of financial institutions act as mandated reporters of known or suspected financial elder abuse indefinitely, a mandate which currently sunsets on January 1, 2013. By making section 15630.1 of the Welfare and Institutions Code permanent, it will continue the protection of elders and dependent adults from financial abuse.

Last Action: Held in the Senate Committee on Banking and Financial Institutions at the author's request. Author joined Senator Simitian as a principal co-author of SB 33, which is identical to AB 518.

AB 533 (Yamada) Area Agency on Aging and Independent Living Center Funding

In the absence of enactment of the annual Budget Act by July 1 of each year, Older American Act funds that support programs and services administered through the California Department of Aging (CDA), and Federal Rehabilitation Act funds that support programs and services administered through the Department of Rehabilitation, are held in state administered trust accounts. This creates deep concern amongst consumers who depend upon these supports to remain independent. It also causes significant concerns to program contracting agencies, administrators and staff that annually scramble to piece together stop-gap funding – often at considerable personal cost – in order to assure their clients are not exposed to gaps in service.

AB 533 (Yamada) creates a continuous appropriation of federal funds that have already been appropriated to the State of California from the United States Treasury, and have been deposited in the state's Federal Trust Fund for the single purpose of supporting independent living centers (ILC's) and area agencies on aging (AAA's). This would provide the California Department of Aging, (CDA) and the California Department of Rehabilitation (DOR) the funds necessary to administer programs operated by AAA's and ILC's during fiscal years in which the state Budget Act is not enacted by July 1.

According to the author; "data from 1979 through 2010 indicate that the state budget has passed prior to July 1, only 12 times out of 30 years. Because the programs addressed by this bill operate with very small margins, individual program administrators often pursue lines of credit at great personal expense in order to assure no interruption of services for their frail clients. Administrators are not reimbursed for related expenses, such as fees and interest. In other scenarios, local programs' credit records suffer as a result of the emergency loans, late payments, and payroll interruptions. The alternative is to allow programs to fail, endure a costly and lengthy "Request For Proposal" process and compete to receive funds to re-start the program. Of course, Californians using these programs end up suffering the most."

Last Action: Held in Assembly Appropriations

AB 574 (Lowenthal) Program for All-Inclusive Care of the Elderly – "PACE"

AB 574 allows for the long-term implementation of the PACE model in California by increasing the limit of potential providers from 10 to 15.

The Program of All-Inclusive Care for the Elderly (PACE) model was created by the On Lok Senior Health Services program in San Francisco in 1973. The model is centered on the belief that it is better for the well-being of seniors with chronic care needs and their families, for their senior loved one to be served in the community whenever possible.

PACE serves individuals who are:

- Aged 55 or older;
- Certified by the state to need nursing home care;
- Able to live safely in the community at the time of enrollment; and
- Live in a designated geographic PACE service area.

Although all PACE participants must be certified to need nursing home care to enroll in PACE, only about seven percent of PACE participants reside in a nursing home nationally. If a PACE enrollee does need nursing home care, the PACE program pays for it and continues to coordinate the client's care.

With the passage of the Balanced Budget Act of 1997, the PACE model became a permanent provider under Medicare, and a state option under Medicaid, no longer requiring federal waiver authority. The total number of authorized programs nationwide was increased substantially from a maximum of 15 demonstration sites to 40. By 2009, there were 72 PACE programs operating in 30 states.

California currently has five PACE organizations operating in six communities: Los Angeles, Oakland, Sacramento, San Francisco, San Jose, and San Diego.

PACE is an integrated model of care that provides comprehensive medical and long-term care services, fully coordinated by the program's interdisciplinary teams. With the broad range and intense coordination of services, more than 90 percent of PACE participants are able to remain at home and in their communities. PACE is funded through capitation payments from Medicare, Medicaid and private individuals depending on the individual's eligibility for public programs.

On average, a typical PACE participant is female, is 80 years old, has 8 medical conditions and is limited in 3 activities of daily living. Forty-nine percent of PACE participants have been diagnosed with dementia.

Besides expanding availability of PACE, AB 574 modernizes state laws relative to the PACE programs and deletes out-dated references to its prior status as a federal demonstration program.

Last Action: Chapter 367, Statutes of 2011

AB 594 (Yamada)

AB 594 would reform and streamline the administration of long-term care services by placing important components of the state's home and community based long-term services and supports under the jurisdiction of a single agency.

In 1999, the US Supreme Court, issued a decision in a landmark case which changed the rights of all Americans overcoming disability. It effectively requires states to develop more opportunities for individuals with disabilities to live in their communities rather than in nursing homes and other institutional settings.

California has established a number of long-term care programs that provide services and supports to individuals to enable them to avoid institutionalization and live independently in their homes. Programs such as IHSS which provides low-income people living with disabilities to remain independent via personal care, or Multi-purpose Senior Services Program (MSSP) which helps people who are so disabled that they qualify for 24-hour medical supervision to live in their own home and still get the care they need to be safe.

The Legislative Analyst's Office, the Little Hoover Commission, and others have found California's system of community-based long-term service and supports delivery is dysfunctional due to the fragmentation of leadership, responsibility and funding. Dedicated funding streams and varied eligibility criteria have created "silos" of services that often respond better to the conveniences of bureaucracies administering them, than to the clients who need the services. Consumers who rely upon multiple programs to remain independent are often challenged by each program's requirements of participation, thus the bureaucracies become barriers to those services and support.

AB 594 calls upon the leadership within the California Health and Human Services Agency to submit a plan to begin transitioning various community-based services that are presently administered by several different departments, into the California Department of Adult and Aging Services. In order to develop this plan, and in order to assist with the transition, AB 594 calls for a stakeholder group made up of various representatives. Though the existing language provides for flexibility in size and make-up, the bill mandates that the following interests are included: independent living centers, area agencies on aging, adult day health care, adult protective services, in-home supportive services, caregiver resource centers, consumer of home- and community-based services. Ultimately, AB 594 would establish a new, single entity, to over-see the spectrum of programs, projects and services established to support an individual living with disabilities' desire to remain in their home, communities, or least restrictive home-like environment.

Last Action: Two-year bill. Held in Assembly Human Services

AB 1293 (Blumenfeld)

AB 1293 was introduced to address financial and fiduciary abuse. This measure creates a mechanism which allows suspect assets to be frozen after a perpetrator has been charged with an instance of theft or embezzlement. The measure would curtail the practice of liquidating ill-gotten gains to finance a financial abuser's defense when a charge of financial or fiduciary abuse is filed. This measure is required in order to assist District Attorneys in preserving the assets obtained by financial and fiduciary abusers. Specifically the bill:

- 1) Authorizes the prosecuting agency in conjunction with a criminal proceeding alleging theft or embezzlement of property worth \$100,000 or more, to file a petition of forfeiture, as prescribed, with the superior court of the county in which the defendant has been charged with elder or dependent financial abuse, and alleging that the defendant has acquired the property or proceeds through theft or embezzlement of an elder or dependent adult's property.

- 2) Defines "prosecuting agency" as the Attorney General or the district attorney of any county for purposes of this act.

Last Action: Chapter 371, Statutes of 2011.

AB 1415 (Blumenfield)

AB 1415 would provide that it is the intent of the Legislature to provide for an orderly conversion of ADHC from a Medi-Cal benefit to a program operating under a specified waiver. This bill would require the department to establish the Keeping Adults Free from Institutions (KAFI) program for the purposes of transitioning individuals from the ADHC program to a program under a waiver or to any other supportive services, if appropriate. The bill would require the department to take all appropriate action to obtain expedited approval from the federal Centers for Medicare and Medicaid Services to convert the ADHC program to a federal waiver.

Last Action: Held in Assembly Health Committee; language embodied in AB 96 (vetoed), a budget trailer bill.

SB 33 (Simitian)

SB 33 repeals the sunset date associated with various Welfare and Institutions Code sections (WIC), known as the "Elder and Dependent Adult Financial Abuse Act," thus making the act permanent.

According to the author, SB 33 will allow the state to continue the provisions of the Elder and Dependent Adult Financial Abuse Act indefinitely. Those provisions include the following mandates.

- 1) A requirement that bank, savings and loan, and credit union employees report financial abuses if the abuse becomes evident in their contacts with, or review of, an elder and or dependent adult's financial matters.
- 2) Immunity to credit union and bank tellers during their first six months of employment if they have not been trained to identify and report elder and dependent adult financial abuse.
- 3) A requirement that there is more than a mere allegation of financial abuse before imposing an obligation to report. Mandated reporters would be required to report only when both reasonable belief and corroborating evidence indicate abuse exists. Reporters are not required to conduct independent investigations.
- 4) Efficient investigation and data collection by directing reports to an adult protective services agency or law enforcement agency.
- 5) Extension of civil and criminal immunity to reporters reporting in good faith.

- 6) Extension of civil and criminal immunity to reporters providing information to adult protective services and law enforcement agencies.
- 7) Reimbursement of court and attorney fees should an unmerited action be brought against a mandated reporter.

Last Action: Chapter 372, Statutes of 2011.

SB 718 (Vargas)

SB 718 allows counties or the Ombudsman, to voluntarily adopt a secure and confidential electronic elder and dependent adult abuse reporting system which would manage the transfer of information otherwise contained in telephonic initial phone abuse reports, or subsequent written abuse reports. The bill also calls for reports to legislative committees on changes in the numbers of reports, numbers of dropped calls, and other criteria which would demonstrate success, or a lack thereof, of an electronic abuse reporting mechanism.

Last Action: Chapter 373, Statutes of 2011