Elder Issues in Nevada

Commission on Aging Subcommittee Concerning Legislative Issues
Information Sheet for Legislators
2017

AGING AND DISABILITY SERVICES DIVISION
COMMISSION ON AGING

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The Nevada Commission on Aging Subcommittee Concerning Legislative Issues is pleased to offer this overview and discussion of key issues impacting Nevada's senior community. The "Information Sheets" are intended as a starting point to frame a useful dialogue with legislators and candidates for office.

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COMMISSION ON AGING SUBCOMMITTEE CONCERNING LEGISLATIVE ISSUES
ELDER ISSUES IN NEVADA

OVERVIEW

Elder issues are issues for people of all ages; those who have lived long enough to be regarded as an elder, generously assist family, friends and neighbors and serve in the role of caregivers. When we provide for the safety and security of our elders, people of all ages and our community reap enormous benefits.

Nevada's aging population is one of the fastest growing in the nation. Today, approximately 14% of the state's population is over age 65. Growth in the oldest segment, persons 85 and older, is exponential increasing by 78% over the last decade. This group is most likely to be in ill health and at-risk of institutional placement.

In the later years of life, most individuals want to remain in their own homes. To avoid nursing home placement, older individuals and their families often need a range of quality, affordable community-based services.

Helping individuals remain in their home is the most cost effective option for the individual and Nevada. On average, the same dollars will support 3 individuals with community-based services for every one person placed in a nursing home. Yet, our current system is inadequate to meet the existing and growing need for community-based services.

The issues identified in this paper focus on key areas of importance to support our elders in their quest to remain independent:

- Access to Services
- Behavioral, Cognitive and Mental Health
- Family Caregivers
- Legal Rights
- Medicaid Managed Long Term Services and Supports

Each section provides a brief overview of the issue, description of unmet needs and actions needed for Legislative support.

The Commission on Aging Legislative Subcommittee encourages you to share your views on these issues and respectfully requests your support for the items identified in order to make a meaningful difference in our capacity to care for Nevada's elders.

ACCESS TO SERVICES

Understanding the Issues

An estimated 14% or 400,000 Nevada residents are 65 years of age or older according to the U.S. Census. Eight percent of those older than 65, approximately 31,798, live in poverty at 100% of the Federal Poverty Level, and 36% of them have a disability. The Aging and Disability Services Division NRS 439 Report of Community Needs and Priorities for Older Nevadans, published in June 2016, said that "Case Management, Home Health Care and Transportation" were the three most needed services, however that all home and community-based services were important to keep older people in their homes and save taxpayer dollars.

The "Olmstead Decision" (ADA Title II, 1990) enables people with disabilities to live in the least restrictive setting of their choice. Nevada became an Olmstead friendly state when an Olmstead Plan was approved by the Nevada State Legislature in 2003. Nevada is currently in the process of updating the Aging and Disabilities Services Strategic Plans that has Olmstead concepts incorporated throughout the document. Those concepts include: Access to appropriate services to keep one living in the community rather than an institution, access to services at a reasonable pace, and access to services whether budgeted or not, if necessary to avoid premature institutionalization, be accommodated.

The state is obligated to coordinate efforts with Medicaid to ensure access to Long Term Services and Supports (LTSS) and to disseminate knowledge about access to LTSS, habilitation and rehabilitation options to community providers, individuals needing services, family members and primary support providers.

Unmet Needs

- **Waiver Slots**- keep older adults living in the community as opposed to being placed in an institutional setting. For older frail adults, waivers provide access to an array of community-based services including: personal care (bathing, grooming, toileting, transferring/ambulating, dressing, eating); adult day care; respite care; homemaker services; chore service; and, adult companion. These services are provided in: an individual's home, community settings, Homes for Individual Residential Care, Residential Group Care or Assisted Living Facilities. Costs for community-based services are significantly less than for a nursing home placement. To be eligible for a waiver, an individual has to be at imminent risk of nursing home placement.

  Currently, there are more than 450 older adults waiting more than 8 months for access to Home and Community-Based Services waivers. While waiting to receive a waiver, these elders are at highest risk of being placed in a nursing home, often against their wishes, or die while on the waiting list. Slots for waiver services need to be increased to eliminate the waiting lists and meet the needs of a rapidly growing aging population. The Governor in the Strategic Plan Framework for Nevadans has called for a 20% increase in the availability of home and community-based services to vulnerable adults.

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ACCESS TO SERVICES (continued)

- **Medicaid Reimbursement Rates for Waiver Services**– Reimbursement rates for many providers offering community-based long term care services including services in the home, personal care and adult day health care have not been adjusted since 2002. Since then, Medicaid has been expanded to provide more services to mothers and children, the Aged, Blind and Disabled, and childless adults. Current reimbursement rates do not fully support the cost of delivering services or the capacity for expansion to meet the growing demand for waiver services. After more than a decade of low reimbursement rates, many providers no longer accept Medicaid clients or have gone out of business.

  As Chair of the Subcommittee to Study Postacute Care, Nevada Assemblywoman Robin Titus, M.D., has authored a letter asking the Governor's consideration of Medicaid rates in his budget. The letter requests:
  - "Review of the Medicaid rate methodology for reimbursing postacute care facilities and personal care and home health services"[1]
  - "Inclusion of an appropriation in the Governor's recommended and legislatively approved budget that supports payment rates that are sufficient to ensure that Medicaid beneficiaries have access to covered services."[2]
  - "Index the reimbursement rate to increase with inflation in future biennia."[3]

  Additionally, in the event there is an increase in the minimum wage, that the provider reimbursement rate be adjusted concurrently.

Action Needed

1) Increase the number of frail elderly consumers receiving Medicaid Home and Community-Based waiver services by funding new placements, to eliminate waiting lists and meet the increasing demand due to rapid growth in the state's aging population.
   - Budget No. M540 within the Division of Health Care Finance and Policy (Medicaid)

2) Implement all of recommendations in the letter sent to Governor Sandoval from Nevada Assemblywoman Robin Titus, M.D., Chair Subcommittee to Conduct a Study of Postacute Care (A.B. 242, 2015) on July 8, 2016, regarding reimbursement rates for providers under Medicaid.
   - Bill Draft Requests (BDR) 209 - Provides for the Periodic Review of Rates Under the State Plan for Medicaid
   - BDR 368 – Requires Analysis of Adequacy of Rates of Reimbursement Paid through Medicaid Waiver Programs for Person Care Services
   - BDR 369 – Requires Comparative Analysis of Rates of Reimbursement Paid for Personal Care Services and Home and Community-Based Services Furnished by Certain Providers
   - Senate Bill 28 - Requires an Annual Review of Certain Rates Paid by Medicaid in this State

[1] Letter from Robin L. Titus, M.D., Nevada State Assemblywoman, Chair, Subcommittee to Conduct a Study of Postacute Care to Governor Brian Sandoval, July 8, 2016.
[2] Ibid.
[3] Ibid.

BEHAVIORAL, COGNITIVE AND MENTAL HEALTH

Understanding the Issues

- It is estimated that 20 – 25% of individuals age 65 and older have a mental health disorder, often compounded by chronic physical diseases of aging (http://www.apa.org/about/gr/issues/aging/mental-health.aspx)
- Older adults can be affected by various behavioral, cognitive and mental health challenges including:
  - Ongoing and/or lifelong psychiatric illnesses
  - Onset of illnesses with behavioral and/or cognitive symptoms such as dementia or stroke
  - Disorders due to age-related disability, life events or caregiving such as depression or anxiety
- Based on 2015 Census estimates, 84,400 – 105,500 older Nevadans are affected by these disorders (http://www.census.gov/quickfacts/table/PST045215/32)
- Nevada has one of the highest geriatric suicide rates in the U.S. One in four attempted suicides result in death; approximately 60% saw their doctor within one month of their suicide
- Dementia affects 1 in 9 at age 65 and almost 50% of those age 85 and over. Dementia is not a normal part of the aging process. An individual with dementia can experience cognitive and behavioral symptoms that benefit from specialized interventions.

Unmet Needs

Nevada's current health care system is inadequate to effectively meet the specialized behavioral health needs of older adults. Untreated mental health issues frequently result in poorer health outcomes, along with increased health care utilization, levels of disability/impairment, stress on caregivers, mortality and risk of suicide. (https://www.ncoa.org/news/resources-for-reporters/get-the-facts/healthy-aging-facts/) The scarcity of providers with expertise in caring for older adults with behavioral issues yields additional negative consequences including inappropriate admissions for inpatient psychiatric care, unsafe discharges from medical settings and limited access to proven cost-effective treatments.

Further challenges to addressing unmet needs include:

- Misconceptions about the normal aging process; lack of understanding regarding behavioral health issues experienced by older adults
- Limited training for medical professionals in screening, diagnosis, treatment and behavior management including use of drug-free techniques
- Lack of education and training for paid and family caregivers
- Limited number of providers offering evidence-based programs focused on behavioral/cognitive symptoms
- Reimbursement levels inadequate to sustain the higher staffing and training costs for community-based providers to serve behaviorally complex older adults

Action Needed

1) Expand Nevada Medicaid's Behavioral Complex Care Program to include community-based long term care services
   - This change will: 1) ensure parity in reimbursement between institutional and community-based providers serving behaviorally complex older adults, 2) expand the number of community-based care options for older individuals who wish to remain in their own home for as long as possible and, 3) shift the state's financial obligation to less costly types of care.

2) Fund evidence-based behavioral health demonstration projects targeted to deliver better care to older adults with behavioral, cognitive and mental health challenges
   - Demonstration projects would implement tested interventions to deliver cost-efficient quality care, reduce unnecessary emergency and hospital admissions, promote safe discharges from medical settings and decrease premature nursing home placements.

BDR 63 - Establishes an Interim Study Committee to Research Issues Regarding the Behavioral Health and Cognitive Care of Older Persons

FAMILY CAREGIVERS

Understanding the Issues

- Key statistics about family caregivers:
  - There are an estimated 500,000 Nevadans providing approximately 400 million hours annually of unpaid care to family, friends and neighbors live independently (AARP)
  - Family caregivers provide the majority of unpaid care for their loved ones, at an estimated saving to Nevada taxpayers of $4 billion per year (AARP)
  - Up to 75% of caregivers are women; the majority are middle aged and employed outside of the home
- Caregiving tasks:
  - Personal care – Includes tasks such as meal preparation, bathing and managing incontinence
  - Medications – Almost 50% of caregivers administer 5 to 9 prescriptions each day
  - Complex medical tasks – Includes wound care, intravenous medications and injections
  - Coordination of care and services – Accessing community-based services such as personal care, managing medical care, transportation, financial affairs and medical insurance
- Impact on caregivers:
  - Physical and emotional stress results in higher rates of depression, chronic illness and even death
  - 75% of caregivers are employed outside of the home. Businesses are impacted by lost productivity due to employees fulfilling caregiving responsibilities.
  - Financial stress includes ongoing out-of-pocket expenses, lost workplace time, and/or resignation from a job in order to provide full time care
  - Nursing home placement is often the only option when caregivers can no longer manage caring for a loved one at home. According to 2016 Genworth Cost of Care Survey, Nevada's median cost of a semi-private room in a nursing home is over $95,000 per year; these costs are born by families, insurance, Medicaid and other government programs. The impact on Medicaid is significant as older adults utilize over half of all dollars spent even though they are a small percentage of the total enrolled.

Unmet Needs

- Education and training – Family caregivers receive little or no education or training to care for their loved ones' physical and mental health conditions yet are often called upon to provide complex medical or nursing tasks along with emotional support for loved ones with chronic diseases and cognitive disorders, such as Alzheimer's disease.
- Supportive services – Home and community-based services, such as adult day care, personal care, respite and case management help family caregivers manage caregiving tasks, reducing burden and stress. There is already a shortage of affordable, quality community-based services and providers; the projected demands of the state's growing senior population will place severe stress on a fragile system, increasing the risk of costly nursing home placement.
- Respite – Defined as a break from the demands and responsibilities of caregiving

Action Needed

1) Caregivers who are employed need flexibility to allow them to use their earned time off to provide care. BDR 637 "authorizes the use of leave for employee caregiving".
2) Provide state funding to Nevada's Aging and Disability Resource Centers (federally designated entities serving as a no-wrong door/single point of entry into the long-term supports and services system) to expand resources for family caregivers including the provision of information, counseling and assistance to empower individuals and families to make informed decisions about their long-term care needs, access public/private services and reduce the negative consequences of caregiving.

LEGAL RIGHTS

Understanding the Issues

In the continuing effort to strengthen the laws preventing older people in Nevada from being maltreated, it has become evident that there are some weaknesses to be addressed. The penalties for neglecting an older person are too lenient. The mandatory reporting laws contain a clause that could allow for immunity from civil or criminal liability for the perpetrator. And, as has been widely reported, the guardianship laws require numerous changes to protect people who are facing guardianship and those who are under guardianship.

Unmet Needs

- Penalties for neglecting an older person and causing physical pain or mental suffering or for causing substantial bodily or mental harm or death are too lenient—ranging from a gross misdemeanor to a category B felony and imprisonment from 2-6 years. This compares to penalties of up to 20 years for substantial bodily harm or death as the result of child abuse or of causing substantial harm or death when driving under the influence.
- Under the mandatory reporting laws, immunity is granted from civil or criminal liability for reporting, investigating or submitting information about elder abuse. This allows people who commit elder abuse and then report it to not be charged with the crime because they are immune from prosecution.
- While the Federal Arbitration Act allows for arbitration clauses in long-term care facility contracts, the contracts being used in Nevada are often not fair to both parties due to the pressures of the moment the contract was signed, the sophistication level of the parties, and whether the person signing the document understands it.
- People who are under guardianship in Nevada have no statutory bill of rights to assure proper treatment.

Action Needed

1) Change the penalties in NRS 200.5099(2)(b) to reflect the same penalties as are prescribed for neglect of a child, which is a Category B felony with a penalty of not less than 2 years and not more than 20 years. NRS 200.508(2)(a)(2).
2) Add a part 4 to NRS 200.5096 that states “the immunity provisions of NRS 200.5096 do not apply to any person who commits, conspires to commit, aids and abets, or is an accessory after the fact, to elder or vulnerable person abuse, neglect, abandonment, isolation, and exploitation or any crime under NRS 200.5091- NRS 200.50995.
3) Require that all long-term care contracts contain a SEPARATE mandatory arbitration agreement that explains all of the ramifications of signing the agreement, including the loss of the right to take grievances to court. The agreement should clearly state that either party can opt out of mandatory arbitration at any time.
4) Adopt the Nevada Supreme Court Commission to Study the Administration of Guardianships in Nevada’s Courts recommendations regarding creating statutory rights for people who are under guardianship.

MEDICAID
MANAGED LONG TERM SERVICES AND SUPPORTS (MLTSS)

Understanding the Issues

- **Guiding Principles**
  - Implementation of CMS Medicaid and CHIP Managed Care Final Rule (CMS-2390-F)
  - Individuals enrolling in Medicaid MLTSS have a choice of plan and providers
  - Transparency at every phase of study and any implementation
  - Reinvestment of savings to improve access to and quality of home and community based care. Savings should be allocated to increase eligibility for services so that more individuals can receive HCBS. (AARP Letter 12/16/15)
- **Key concept from new CMS Rules for MLTSS**
  - Creates a structure for engaging stakeholders in the monitoring of Medicaid MLTSS programs;
  - Requires a deliberative state planning process, which includes standards for a state's readiness reviews of managed care plans;
  - Enacts payment methodologies that reflect the goals of Medicaid MLTSS programs to improve the health of populations, support beneficiaries' experience of care, support community integration of enrollees, and control costs;
  - Requires the creation of an independent beneficiary support system that serves as a centralized point of contact to help individuals navigate the service delivery system;
  - Requires person-centered processes to ensure beneficiaries' medical and non-medical needs are met and they have the quality of life and level of independence desired;
  - Sets standards to evaluate the adequacy of the network for Medicaid MLTSS programs, the qualifications and credentialing of providers, and the accessibility of providers to meet the needs of Medicaid MLTSS enrollees.

Unmet Needs

- Person and family centered planning which allows individuals to live as independently as possible and exercise control over their own care arrangement (AARP)
- Policies and practices to fully remediate historical LTSS institutional bias; most older adults would prefer to receive services in their homes and communities (AARP)
- Adequacy of community-based provider network to meet needs of consumers, including those with costly illnesses and/or with medically challenging conditions and provide services in a timely manner
- Insufficient funding to offer a full continuum of long term services and supports and eliminate waiting lists for services
- Full inclusion of family caregivers in service planning and delivery

MEDICAID
MANAGED LONG TERM SERVICES AND SUPPORTS (MLTSS)

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MANAGED LONG TERM SERVICES AND SUPPORTS (MLTSS)
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Action Needed

1) **Legislative guidance and oversight required to decide future of Medicaid MLTSS and possible transition to managed care in Nevada**
   - **Decision-Making Period**
     - Complete transparency at each step in the process including clearly defined processes of decision making and any transition implementation action plan
     - Stakeholder input at each step in process to consider adoption and implementation of managed care for Medicaid MLTSS
   - **Oversight, if Transition to Managed Care**
     - State responsibilities for oversight
       - Robust MCO-readiness review process (AARP)
       - Ensure all mandated requirements and standards are in compliance
       - Commitment to actively monitor and use all enforcement tools available (AARP)
     - State and managed care plans must create stakeholder and advisory groups to oversee MLTSS
       - State's stakeholder group to be responsible for soliciting and addressing opinions of beneficiaries and other stakeholders in the design, implementation and oversight of a state's Medicaid MLTSS.
       - Managed care organizations providing Medicaid MLTSS must have a member advisory committee comprised of a reasonably representative sample of the populations receiving long term services and supports.