

CONCURRENCE IN SENATE AMENDMENTS

AB 81 (Committee on Budget)

As Amended June 22, 2020

2/3 vote. Budget Bill Appropriation Takes Effect Immediately

**SUMMARY:**

This is a health trailer bill for 2020-21. It contains necessary changes related to the Budget Act of 2020. This bill makes various statutory changes to implement the 2020-21 budget. Specifically, this bill reauthorizes the skilled nursing facilities quality assurance fee, and provides counties temporary flexibility in the implementation of the Mental Health Services Act in light of the COVID-19 Public Health Emergency.

**The Senate Amendments:**

*Skilled Nursing Facilities Quality Assurance Fee*

- 1) Exempt freestanding pediatric subacute skilled nursing facilities from paying the state skilled nursing facility (SNF) Quality Assurance Fee (QAF).
- 2) Revise the QAF to be administered based on calendar years rather than fiscal years.
- 3) Require the Department of Health Care Services (DHCS) to assess interest at the rate of 7% per year, when a SNF fails to pay all or part of the QAF within 60 days of the due date, until the QAF and interest has been paid in full.
- 4) Authorize DHCS to deduct any unpaid assessments, including any interest and penalties owed, from a debtor SNF, from any Medi-Cal payments made to that SNF. Require DHCS to provide prior written notice to both the SNF itself, and to any related ownership facility. Authorize DHCS to take into account the financial condition of a related facility and apply the deduction over time.
- 5) Require a SNF, in the event of a merger, acquisition, or change of ownership, to be responsible for paying to the state the full amount of outstanding QAF payments, including any interest and penalties. Authorize a SNF considering a change in ownership to request the status of QAF payment obligations from DHCS.
- 6) Authorize DHCS, when all or any part of the QAF goes unpaid, to take any or all of the following actions: a) assess a penalty of up to 50% of the total unpaid fee, and any interest assessed; b) recommend to the State Department of Public Health that license or Medi-Cal certification renewal, or approval of a change of ownership application, be delayed until the full amount of the QAF, penalties, and interest has been paid; or c) delay approval of a new Medi-Cal provider agreement, or provider agreement transfer to a successor facility, in the event of a merger, acquisition or ownership change, until the full amount of the QAF, penalties and interest is paid in full, or until the successor facility has entered into a payment agreement with DHCS for the outstanding debt, taking into account the financial situation of the facility and potential impact on services to Medi-Cal beneficiaries.
- 7) Authorize DHCS to, as a condition of approving a new or transferred Medi-Cal provider agreement, to require either or both: a) the successor facility to enter into a payment agreement with DHCS for outstanding QAF-related debt; and b) the successor facility owner

to enter into an alternative payment agreement with DHCS that takes into account the financial situation of the facility and the potential impact on the delivery of services to Medi-Cal beneficiaries.

- 8) Authorize DHCS to waive all or a portion of the interest or penalties assessed for a petitioning SNF if DHCS determines, in its sole discretion, that the SNF has demonstrated an undue financial hardship for the SNF or a significant financial difficulty in providing services to Medi-Cal beneficiaries. Require that a waiver be conditioned on the SNF's agreement to pay outstanding fee amounts on an alternative schedule that takes into account the financial situation of the facility and potential impact on service delivery. Require DHCS to post on its website a list of all SNFs that receive a waiver and the amount of interest or penalty being waived.
- 9) Extend the sunset on this QAF from December 31, 2020 to December 31, 2022 and repeal the statute on January 1, 2024.
- 10) Continue to exempt from the Skilled Nursing Facility Quality and Accountability Supplemental Payment System (QASP) special program services for the mentally disordered.
- 11) Increase penalties, imposed by the Department of Public Health, on facilities for failing to meet the nursing hours or direct care service hours per patient per day statutory requirements as follows: a) from \$15,000 to \$25,000 if the facility fails to meet the requirements for five to 49% of the audited days; and b) from \$30,000 to \$50,000 if the facility fails to meet the requirements for over 49% of the audited days. Authorize a facility to request an appeal based upon a determination that does not result in an assessment.
- 12) Authorize DHCS to incorporate, under the QASP, an additional performance measure based upon a facility's compliance with requirements related to the COVID-19 Public Health Emergency described in All Facility Letters issued by the Department of Public Health.
- 13) Require DHCS to pay a supplemental payment, by April 30 of 2021 and 2022 to qualified facilities based on statutory criteria and according to performance measure benchmarks determined by DHCS in consultation with stakeholders.
- 14) Discontinue the QASP on January 1, 2023, and requires DHCS to convene a stakeholder process by September 1, 2021 to develop a successor supplemental payment or similar quality-based payment methodology to replace the existing QASP, to begin in 2023.
- 15) Authorize DHCS to deduct a SNF's unpaid debt, from unpaid QAFs, interest, or penalties, from QASP payments.
- 16) Authorize SNFs to account for the costs of caregiver trainings that enhance the skills, education, or career advancement for nursing home workers, and trainings provided through a joint labor-management Taft-Hartley fund, as direct passthroughs of proportional Medi-Cal costs.
- 17) Authorize DHCS to continue and update specific geographic peer groups for facility rate setting based on facility characteristics in consultation with stakeholders.

- 18) Increase the limit on direct and indirect resident care labor costs from the 90th to the 95th percentile.
- 19) Require DHCS to audit facility costs and revenues that are associated with the COVID-19 Public Health Emergency to determine whether a facility has adequately used increased Medicaid payments associated with the emergency only for allowable costs, which include: patient care, increased wages or benefits, shift incentive payments, staff retention bonuses, pay differential for workers employed by more than one facility, and overtime payments to non-managerial workers, personal protective requirement, COVID-19 testing for any workers, infection control measures and equipment, and staff training.
- 20) Require a facility that received increased Medicaid payments associated with COVID-19 to provide any information requested by DHCS on emergency-related costs and revenues at the time and in the manner specified by DHCS. Require DHCS to recoup any amounts of increased Medicaid payments that were not used to support the delivery of patient care. Require DHCS to seek any state plan amendments deemed necessary to conduct these audits, and only implement these provisions to the extent any necessary federal approvals are obtained, and federal financial participation is available and not otherwise jeopardized.
- 21) Stipulate that the annual increase in the weighted average medi-Cal reimbursement rate shall continue to be 3.62% until December 31, 2020, and that the reimbursement rates established for the rate period of August 1, 2020 through December 31, 2020 shall be no less than the amounts that would have been established under the reimbursement methodology used in the 2019-20 rate year.
- 22) Authorize DHC to condition a SNF's receipt of the annual rate increase for August 1, 202 to December 31, 2020, and for the 2021 and 2022 calendar years on that facility's good faith efforts to comply with any requirements related to the COVID-19 Public health Emergency described in Department of Public Health All Facility Letters.
- 23) Prohibit the weighted average Medi-Cal reimbursement rate increase from exceeding the applicable federal upper payment limit.
- 24) Require the annual aggregate increase in the weighted average Medi-Cal reimbursement rate for the 2021 calendar year to be 3.5% plus the projected cost of complying with new state or federal mandates.
- 25) Require the annual aggregate increase in the weighted average Medi-Cal reimbursement rate for the 2022 calendar year to be 2.4% plus the projected cost of complying with new state or federal mandates.
- 26) Require SNFs, beginning in 2021, to demonstrate compliance with the following Medi-Cal requirements: a) direct care service hours per patient day; b) applicable minimum wage laws; and c) wage pass-through requirements. Require DHCS, when it determines that a facility has been out of compliance with any of these requirements, to assess a monthly penalty up to \$50,000 until the facility demonstrates compliance to DHCS. Limits these penalties to 4% of the total Medi-Cal revenue received by the facility in the previous calendar year. Authorize DHCS to assess additional penalty amounts if a facility is out of compliance for multiple years. Authorize DHCS to waive the penalties for a facility if DHCS determines that the

facility demonstrates a high likelihood of undue financial hardship or difficulty in providing services to Medi-Cal beneficiaries.

- 27) Make these provisions contingent on receipt of any necessary federal approvals and that federal financial participation is available and not otherwise jeopardized, and authorize DHCS to modify these provisions as necessary to obtain federal approval and ensure availability of federal financial participation. Require consultation with affected providers and stakeholders, and notification of the Joint Legislative Budget Committee should DHCS deem modifications necessary.

*Mental Health Services Act COVID-19 Flexibilities*

- 1) Allow a county that is unable to complete and submit a three-year Mental Health Services Act (MHSA) plan or annual update for the 2020-21 fiscal year, due to the COVID-19 Public Health Emergency, to extend the effective timeframe of its currently approved three-year plan or annual update to include the 2020-21 fiscal year. Require a county to submit such a three-year plan or annual update to the Mental Health Services Oversight and Accountability Commission and the State Department of Health Care Services (DHCS) by July 1, 2021.
- 2) Authorize counties to access their MHSA prudent reserves during the 2020-21 fiscal year and spend them on prevention and early intervention, services to persons with severe mental illness, the children's system of care and the adult and older adults system of care, and for housing assistance for homeless individuals with severe mental illness. Authorize DHCS to implement this section through All County Letters, without adopting new regulations.
- 3) Authorize DHCS to allow counties to determine the percentage of funds to allocate across programs within the children's system of care, and within the adult and older adult system of care for the 2020-21 fiscal year by means of All County Letters, without adopting new regulations.
- 4) Stipulate that unspent funds allocated to a county, and interest accruing on those funds, that is subject to reversion as of July 1, 2019, and July 1, 2020, shall be subject to reversion on July 1, 2021.
- 5) Find and declare that the provisions in this measure further the Mental Health Services Act, approved by Proposition 63 on November 2, 2004, and are consistent with its purposes.

*General Provisions*

- 1) Declare that the provisions of this measure are severable, such that if any provision of this measure is held invalid, that invalidity shall not affect other provisions.
- 2) Declare that this bill provides for appropriations related to the Budget Bill, is related to the budget in the Budget Bill and shall take effect immediately.

**COMMENTS:**

This bill is a budget trailer bill within the overall 2020-21 budget package to implement actions taken affecting the Department of Health Care Services.

**According to the Author:**

None

**Arguments in Support:**

None on file.

**Arguments in Opposition:**

None on file.

**FISCAL COMMENTS:**

This is a budget trailer bill related to various provisions contained in the 2020 Budget Act.

**VOTES:**

**ASSEMBLY FLOOR: 54-13-13**

**YES:** Aguiar-Curry, Bauer-Kahan, Bloom, Boerner Horvath, Bonta, Burke, Calderon, Carrillo, Cervantes, Chau, Chu, Cooper, Daly, Eggman, Frazier, Friedman, Gabriel, Cristina Garcia, Gipson, Gloria, Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kamlager-Dove, Limón, Maienschein, McCarty, Medina, Mullin, Muratsuchi, Nazarian, O'Donnell, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Smith, Mark Stone, Ting, Weber, Wicks, Wood, Rendon

**NO:** Bigelow, Brough, Dahle, Flora, Fong, Gallagher, Kiley, Mathis, Melendez, Obernolte, Patterson, Voepel, Waldron

**ABS, ABST OR NV:** Arambula, Berman, Chen, Chiu, Choi, Cooley, Cunningham, Diep, Eduardo Garcia, Lackey, Levine, Low, Mayes

**UPDATED:**

VERSION: June 22, 2020

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