

AMENDED IN ASSEMBLY JUNE 4, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 969

Introduced by Assembly Member Chan
(Coauthors: Assembly Members Alquist, Aroner, Cedillo, Robert Pacheco, and Strom-Martin)
(Coauthors: Senators Kuehl and Ortiz)

February 23, 2001

An act to amend Sections 14005.7, 14005.12, and 14005.40 of the Welfare and Institutions Code, relating to human services.

LEGISLATIVE COUNSEL'S DIGEST

AB 969, as amended, Chan. Medi-Cal: ~~In-Home~~ *in-home* supportive services.

Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Services, pursuant to which medical benefits are provided to public assistance recipients and certain other low-income persons. Under existing law, 2 of the categories of persons eligible for Medi-Cal benefits are medically needy persons and medically needy family persons. Existing law establishes formulas for determining the amount of benefits a person in these eligibility categories may receive based on the person's allowable income amounts.

This bill, to the extent federal financial participation is available, would provide an additional income deduction, for purposes of Medi-Cal eligibility of these persons.

Existing law provides that for a person in a medical institution or nursing facility, the amount considered as required for maintenance per

month shall be computed in accordance with federal law and regulations, and shall include providing for specified purposes.

This bill, to the extent federal financial participation is available and to the same extent allowed for Medi-Cal recipients not in long-term care, would include among those purposes a work expense allowance, reasonable court approved guardian or conservatorship fees and those fees and costs reducing the amount of unearned income received and unavailable, in accordance with prescribed formulas.

Existing law requires the department to implement a federal option to reduce certain Medi-Cal income and resource eligibility requirements for aged, blind, and disabled persons. Among these requirements is that countable income not exceed an income standard equal to 100% of the applicable federal poverty level, plus \$230 for an individual or, in the case of a couple, \$310, provided certain conditions are met.

This bill would increase the amount for a couple from \$310 to \$425. It would also provide that, commencing January 1, 2004, both income deductions shall be increased annually by a specified amount.

This bill would require the department to adopt emergency regulations for implementation of the bill. By expanding Medi-Cal eligibility by increasing counties' responsibilities for Medi-Cal eligibility determination, this bill would impose a state-mandated local program.

Existing law provides for the county-administered In-Home Supportive Services (IHSS) program, under which qualified aged, blind, and disabled persons are provided with services in order to permit them to remain in their own homes and avoid institutionalization.

Existing law permits services to be provided under the IHSS program either through the employment of individual providers, a contract between the county and an entity for the provision of services, the creation by the county of a public authority, or a contract between the county and a nonprofit consortium. Services known as personal care option services, and that are similar to those provided under the IHSS program, are provided to certain Medi-Cal recipients.

This bill would require the California Health and Human Services Agency, by January 1, 2003, to submit a report to the Legislature on the feasibility of adopting a pilot project for a sliding-scale system of universal eligibility for in-home supportive services in counties that have adopted public authorities for the provision of those services, with services to be provided either through the In-Home Supportive Services



Program or as personal care option services under the Medi-Cal program.

This bill would specify that provisions of this bill shall be implemented only if funds are appropriated in the Budget Act or another statute for that purpose.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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

- 1 SECTION 1. Section 14005.7 of the Welfare and Institutions
- 2 Code is amended to read:
- 3 14005.7. (a) Medically needy persons and medically needy
- 4 family persons are entitled to health care services under Section
- 5 14005 providing all eligibility criteria established pursuant to this
- 6 chapter are met.
- 7 (b) Except as otherwise provided in this chapter or in Title XIX
- 8 of the federal Social Security Act, no medically needy family
- 9 person, medically needy person or state-only Medi-Cal persons
- 10 shall be entitled to receive health care services pursuant to Section
- 11 14005 during any month in which his or her share of cost has not
- 12 been met.
- 13 (c) Countable income, for purposes of determining share of
- 14 cost in subdivisions (d), (e), and (f), shall be determined in
- 15 accordance with all of the following:
- 16 (1) Monthly income shall be determined, defined, counted, and
- 17 valued in accordance with Title XIX of the federal Social Security
- 18 Act (42 U.S.C. Sec. 1396 et seq.).



1 (2) Persons who qualify as medically needy persons under
2 ~~subdivision (d) and as medically needy family persons under~~
3 subdivision (e) shall, commencing January 1, 2002, have a
4 monthly income deduction that shall be the difference between the
5 following:

6 (A) The income level for maintenance need established
7 pursuant to Section 14005.12.

8 (B) One hundred thirty-three percent of the federal poverty
9 level for ~~a family of~~ *the family with* two adults counted as three
10 persons as provided for in subdivision (c) of Section 14005.12.

11 (3) *Persons who qualify as medically needy family members*
12 *under subdivision (d) shall, commencing on January 1, 2002, have*
13 *a monthly income deduction that shall be the difference between*
14 *the following:*

15 (A) *The income level for maintenance need established*
16 *pursuant to Section 14005.12.*

17 (B) *One hundred percent of the federal poverty level for the*
18 *family with a family of two adults counted as three persons as*
19 *provided for in subdivision (c) of Section 14005.12.*

20 (d) In the case of a medically needy person, monthly income,
21 as determined in accordance with subdivision (c), in excess of the
22 amount required for maintenance established pursuant to Section
23 14005.12, exclusive of any amounts considered exempt as income
24 under Chapter 3 (commencing with Section 12000), less amounts
25 paid for Medicare and other health insurance premiums shall be
26 the share of cost to be met under Section 14005.9.

27 (e) In the case of a medically needy family person or state-only
28 Medi-Cal person, countable monthly income, as determined, in
29 accordance with subdivision (c), in excess of the amount required
30 for maintenance established pursuant to Section 14005.12,
31 exclusive of any amounts considered exempt as income under
32 Chapter 2 (commencing with Section 11200), less amounts paid
33 for Medicare and other health insurance premiums shall be the
34 share of cost to be met under Section 14005.9.

35 (f) In determining the countable income of a medically needy
36 person residing in a licensed community care facility in
37 accordance with subdivision (c), any amount paid to the facility for
38 residential care and support that exceeds the amount needed for
39 maintenance shall be deemed unavailable for the purposes of this
40 chapter.



1 (g) The department shall immediately seek any federal
2 approvals, including state plan amendments, necessary to receive
3 federal financial participation for medical and remedial services
4 payable by reason of the income methodologies provided for in
5 paragraphs (2) and (3) of subdivision (c). If this approval is not
6 granted by the federal government in whole or in part, the Attorney
7 General may file all administrative and judicial proceedings
8 available under the law to obtain approval. The income
9 methodologies provided for in paragraphs (2) and (3) of
10 subdivision (c) shall be implemented only to the extent federal
11 financial participation is available *and appropriation in the*
12 *Budget Act or another statute is provided* for health care benefits
13 provided when countable monthly income is determined in
14 accordance with those income methodologies.

15 SEC. 2. Section 14005.12 of the Welfare and Institutions
16 Code is amended to read:

17 14005.12. (a) (1) For the purposes of Sections 14005.4 and
18 14005.7, the department shall establish the income levels for
19 maintenance need at the levels that reasonably permit medically
20 needy persons to meet their basic needs for food, clothing, and
21 shelter, and for which federal financial participation will be
22 maximized under Title XIX of the federal Social Security Act. It
23 is the intent of the Legislature that the income levels for
24 maintenance need for medically needy aged, blind, and disabled
25 adults, in particular, shall be based upon amounts that adequately
26 reflect their needs.

27 ~~(2) (A) Reductions~~

28 (2) *Subject to paragraph (3), reductions* in the maximum aid
29 payment levels set forth in subdivision (a) of Section 11450 in the
30 1991–92 fiscal year, and thereafter, shall not result in a reduction
31 in the income levels for maintenance under this section.

32 ~~(B)~~

33 (3) (A) The department shall seek any necessary federal
34 authorization for maintaining the income levels for maintenance
35 at the levels in effect June 30, 1991.

36 ~~(C)~~

37 (B) If federal authorization is not obtained, medically needy
38 persons shall not be required to pay the difference between the
39 share of cost as determined based on the payment levels in effect
40 on June 30, 1991, under Section 11450, and the share of cost as



1 determined based on the payment levels in effect on July 1, 1991,
 2 and thereafter.

3 ~~(D)~~

4 (3) Any medically needy person who was eligible for benefits
 5 under this chapter as categorically needy for the calendar month
 6 immediately preceding the effective date of the reductions in the
 7 minimum basic standards of adequate care for the Aid to Families
 8 with Dependent Children program as set forth in Section
 9 11452.018 made in the 1995–96 Regular Session of the
 10 Legislature shall not be responsible for paying his or her share of
 11 cost if all of the following apply:

12 ~~(i)~~

13 (A) He or she had eligibility as categorically needy terminated
 14 by the reductions in the minimum basic standards of adequate care.

15 ~~(ii)~~

16 (B) He or she, but for the reductions, would be eligible to
 17 continue receiving benefits under this chapter as categorically
 18 needy.

19 ~~(iii)~~

20 (C) He or she is not eligible to receive benefits without a share
 21 of cost as a medically needy person pursuant to ~~subparagraph (A)~~
 22 ~~or (B)~~; paragraph (2) or (3).

23 ~~(b) Except as provided in paragraph (2) of subdivision (a), in~~

24 (b) In the case of a single individual, the amount of the income
 25 level for maintenance per month shall be 80 percent of the highest
 26 amount that would ordinarily be paid to a family of two persons,
 27 without any income or resources, under subdivision (a) of Section
 28 11450, multiplied by the federal financial participation rate.

29 ~~(c) Except as provided in paragraph (2) of subdivision (a), in~~

30 (c) In the case of a family of two adults, the income level for
 31 maintenance per month shall be the highest amount that would
 32 ordinarily be paid to a family of three persons without income or
 33 resources under subdivision (a) of Section 11450, multiplied by
 34 the federal financial participation rate.

35 (d) For the purposes of Sections 14005.4 and 14005.7, for a
 36 person in a medical institution or nursing facility, or for a person
 37 receiving institutional or noninstitutional services from an
 38 organization with a frail elderly demonstration project waiver
 39 pursuant to Chapter 8.75 (commencing with Section 14590), the
 40 amount considered as required for maintenance per month shall be



1 computed in accordance with Title XIX of the federal Social
2 Security Act, and regulations adopted pursuant thereto. Those
3 amounts shall be computed pursuant to regulations which include
4 providing for the following purposes:

5 (1) (A) Personal and incidental needs.

6 (B) Maintenance in the amount of not less than thirty-five
7 dollars (\$35) per month while a patient. The department may, by
8 regulation, increase this amount as necessitated by increasing costs
9 of personal and incidental needs. A long-term health care facility
10 shall not charge an individual for the laundry services or periodic
11 hair care specified in Section 14110.4.

12 (C) (i) When there is earned income, a work expense
13 allowance equal to the work incentive deductions available to
14 persons not in long-term care. For persons who qualify for
15 Medi-Cal on the basis of age or disability, the earned income
16 deductions available are twenty dollars (\$20) and sixty-five
17 dollars (\$65), any impairment related work expenses, and one-half
18 of the remainder. For persons who qualify for Medi-Cal on the
19 basis of blindness, the earned income deductions available are
20 twenty dollars (\$20) and sixty-five dollars (\$65), and any blind
21 work expenses, one-half of the remainder. The amount
22 disregarded for the work incentive deductions in any month shall
23 constitute the amount by which the person's personal and
24 incidental needs have been increased in that month.

25 (ii) The department shall seek any necessary federal approvals,
26 including state plan amendments, for the changes in income
27 methodologies authorized in this subparagraph. This
28 subparagraph shall be implemented only to the extent federal
29 financial participation is available *and an appropriation in the*
30 *Budget Act or another statute is provided* for health care benefits
31 provided pursuant to Section 14005 after the augmentations to
32 personal and incidental needs through deductions and offsets
33 authorized in those paragraphs.

34 (D) (i) Reasonable court approved guardian or
35 conservatorship fees to the same extent allowed for Medi-Cal
36 recipients not in long-term care. The amount of income
37 disregarded for payment of reasonable court approved
38 guardianship or conservatorship fees shall constitute the amount
39 by which the person's personal and incidental needs have been
40 increased in that month.



1 (ii) The department shall seek any necessary federal approvals,
2 including state plan amendments, for the changes in income
3 methodologies authorized in this subparagraph. This
4 subparagraph shall be implemented only to the extent federal
5 financial participation is available *and an appropriation in the*
6 *Budget Act or other statute is provided* for health care benefits
7 provided pursuant to Section 14005 after the augmentations to
8 personal and incidental needs through deductions and offsets
9 authorized in those paragraphs.

10 (2) The upkeep and maintenance of the home.

11 (3) The support and care of his or her minor children, or any
12 disabled relative for whose support he or she has contributed
13 regularly, if there is no community spouse.

14 (4) If the person is an institutionalized spouse, for the support
15 and care of his or her community spouse, minor or dependent
16 children, dependent parents, or dependent siblings of either
17 spouse, provided the individuals are residing with the community
18 spouse.

19 (5) The community spouse monthly income allowance shall be
20 established at the maximum amount permitted in accordance with
21 Section 1924(d)(1)(B) of Title XIX of the federal Social Security
22 Act (42 U.S.C. Sec. 1396r-5(d)(1)(B)).

23 (6) The family allowance for each family member residing
24 with the community spouse shall be computed in accordance with
25 the formula established in Section 1924(d)(1)(C) of Title XIX of
26 the federal Social Security Act (42 U.S.C. Sec. 1396r-5(d)(1)(C)).

27 (7) (A) Fees and costs reducing the amount of unearned
28 income received, and therefore ~~available~~ *unavailable*. Examples
29 of fees and costs that would reduce unearned income include
30 federal and state tax withholding, transaction or brokerage fees,
31 and check writing fees. The amount disregarded pursuant to this
32 paragraph shall constitute unavailable income.

33 (B) The department shall seek any necessary federal approvals,
34 including state plan amendments, for the changes in income
35 methodologies authorized in this subparagraph. This
36 subparagraph shall be implemented only to the extent federal
37 financial participation is available *and an appropriation in the*
38 *Budget Act or other statute is provided* for health care benefits
39 provided pursuant to Section 14005 after the augmentations to



1 personal and incidental needs through deductions and offsets
2 authorized in those paragraphs.

3 (e) For the purposes of Sections 14005.4 and 14005.7, with
4 regard to a person in a licensed community care facility, the
5 amount considered as required for maintenance per month shall be
6 computed pursuant to regulations adopted by the department
7 which provide for the support and care of his or her spouse, minor
8 children, or any disabled relative for whose support he or she has
9 contributed regularly.

10 (f) The income levels for maintenance per month, except as
11 specified in subdivisions (b) to (d), inclusive, shall be equal to the
12 highest amounts that would ordinarily be paid to a family of the
13 same size without any income or resources under subdivision (a)
14 of Section 11450, multiplied by the federal financial participation
15 rate.

16 (g) The “federal financial participation rate,” as used in this
17 section, shall mean $133\frac{1}{3}$ percent, or ~~such~~ any other rate set forth
18 in Section 1903 of the federal Social Security Act (42 U.S.C. Sec.
19 1396(b)), or its successor provisions.

20 (h) The income levels for maintenance per month shall not be
21 decreased to reflect the presence in the household of persons
22 receiving forms of aid other than Medi-Cal.

23 (i) When family members maintain separate residences, but
24 eligibility is determined as a single unit under Section 14008, the
25 income levels for maintenance per month shall be established for
26 each household in accordance with subdivisions (b) to (h),
27 inclusive. The total of these levels shall be the level for the single
28 eligibility unit.

29 (j) The income levels for maintenance per month established
30 pursuant to subdivisions (b) to (i), inclusive, shall be calculated on
31 an annual basis, rounded to the next higher multiple of one
32 hundred dollars (\$100), and then prorated.

33 SEC. 3. Section 14005.40 of the Welfare and Institutions
34 Code is amended to read:

35 14005.40. (a) To the extent federal financial participation is
36 available, the department shall exercise its option under Section
37 1902(a)(10)(A)(ii)(X) of the federal Social Security Act (42
38 U.S.C. Sec. 1396a(a)(10)(A)(ii)(X), to implement a program for
39 aged and disabled persons as described in Section 1902(m) of the
40 federal Social Security Act (42 U.S.C. Sec. 1396a(m)(1)).



1 (b) To the extent federal financial participation is available, the
2 blind shall be included within the definition of disabled for the
3 purposes of the program established in this section.

4 (c) An individual shall satisfy the financial eligibility
5 requirement of this program if both of the following conditions are
6 met:

7 (1) ~~Countable~~—(A) *Unless subparagraph (B) is implemented*
8 *pursuant to an appropriation by the Legislature, countable*
9 *income, as determined in accordance with Section 1902(m) of the*
10 *federal Social Security Act (42 U.S.C. Sec. 1396a(m)), does not*
11 *exceed an income standard equal to 100 percent of the applicable*
12 *federal poverty level, plus two hundred thirty dollars (\$230) for an*
13 *individual or, in the case of a couple, ~~four hundred twenty-five~~*
14 *dollars (~~\$425~~) *three hundred ten dollars (\$310), provided that the**
15 *income standard so determined shall not be less than the SSI/SSP*
16 *payment level for a disabled individual or, in the case of a couple,*
17 *the SSI/SSP payment level for a disabled ~~couple~~ couple.*

18 (B) *Countable income, as determined in accordance with*
19 *Section 1902(m) of the federal Social Security Act (42 U.S.C. Sec.*
20 *1396a(m)), does not exceed an income standard equal to 100*
21 *percent of the applicable federal poverty level, plus two hundred*
22 *thirty dollars (\$230) for an individual or, in the case of a couple,*
23 *four hundred twenty-five dollars (\$425), provided that the income*
24 *standard so determined shall not be less than the SSI/SSP payment*
25 *level for a disabled individual or, in the case of a couple, the*
26 *SSI/SSP payment level for a disabled couple.*

27 (C) On and after January 1, 2004, the two hundred thirty ~~dollar~~
28 ~~(\$230) and the four hundred twenty five dollar (\$425) dollar~~
29 ~~(\$230) income deduction specified in subparagraphs (A) and (B)~~
30 ~~for an individual and the two hundred thirty dollar (\$230) income~~
31 ~~deduction specified in subparagraph (A) for a couple or the four~~
32 ~~hundred twenty-five dollar (\$425) income deduction specified in~~
33 ~~subparagraph (B) for a couple, as appropriate, subject to the~~
34 ~~appropriation of funds in the Budget Act or another statute,~~
35 ~~income deductions shall be increased annually by an amount equal~~
36 ~~to the percentage increases for the prior year in the social security~~
37 ~~cost-of-living allowance. These increases in the income~~
38 ~~deductions shall be implemented annually when the increases in~~
39 ~~the federal poverty level are increased, contingent on an~~



1 *appropriation in the annual Budget Act or another statute for this*
2 *purpose.*

3 (2) Countable resources, as determined in accordance with
4 Section 1902(m) of the federal Social Security Act (42 U.S.C. Sec.
5 1396a(m)), do not exceed the maximum levels established in that
6 section.

7 (d) The financial eligibility requirements provided in
8 subdivisions (c) may be adjusted upwards to reflect the cost of
9 living in California, contingent upon appropriation in the annual
10 Budget Act.

11 (e) Notwithstanding Chapter 3.5 (commencing with Section
12 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
13 the department shall implement this section by means of all-county
14 letters or similar instructions, and without taking regulatory
15 action. Thereafter, the department shall adopt regulations in
16 accordance with the rulemaking provisions of Chapter 3.5
17 (commencing with Section 11340) of Part 1 of Division 3 of Title
18 2 of the Government Code.

19 (f) For purposes of calculating income under this section
20 during any calendar year, increases in social security benefit
21 payments under Title II of the federal Social Security Act (42
22 U.S.C. Sec. 401 et seq.) arising from cost-of-living adjustments
23 shall be disregarded commencing in the month that these social
24 security benefit payments are increased by the cost-of-living
25 adjustment through the month before the month in which a change
26 in the federal poverty level requires the department to modify the
27 income standard described in subdivision (c).

28 (g) Notwithstanding any other provision of law, the program
29 provided for pursuant to this section, including amendments
30 thereto, shall be implemented only if, and to the extent that, the
31 department determines that federal financial participation is
32 available under Title XIX of the federal Social Security Act (42
33 U.S.C. Sec. 1396 et seq.). *The implementation of subparagraphs*
34 *(B) and (C) of paragraph (1) of subdivision (b) shall be contingent*
35 *on the appropriation of funds for that purpose in the Budget Act*
36 *or another statute.*

37 (h) Subject to subdivision (g), this section shall be
38 implemented commencing January 1, 2001.

39 SEC. 4. The State Department of Health Services shall adopt
40 emergency regulations to implement the amendments to Section



1 14005.7, 14005.12, and 14005.40 of the Welfare and Institutions
 2 Code made by this act in accordance with the Administrative
 3 Procedure Act (Chapter 3.5 (commencing with Section 11340) of
 4 Part 1 of Division 3 of Title 2 of the Government Code).
 5 Emergency regulations shall be adopted under this section with
 6 respect to any provision of this act for which necessary federal
 7 approvals have been obtained, and shall be adopted within 30 days
 8 of the obtaining of those approvals. The initial adoption of
 9 emergency regulations and one readoption of the initial
 10 regulations shall be deemed to be an emergency and necessary for
 11 the immediate preservation of the public peace, health and safety,
 12 or general welfare. Initial emergency regulations and the first
 13 readoption of those regulations shall be exempt from review by the
 14 Office of Administrative Law. The emergency regulations
 15 authorized by this section shall be submitted to the Office of
 16 Administrative Law for filing with the Secretary of State and
 17 publication in the California Code of Regulations and shall remain
 18 in effect for no more than 180 days.

19 SEC. 5. The California Health and Human Services Agency
 20 shall, by January 1, 2003, submit a report to the Legislature on the
 21 feasibility of adopting a pilot project for a sliding-scale system of
 22 universal eligibility for in-home supportive services in counties
 23 that have adopted public authorities for the provision of those
 24 services, with services to be provided either through the In-Home
 25 Supportive Services Program or as personal care option services
 26 under the Medi-Cal program.

27 SEC. 6. Notwithstanding Section 17610 of the Government
 28 Code, if the Commission on State Mandates determines that this
 29 act contains costs mandated by the state, reimbursement to local
 30 agencies and school districts for those costs shall be made pursuant
 31 to Part 7 (commencing with Section 17500) of Division 4 of Title
 32 2 of the Government Code. If the statewide cost of the claim for
 33 reimbursement does not exceed one million dollars (\$1,000,000),
 34 reimbursement shall be made from the State Mandates Claims
 35 Fund.

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