

## Assembly Bill No. 1040

### CHAPTER 875

An act to add Article 4.05 (commencing with Section 14139.05) to, and to repeal Article 4.1 (commencing with Section 14139.7) of, Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, relating to long-term care.

[Approved by Governor October 13, 1995. Filed  
with Secretary of State October 16, 1995.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 1040, Bates. Long-term care.

Existing law provides for various programs that provide long-term care services for elderly and disabled adults.

This bill would require the State Department of Health Services to administer a pilot program, for the establishment of not more than 5 pilot project sites around the state.

The bill would require each pilot project to develop an administrative action plan. Local project sites would be required to have a long-term care services agency that would be responsible for implementing the plan.

The bill would require that the department set a capitated rate for payment unless the department determines one or more integrated programs cannot be capitated.

Existing law enacted in Chapter 305 of the Statutes of 1995 provides for the establishment of a long-term care integration pilot program.

This bill would repeal that provision.

*The people of the State of California do enact as follows:*

SECTION 1. Article 4.05 (commencing with Section 14139.05) is added to Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:

#### Article 4.05. Long-Term Care Integration Pilot Program

14139.05. The Legislature finds and declares that:

(a) Long-term care services in California include an uncoordinated array of categorical programs offering medical, social, and other support services that are funded and administered by a variety of federal, state, and local agencies and are replete with gaps, duplication, and little or no emphasis on the specific concerns of individual consumers.

(b) Although the need for a coordinated continuum of long-term care services has long been apparent, numerous obstacles prevent its development, including inflexible and inconsistent funding sources, economic incentives that encourage the placement of consumers in the highest levels of care, lack of coordination between aging, health, and social service agencies at both state and local levels, and inflexible state and federal regulations.

(c) The office of the Legislative Analyst and others have pointed out that California's systems of service delivery in a number of areas are dysfunctional, due to the fragmentation of responsibility and funding for interrelated services. Principles proposed by the Legislative Analyst to guide the restructuring of these systems include recognizing program linkages, coordinating service delivery mechanisms, removing barriers to innovation, and instilling financial incentives to promote prevention and coordination.

(d) It is both more efficient and more humane to restructure long-term care services so that duplicative and confusing eligibility criteria, assessments, intake forms, and service limitations will not inhibit consumer satisfaction, impede improvements in consumer health status, and result in the ineffective use of resources.

(e) There is a growing interest in community-directed systems of funding and organizing the broad array of health, support, and community living services needed by persons of all ages with disabilities.

(f) It is in the interest of those in need of long-term care services, and the state as a whole, to develop a long-term care system that provides dignity and maximum independence for the consumer, creates home and community based alternatives to unnecessary out-of-home placement, and is cost effective.

14139.1. (a) It is the intent of the Legislature to establish the Long-Term Care Integration Pilot Program that will integrate the financing and administration of long-term care services in up to five pilot project sites in the state. Contingent upon a state approved administrative action plan, at least one site shall be in a rural or underserved part of the state.

(b) It is further the intent of the Legislature to support, in each pilot project site, the development of a model integrated service delivery system that meets the needs of all beneficiaries, both those who live in their own homes and those who are in out-of-home placements, in a humane, appropriate, and cost-effective manner.

14139.11. The goals of this pilot program shall be to:

(a) Provide a continuum of social and health services that foster independence and self-reliance, maintain individual dignity, and allow consumers of long-term care services to remain an integral part of their family and community life.



(b) If out-of-home placement is necessary, to ensure that it is at the appropriate level of care, and to prevent unnecessary utilization of acute care hospitals.

(c) If family caregivers are involved in the long-term care of an individual, to support caregiving arrangements that maximize the family's ongoing relationship with, and care for, that individual.

(d) Deliver long-term care services in the least restrictive environment appropriate for the consumer.

(e) Encourage as much self direction as possible by consumers, given their capability and interest, and involve them and their family members as partners in the development and implementation of the pilot project.

(f) Identify performance outcomes that will be used to evaluate the appropriateness and quality of the services provided, as well as the efficacy and cost effectiveness of each pilot project, including, but not limited to, the use of acute and out-of-home care, consumer satisfaction, the health status of consumers, and the degree of independent living maintained among those served.

(g) Test a variety of models intended to serve different geographic areas, with differing populations and service availability.

(h) Achieve greater efficiencies through consolidated screening and reporting requirements.

(i) Allow each pilot project site to use existing funding sources in a manner that it determines will meet local need and that is cost-effective.

(j) Allow the pilot project sites to determine other services that may be necessary to meet the needs of eligible beneficiaries.

(k) Identify ways to expand funding options for the pilot program to include medicare and other funding sources.

14139.12. It is the intent of the Legislature that the costs of this pilot program to the General Fund will not exceed the direct and indirect costs that existing programs would expect to incur had the integrated services not been provided through this pilot program. If the Department of Finance determines, and informs the director in writing, that the implementation of this pilot program will result in any additional costs to the state relative to the provision of long-term care services to eligible beneficiaries, the department may terminate the operation of all or any part of this pilot program. The state shall not be held liable for any additional costs incurred by a pilot project site. Any such determination made by the Department of Finance shall be available to any party upon request.

14139.13. (a) Any contract entered into pursuant to this article may be renewed if the long-term care services agency continues to meet the requirements of this article and the contract. Failure to meet these requirements shall be cause for nonrenewal of the contract. The department may condition renewal on timely



completion of a mutually agreed upon plan of corrections of any deficiencies.

(b) The department may terminate or decline to renew a contract in whole or in part when the director determines that the action is necessary to protect the health of the beneficiaries or the funds appropriated to the Medi-Cal program. The administrative hearing requirements of Section 14123 do not apply to the nonrenewal or termination of a contract under this article.

(c) In order to achieve maximum cost savings the Legislature hereby determines that an expedited contract process for contracts under this article is necessary. Therefore, contracts under this article shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code. The contracts shall not take effect unless they are approved by the Department of Finance.

(d) The Commissioner of Corporations shall, at the director's request, immediately grant an exemption from Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code for purposes of carrying out any contract entered into pursuant to this article.

14139.2. The department shall serve as the lead agency for the administration of this chapter. The department's responsibilities shall include, but are not limited to:

(a) Development of criteria for the selection of pilot project sites.

(b) Selection of the pilot project sites to participate in the pilot program.

(c) Providing, or arranging for, technical assistance to participating sites.

(d) Development of specific performance outcome measures by which the program can be evaluated.

(e) Development of standards for complying with reporting requirements specified in state law for the programs integrated within the pilot program implemented pursuant to this article. The standards developed pursuant to this subdivision shall apply in lieu of any existing reporting obligations for the programs. The existing individual reporting requirements for programs integrated within the pilot program shall be deemed to have been met through the reports required by this section. Existing requirements for reports to the Office of Statewide Health Planning and Development shall not be eliminated.

(f) Seeking all federal waivers necessary for full implementation of the pilot program.

(g) Setting a payment rate consistent with Section 14139.5.

(h) Approval or disapproval of administrative action plans.

14139.21. The department may accept funding from federal agencies, foundations or other nongovernmental sources and may contract with qualified consultants to assist with the provision of



technical assistance, the development of data collection, reporting, and analysis systems, or any other purposes that further the goals of this demonstration program. The department shall not accept funds from any entity that stands to gain financially from implementation of the pilot program. In contracting with consultants to assist with the pilot program, the department shall specify timelines and delivery dates so as to ensure the continued implementation of the pilot program.

14139.22. (a) The department shall convene a working group that shall include the Director of Health Services, the Director of Social Services, and the Director of Aging, or the program staff from each of those departments who have direct responsibility for the programs listed in subdivision (b) of Section 14139.32, and may include the Director of Mental Health and the Director of Rehabilitation, or program staff from those departments with direct responsibilities for programs that may be included as a service in any pilot project site, and representatives from each pilot project site upon its selection.

(b) The department shall consult with the working group during the designing of the pilot program, in the selection of the pilot project sites, and in the monitoring of the program under this article, and shall utilize the working group as a resource for problem-solving and a means of maintaining interdepartmental and intersite communication.

(c) The working group shall strive to ensure that the pilot program under this article makes maximum use of home-based and community-based services, and throughout the continuum of care for each beneficiary, encourages the use of the least restrictive environment in which the beneficiary can receive appropriate care.

14139.23. Upon the implementation of the pilot program, responsibility for administering the programs integrated within the pilot program shall be transferred to the department, and shall be specified in an interagency agreement between participating departments. Prior requirements for any program integrated within this pilot program shall be deemed to have been met through compliance with the requirements established by this article, by the department for the pilot program by each county's approved plan, and by the approved applicable federal waivers.

14139.24. The department shall seek all federal waivers necessary to allow for federal financial participation in the pilot program implemented pursuant to this article. This article shall not be implemented unless and until the director has executed a declaration that the approval of all necessary federal waivers has been obtained by the department.

14139.25. Notwithstanding any other provision of this article, costs to the General Fund shall not exceed the amount that would have been expended in the absence of the pilot program.



14139.3. (a) Pilot project sites may be comprised of a single county, a multicounty unit, or a subcounty unit.

(b) Each selected site shall do all of the following:

(1) Establish a consolidated long-term care services fund that shall accommodate state and federal fiscal and auditing requirements, shall be used solely for the purposes described in this article, and shall not be used for any county pooled investment fund.

(2) Identify a local entity, that may be either a governmental entity or a not-for-profit private agency, to administer the fund. The local entity may be one that already exists, or may be established for the express purpose of administering the fund. This agency shall be designated as the long-term care services agency and shall contract with the department to carry out this article.

(3) Develop and provide to the department an administrative action plan that shall include, but is not limited to:

(A) A complete description of the covered scope of services and programs to be integrated.

(B) A complete description of the proposed long-term care delivery system and how it will improve system efficiency and enhance service quality.

(C) Demonstration of a willingness and commitment by the long-term care services agency to work with local community groups, providers, and consumers to obtain their input.

(D) Proposed measurable performance outcomes that the pilot program is designed to achieve.

(E) A description of the expected impact on current program services to Medi-Cal eligible beneficiaries and consumers of non-Medi-Cal services included in the integrated system.

(F) Assurance of minimal disruption to current recipients of long-term care services during the phase-in of the pilot project.

(G) Reasonable assurance that services provided will be responsive to the religious, cultural, and language needs of beneficiaries.

(H) Assurances that providers who serve the needs of special populations such as religious and cultural groups or residents of multilevel facilities as defined in paragraph (9) of subdivision (d) of Section 15432 of the Government Code and community care retirement communities as defined in subdivision (u) of Section 1771 of the Health and Safety Code, will be able to continue to serve those persons when willing to contract under the same terms and conditions as similar providers.

(I) Specific alternative concepts, requirements, staffing patterns, or methods for providing services under the pilot project.

(J) A process to assure that Medi-Cal dollars are appropriately expended in accordance with federal requirements.

(K) A description of how the pilot project site will maintain adequate fiscal control and ensure quality of care for beneficiaries.



(L) A description of how the pilot project site will coordinate, relate to, or integrate with Medi-Cal managed care plans, local managed care plans, and other organizations which provide services not part of the pilot project.

(M) A proposed timeline for planning and startup of the pilot project.

(N) An estimate of costs and savings.

(O) Demonstration of the financial viability of the plan.

(c) The administrative action plan shall reflect a planning process that includes long-term care consumers, their families, and organizations that represent them, organizations that provide long-term care services, and representatives of employees who deliver direct long-term care services. The planning process may include, but is not limited to, the members of the local advisory committee required pursuant to Section 14139.31.

(d) The administrative action plan shall receive the approval of the county board of supervisors before it is submitted to the department for final state approval. The board of supervisors shall present evidence of the commitment to the administrative action plan of all publicly funded agencies that currently serve consumers who will be eligible under the pilot project, and all publicly and nonpublicly funded agencies that will be responsible for providing services under the pilot project. This evidence may include resolutions adopted by agency governing bodies, memoranda of understanding, or other agreements pertinent to the implementation of the plan.

14139.31. In order to be selected, a pilot project site shall demonstrate that it has an active advisory committee that includes consumers of long-term care services, representatives of local organizations of persons with disabilities, seniors, representatives of local senior organizations, representatives of employees who deliver direct long-term care services, and representatives of organizations that provide long-term care services. At least one-half of the members of the advisory committee must be consumers of services provided under this chapter or their representatives.

14139.32. (a) The administrative action plan shall identify the funds to be transferred into the consolidated long-term care services fund.

(b) The funds shall include Medi-Cal long-term institutional care, the Medi-Cal Personal Care Services Program, and the In-Home Supportive Services Program and may include funds from the following programs and services:

- (1) Multipurpose Seniors Services Program.
- (2) Alzheimer's Day Care Resources Centers Program.
- (3) Linkages Program.
- (4) Respite Program.
- (5) Adult Day Health Care Program.



(6) Medi-Cal home health agency services.  
(7) Medi-Cal home-based and community-based waiver programs.

(8) Medi-Cal hospice services.

(9) Medi-Cal acute care hospital services.

(10) Other Medi-Cal services, including, but not limited to, primary, ancillary, and acute care.

(c) Optional program funds enumerated in subdivision (b) of Section 14139.32 shall be included in the long-term care services fund in any case where a program was funded prior to its integration into the pilot project.

(d) In determining which project sites to select for participation in the pilot program, the department shall give preference to those sites that include funds from the largest number of programs existing within the project site at the time the site applies for selection, provided the administrative action plan meets all other selection criteria. With the exception of up to one rural county, preference shall be given to project sites that include primary, ancillary, and acute care in the consolidated fund, provided their administrative action plan meets all other selection criteria.

14139.33. The administrative action plan shall delineate the services to be provided to all eligible beneficiaries. At a minimum, services to be provided shall include all of the following:

(a) Care or case management, including assessment, development of a service plan in conjunction with the consumer and other appropriate parties, authorization and arrangement for purchase of services or linkages with other appropriate entities, service coordination activities, and followup to determine whether the services received were appropriate and consistent with the service plan. Service coordination activities shall ensure that the records of each beneficiary are maintained in a consistent and complete manner and are accessible to the beneficiary or his or her family, and providers involved in his or her care. This shall be the case whether a beneficiary resides in his or her own home or in a licensed facility.

(b) Education of beneficiaries, their families, and others in their informal support network, including independent living skills training to maximize the independence of the beneficiary.

(c) In-home services.

(d) Adult day services.

(e) Institutional long-term care.

(f) Hospice services.

(g) Linkages to acute care services and primary care services, if they are not included in the integrated plan.

14139.34. The administrative action plan may also include any of the following services:

(a) Transportation.





- (b) Home modification.
- (c) Medical services, including, but not limited to, primary, ancillary, and acute care.
- (d) Housing and residential services.
- (e) Other services determined by the pilot project to be necessary to meet the needs of eligible beneficiaries.

14139.35. The department may exempt a pilot project site from the requirements of subdivisions (d) and (f) of Section 14139.33 if both the following conditions are met:

(a) State funds were not being used in the geographic area covered by the pilot projects to provide those services at the time of application to the pilot program.

(b) The pilot project site can demonstrate to the department how it plans to develop these services, and within what timeframe, during the pilot program.

14139.36. (a) If primary, ancillary, and acute care are not included among the services offered by a pilot project site, the administrative action plan shall include all of the following:

(1) A mechanism for tracking the usage of these services by beneficiaries of the plan.

(2) Provisions for the future inclusion of those services in the integrated plan, including the process and timeline by which they will be integrated.

(b) The department shall, in consultation with the pilot project sites, apply to the federal health care financing administration for a waiver that allows the pilot projects to include medicare funds in the long-term care services fund. Upon receipt of the waiver, within a time period to be designated by the department specific to each site, each pilot project site shall assume responsibility for primary, ancillary, and acute care services.

14139.37. The administrative action plan shall delineate specifically how the pooled funds will be used to deliver services to all eligible recipients in the geographic area covered by the pilot project site.

14139.38. Participating counties shall continue their financial maintenance of effort for each of the programs integrated within the pilot program under this article. The amount of a county's maintenance of effort shall be the same as if the program were not integrated within the pilot program pursuant to this article, and funds equal to this amount shall be deposited in the local consolidated long-term care services fund.

14139.4. (a) The long-term care services agency shall be responsible and at risk for implementing the administrative action plan. The long-term care services agency shall do all of the following:

(1) Respond, or provide for response to, consumer needs on a 24-hour, seven-day-a-week basis.

(2) Conduct comprehensive assessments.



(3) Determine eligibility for long-term care services based on the assessment information.

(4) Provide for contractual arrangements for the provision of, and payment for, sufficient services to meet the long-term care needs of the eligible beneficiary in his or her home, community, residential facility, nursing facility, or other location based on the mix of programs or services included in the administrative action plan.

(5) Provide linkages to acute care hospitals.

(6) Maintain control over utilization of services that are authorized.

(7) Monitor the quality of care provided to consumers.

(8) Maintain a consumer grievance process.

(9) Manage the overall cost-effectiveness of the pilot project for its duration.

(b) Services may be provided through contracts with community-based providers. In instances where a specific service does not exist in the community, the long-term care services agency may facilitate the development of local programs that provide these services or may provide the services directly, if doing so can be demonstrated to be cost effective.

14139.41. (a) For purposes of this chapter, “eligible beneficiaries” shall be defined as persons meeting all the following criteria:

(1) Are Medi-Cal eligible.

(2) Are functionally or cognitively impaired. For purposes of this paragraph “cognitively impaired” means having an impairment caused by organic brain disorder or disease.

(3) Are adults.

(4) Need assistance with two or more activities of daily living or are unable to remain living independently without the long-term care services provided through the pilot program operated pursuant to this article.

(b) To the extent eligible beneficiaries also receive services from a regional center that serves a pilot project site, the pilot project shall delineate in its administrative action plan how services will be coordinated by the two agencies.

14139.42. (a) Each pilot project site shall serve all eligible beneficiaries who live in the geographic area served by the long-term care services agency. In order to eliminate duplicative administrative costs and to achieve a more efficient delivery system, pilot project sites shall also serve non-Medi-Cal eligible individuals who, but for the implementation of the pilot project, would have received services from programs whose funds are included in the consolidated long-term care services fund.

(b) Funding sources allocated for persons who are not eligible for Medi-Cal benefits may be integrated into the consolidated long-term care services fund. To the extent those funds are spent on services for



persons who are not eligible for Medi-Cal benefits, they shall be segregated from capitated funds for Medi-Cal beneficiaries. No funds derived from the capitated Medi-Cal rate may be used for persons who are not eligible for Medi-Cal.

14139.43. This article shall not preclude a long-term care services agency from entering into additional agreements, separate from the pilot project, to serve additional individuals or populations.

14139.44. Pilot project sites shall ensure provider reimbursement rates that are adequate to maintain compliance with applicable federal and state requirements.

14139.5. The department shall set a capitated rate of payment that is actuarially sound and that is based on the number of beneficiaries who are eligible for Medi-Cal benefits to be enrolled in the pilot project, the mix of provided services and programs being integrated, and past Medi-Cal expenditures for services. The rate shall reflect, and the contract shall delineate, the rate at which the local long-term care services agency shall assume the total risk and the mechanisms that shall be used, which may include, but are not limited to, risk corridors, reinsurance, or alternative methods of risk assumption.

14139.51. If the department determines that a program or programs cannot reasonably be capitated, funds may be transferred separately from the capitation payment. The amount of those noncapitated funds shall be based on amounts that would have been expended by the state for those programs in the absence of the pilot program implemented under this article.

It is the intent of the Legislature that, if any local pilot project experiences net savings, those savings shall be used for project expansion and improvement, or to build the required tangible net equity, or if there is no need for expansion or improvement or to build tangible net equity, may be shared by the long-term care services agency and the state.

14139.53. (a) The department shall develop criteria to ensure that pilot project sites maintain fiscal solvency, including by not limited to, the following:

(1) The capability to achieve and maintain sufficient fiscal tangible net equity within a timeframe to be specified by the department for each pilot project site.

(2) The capability to maintain prompt and timely provider payments.

(3) A management information system that is approved by the department and is capable of meeting the requirements of the pilot program.

(b) Any pilot project established under this article shall immediately notify the department in writing of any fact or facts that are likely to result in the pilot project or the long-term care services agency being unable to meet its financial obligations. The written



notice shall describe the fact or facts, the anticipated financial consequences, and the actions that will be taken to address the anticipated consequences, and shall be made available upon request unless otherwise prohibited by law.

14139.6. (a) It is the intent of the Legislature that local entities that are potential participants in this pilot program shall be assured of sufficient time to plan their pilot projects, and that the selected pilot project sites shall be assured of sufficient time to phase in the implementation of their programs. To that end, it is the intent of the Legislature that the department, in consultation with potential pilot project sites and the pilot program working group, shall develop a realistic timeline with guidelines for the planning and implementation of pilot projects.

(b) Nothing in this chapter shall prohibit the department, in consultation with the pilot program working group, from establishing a two-stage selection process in which local pilot project sites may be selected on a preliminary basis. Final selection of local pilot project sites shall be based on the completion of an administrative action plan that the department determines satisfactorily meets the selection criteria.

14139.61. The department may adopt emergency regulations as necessary to implement this article in accordance with the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The initial adoption of emergency regulations shall be deemed to be an emergency and considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, or general welfare. Emergency regulations adopted pursuant to this section shall remain in effect for no more than 180 days.

14139.62. Contingent on the availability of funding, the department shall evaluate the effectiveness of each pilot project on a schedule that coincides with federal waiver reporting requirements, and shall make this information available upon request. The department's evaluation shall include, but not be limited to, the following:

(a) Whether or not the pilot project has reduced the fragmentation and improved the coordination of the long-term care delivery system in the pilot project area.

(b) Whether or not the long-term care delivery system is more efficient and makes better use of available resources.

(c) Whether or not the goals identified in Section 14139.11 have been met.



SEC. 2. Article 4.1 (commencing with Section 14139.7) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code is repealed.

O

