

AMENDED IN ASSEMBLY JUNE 28, 2009

CALIFORNIA LEGISLATURE—2009—10 THIRD EXTRAORDINARY SESSION

ASSEMBLY BILL

No. 44

Introduced by Assembly Member Evans

June 18, 2009

~~An act relating to the Budget Act of 2009.~~ *An act to add Section 293 to the Financial Code, to amend Sections 1250, 1265.5, 1266, 1275.3, 1326, 1337, 1418, 1567.50, 104820, 105250, 116565, 125175, 130500, 130507, 130509, and 130543 of, to amend and repeal Section 125165 of, and to add Sections 125155.1, 125157, and 125166 to, the Health and Safety Code, to amend Section 12739 of the Insurance Code, and to amend Sections 4107, 4684.60, 4684.74, 4684.75, 7502.5, 14005.40, 14007.9, 14011.2, 14087.9, 14105.191, 14105.436, 14105.45, 14110.55, 14126.033, 14132, 14132.951, 14166.20, 14166.225, 14166.23, 14166.245, and 14495.10 of, to amend and repeal Section 14526.1 of, to add Sections 5783, 14005.50, 14013.5, 14105.455, 14105.46, 14132.20, 14132.952, 14522.4, 14525.1, 14526.2, and 14550.6 to, and to repeal Sections 14522.3, 14526.1, and 14550.5 of, the Welfare and Institutions Code, relating to health.*

LEGISLATIVE COUNSEL'S DIGEST

AB 44, as amended, Evans. ~~Budget Act of 2009.~~ *Health.*

~~This bill would express the intent of the Legislature to enact statutory changes relating to the Budget Act of 2009.~~

Existing law provides for the licensure and regulation of health facilities by the State Department of Public Health, including an intermediate care facility/developmentally disabled-nursing. Violation of these provisions is a misdemeanor.

This bill would create as a new category of health facility for, and require the department to license and regulate, intermediate care facility/developmentally disabled-continuous nursing (ICF/DD-CN) facilities, as defined. This bill would require facilities providing continuous skilled nursing services to persons with developmental disabilities pursuant to the above-described provisions to apply for licensure as an ICF/DD-CN within 90 days after licensing regulations become effective. This bill would make other conforming changes. By creating a new crime, this bill would impose a state-mandated local program.

Existing law, until January 1, 2010, authorizes the State Department of Social Services and the State Department of Developmental Services, to jointly establish and administer a pilot project for licensing and regulating Adult Residential Facilities for Persons with Special Health Care Needs (ARFPSHN), to the extent that funds are appropriated for this purpose in the annual Budget Act. Under existing law, a licensed ARFPSHN may provide 24-hour services to up to 5 adults with developmental disabilities who have special health care and intensive support needs.

This bill would extend the pilot project until January 1, 2011, and would make other conforming changes. This bill would impose a state-mandated local program by changing the definition of crimes provided for under the California Community Care Facilities Act.

Existing law authorizes local sponsors, as defined, to offer community dental disease prevention programs to schoolchildren in preschool through 6th grade, and in classes for individuals with exceptional needs. Existing law requires the program to include educational programs focused on the development of personal practices by pupils, as specified, and preventative services. Existing law requires any acts performed or services provided pursuant to the program that constitute the practice of dentistry to be performed or provided by a licensed dentist.

Existing law provides that it is the intent of the Legislature that the above-described program shall be funded according to customary budget procedures.

This bill would, instead, require that the above-described program be funded according to customary budget procedures and that it only be implemented upon appropriation of funds by the Legislature.

Existing law requires the State Department of Public Health to implement and administer a program to meet the requirements of the federal Residential Lead-Based Paint Hazard Reduction Act of 1992.

The department is required to establish fees for the accreditation of training providers, the certification of individuals, and the licensing of entities engaged in lead-related occupations.

This bill would, effective July 1, 2010, require the collected fees to be deposited in the Lead-Related Construction Fund, which would be established by the bill. These moneys would be available to the department upon appropriation by the Legislature for purposes of the program, and would be available for borrowing in accordance with prescribed provisions.

Existing law establishes the Occupational Lead Poisoning Prevention Account, into which fees are paid by employers in prescribed industries that have documented evidence of potential poisoning. Moneys in this account are expended for purposes of the Lead Poisoning Prevention Program, which is conducted by the State Department of Public Health in accordance with prescribed requirements.

This bill would provide that of the funds appropriated from this account in the Budget Act of 2009, \$500,000 would be used for purposes of administration of the residential lead-based paint program during the 2009–10 fiscal year. It would express the intent of the Legislature that funds shall be repaid to the account upon a determination by the Department of Finance that sufficient moneys are available in the Lead-Related Construction Fund.

Existing law, the Calderon-Sher Safe Drinking Water Act of 1996, requires the State Department of Public Health to adopt regulations covering water testing, the monitoring of contaminants, the frequency and method of sampling and testing, the reporting of results, and other matters as may be necessary to determine and ensure the quality of domestic water supplies. Existing law defines “public water system” to mean a system for the provision of water for human consumption through pipes or other constructed conveyances that has 15 or more service connections or regularly serves at least 25 individuals daily at least 60 days out of the year.

Existing law requires public water systems serving 1,000 or more service connections and public water systems that treat water on behalf of one or more water systems, as specified, to reimburse the department for the actual cost incurred by the department in conducting its required activities relating to public water systems, as provided. Existing law further requires public water systems serving less than 1,000 service connections to pay an annual drinking water operating fee to the department for costs incurred by the department in conducting its

required activities relating to public water systems, as provided. Existing law contains limitations on maximum fee amounts that may be imposed on public water systems under these provisions.

This bill would, instead, require these water systems to pay specified fees per service connection, subject to prescribed minimum amounts. This bill would authorize the department to increase the fees, as specified, subject to approval by the Legislature.

Existing law requires the State Department of Health Care Services to establish and administer the Genetically Handicapped Persons Program (GHPP) for the provision of health services to genetically handicapped persons.

This bill would provide that a person who is found eligible for GHPP services whose employer-sponsored health coverage is later terminated or a person who applies for GHPP services whose employer-sponsored health coverage was terminated during the 6-month period prior to the date he or she applies for services shall be ineligible for GHPP services, unless certain exceptions apply. The bill would require an applicant for GHPP services to certify, at the time of application, under penalty of perjury, that he or she was not covered by employer-sponsored health coverage during the 6-month period prior to the date of his or her application or, if he or she was covered by employer-sponsored health coverage, attest to why one of the exceptions to ineligibility applies and provide documentation from the employer-sponsored health coverage that supports his or her attestation. Because the bill would require representations in the statement by the applicant to be made under penalty of perjury, thus changing the definition of a crime, it would impose a state-mandated local program by expanding the crime of perjury.

This bill would also provide that persons who have been found eligible for GHPP services whose employer-sponsored health coverage is thereafter terminated to notify the GHPP within 45 days of the effective date of the termination of their employer-sponsored health coverage and, when applicable, provide the program with the same certification required of applicants for GHPP services.

This bill would authorize the director, on a case-by-case basis, to waive determinations of ineligibility made pursuant to the above-described provisions, or reduce certain time periods as set forth above, if the director determines that the determination of ineligibility or the time periods will result in undue hardship.

This bill would authorize the department to require a client under the GHPP to apply to enroll or otherwise participate in any other state or federal program or other contractual or legal entitlement that would provide services to the client that would otherwise be reimbursed under the GHPP.

This bill would authorize the department, when it determines it to be cost effective, to pay for 3rd-party health coverage for persons eligible for GHPP services in certain circumstances.

Existing law requires the department to determine and establish an enrollment fee for GHPP services that shall be a sliding scale based upon family size and income.

The bill would, with certain exceptions, retroactive to July 1, 2009, instead, base the annual enrollment fee on the client's or, if the client is a minor, the client's parents' or legal guardians' combined adjusted gross income as reported on the relevant state or federal income tax forms for the previous tax year. The bill would require the enrollment fee to be 1½% of adjusted gross income when the reported adjusted gross income was between 200% and 299%, inclusive, of the federal poverty level and to be 3% of adjusted gross income when the reported adjusted gross income was equal to or greater than 300% of the federal poverty level.

The bill would also provide that in the event the annual enrollment fee determined pursuant to the above provisions exceeds the cost of care incurred during the applicable year, the department shall reduce the enrollment fee by refund or credit to an amount equal to the cost of care. The bill would also make conforming changes.

Existing law establishes the California Discount Prescription Drug Program, which is administered by the State Department of Health Care Services. Existing law requires, on August 1, 2010, the department to determine whether pharmaceutical manufacturer participation in the program has been sufficient to meet certain benchmarks. It also requires the department, on and after that date, to reassess program outcomes, at least once every year, consistent with the benchmarks.

This bill would provide that the California Discount Prescription Drug Program become operative on or after July 1, 2010, and would extend the above-described deadlines to August 1, 2013.

Existing law creates the California Major Risk Medical Insurance Program (MRMIP), which is administered by the Managed Risk Medical Insurance Board, to arrange for major risk medical coverage for eligible residents of the state who are unable to secure adequate private health

care coverage. Existing law creates the continuously appropriated Major Risk Medical Insurance Fund within the MRMIP where revenue, including \$18,000,000 from the Hospital Services Account in the Cigarette and Tobacco Products Surtax Fund is deposited annually for the operation of the program.

This bill would, instead, for the 2009–10 fiscal year, prohibit the Controller from depositing any amount into the Major Risk Medical Insurance Fund from the Hospital Services Account in the Cigarette and Tobacco Products Surtax Fund.

Existing law establishes the State Department of Developmental Services and sets forth its duties and responsibilities, including, but not limited to, administration and oversight of the state developmental centers and programs relating to persons with developmental disabilities. Existing law, the Lanterman Developmental Disabilities Services Act, requires the department to allocate funds to private nonprofit regional centers for the provision of community services and support for persons with developmental disabilities and their families.

Existing law provides that the State Department of Mental Health shall house no more than 1,336 patients at Patton State Hospital. However, until September 2009, up to 1,530 patients may be housed at the hospital.

This bill would extend the date that 1,530 patients may be housed at the hospital to September 2012.

Existing law prohibits the total number of developmental center residents in the secure treatment facility at Porterville Developmental Center from exceeding 297.

This bill would include residents receiving services in the center's transition treatment program for purposes of this limit.

Existing law establishes the federal Medicaid program, administered by each state, California's version of which is the Medi-Cal program. The Medi-Cal program, administered by the State Department of Health Care Services, provides basic health care services to qualified low-income persons.

Existing federal and state law contain requirements relating to the establishment of United States citizenship or national status for purposes of establishing Medi-Cal eligibility. Existing Medi-Cal provisions implementing these requirements specify that, except as prescribed, no Medi-Cal services shall be available to any person who fails to comply with these documentation requirements.

This bill would, to the extent that federal financial participation is available and all agreements with the federal government have been obtained, permit the department to exercise a prescribed federal option relating to health care benefits for children.

This bill would require the department, pursuant to, and only to the extent required by, federal law and subject to the provisions described below, to implement an asset verification program for the purpose of determining or redetermining the eligibility of an applicant for, or recipient of, Medi-Cal benefits on the basis of being aged, blind, or disabled.

This bill would require any applicant or recipient described above, and any other person whose resources are required by law to be disclosed to determine the eligibility of the applicant or recipient, to provide authorization for the department to obtain from any financial institution, as defined, any financial record, as defined, held by the institution with respect to the applicant or recipient, and any other person, as applicable, whenever the department determines the record is needed in connection with a determination with respect to eligibility for, or the amount or extent of, medical assistance. The bill would provide that the obtaining of financial records by the department, or its designee, shall be at no cost to the applicant, recipient, or any other person whose resources are required to be disclosed. The bill would authorize the department to determine that an applicant or recipient is ineligible for medical assistance if the applicant or recipient, or any other person, as applicable, refuses to provide, or revokes, any authorization made pursuant to the above-described provisions. The bill would require the department to provide the applicant or recipient with notice of the asset verification requirement prior to the applicant or recipient being required to provide authorization.

This bill would require an officer of a financial institution, as defined, to furnish the department or its designee with information in the possession of the bank or company regarding the assets of any person who is applying for, or is receiving assistance or benefits from, the department and has provided authorization pursuant to the above-described provisions.

Existing law allows the California Medical Assistance Commission to negotiate exclusive contracts with any county that seeks to provide, or arrange for the provision of, Medi-Cal health care services. The system of services provided by or through a county pursuant to these provisions is known as a county-organized health system. Existing law

permits a combination of counties to contract with the department pursuant to these provisions for the provision of services on a regional basis.

This bill would delete the regional basis limitation.

Existing law requires the reimbursement to Medi-Cal pharmacy providers for legend and nonlegend drugs, as defined, to consist of the estimated acquisition cost of the drug, as defined, plus a professional fee for dispensing.

Existing law requires the department to establish a list of maximum allowable ingredient costs (MAIC) for generically equivalent drugs for purposes of establishing the acquisition cost for legend and nonlegend drugs, as provided. Existing law requires the department to update the list of, and establish new, MAICs, and to base the MAIC on the mean of the average manufacturer's price of drugs generically equivalent to the particular innovator drug, plus a percent markup determined by the department to be necessary for the MAIC to represent the average purchase price paid by retail pharmacies in California.

This bill would require the department to establish an MAIC only when 3 or more generically equivalent drugs are available for purchase and dispensing by retail pharmacies in California.

This bill would provide that if average manufacturer's prices are unavailable, the department shall establish the MAIC, either (1) based on the volume weighted average, as defined, of the wholesaler acquisition costs, as defined, of drugs generically equivalent to the particular innovator drug plus a percent markup determined by the department to be necessary for the MAIC to represent the average purchase price paid by retail pharmacies in California or (2) pursuant to a contract with a vendor for the purpose of surveying drug price information, collecting data, and calculating a proposed MAIC.

This bill would require the department to establish a process for providers to seek a change to a specific MAIC when the providers believe the MAIC does not reflect current available market prices.

Under existing law, the State Department of Mental Health is required to implement managed mental health care for Medi-Cal recipients through fee-for-service or capitated contracts with counties, counties acting jointly, qualified individuals or organizations, or nongovernmental entities. The State Department of Mental Health is responsible for assuming specified program oversight authority formerly provided by the State Department of Health Care Services, including, but not limited to, oversight of certain utilization controls.

This bill would, if federal approval is obtained, authorize public agencies that meet certain conditions to, in addition to reimbursement or other payments that the agency would otherwise receive for Medi-Cal specialty mental health services, receive supplemental Medi-Cal reimbursement equal to the amount of federal financial participation received as a result of claims submitted by the State Department of Health Care Services for certain expenditures related to specialty mental health services that are allowable expenditures under federal law.

Existing law authorizes the State Department of Social Services to enter into contracts with manufacturers of single source and multiple source drugs on a bid or nonbid basis and to maintain a list of contract drugs for purposes of the Medi-Cal program. Existing law prescribes conditions under which certain drugs for use in the treatment of acquired immunodeficiency syndrome (AIDS) or an AIDS-related condition or cancer are deemed approved for addition to the Medi-Cal list of contract drugs or considered a Medi-Cal benefit.

Existing law requires, commencing July 1, 2002, all pharmaceutical manufacturers to provide to the department a state rebate, in addition to rebates pursuant to other provisions of state or federal laws, for any drug products that have been added to the Medi-Cal list of contract drugs pursuant to the above-described provisions related to drugs used to treat AIDS and cancer and reimbursed through the Medi-Cal outpatient fee-for-service drug program. Existing law requires the state rebate to be negotiated as necessary between the department and pharmaceutical manufacturers.

This bill would, retroactive to July 1, 2009, and until January 1, 2010, require pharmaceutical manufacturers to provide to the department a state rebate, in addition to rebates pursuant to other provisions of state or federal law, for certain drug products used to treat AIDS and cancer that have been added to the Medi-Cal list of contract drugs, as specified.

Existing federal law requires the United States Secretary of Health and Human Services to enter into an agreement with each manufacturer of covered drugs that are not subject to a rebate under an agreement between the state Medicaid program and the manufacturer under which the amount required to be paid to the manufacturer for covered drugs, with certain exceptions, purchased by a covered entity, as defined, does not exceed an amount equal to the average manufacturer price for the drug under the federal Medicaid program in the preceding calendar quarter, reduced by the rebate received pursuant to the Medicaid agreement.

This bill would provide that a covered entity shall dispense only the above-described drugs to Medi-Cal beneficiaries. This bill provides that if a covered entity is unable to purchase the above-described drugs, the covered entity may dispense a drug purchased at regular drug wholesale rates to a Medi-Cal beneficiary, but that it is required to maintain documentation of their inability to obtain the drugs.

Existing law requires the reimbursement to Medi-Cal pharmacy providers for legend and nonlegend drugs, as defined, to consist of the estimated acquisition cost of the drug, as defined, plus a professional fee for dispensing.

This bill would require pharmacy providers to submit their usual and customary charge, as defined, when billing the Medi-Cal program for prescribed drugs. The bill would require that payment to pharmacy providers be the lower of the pharmacy's usual and customary charge or the above-described reimbursement rate for legend and nonlegend drugs.

Existing law, the Medi-Cal Long-Term Reimbursement Act, requires the department to implement a cost-based reimbursement rate methodology for freestanding skilled nursing facilities, excluding skilled nursing facilities that are a distinct part of a facility that is licensed as a general acute care hospital. Reimbursement rates for these facilities are funded by a combination of federal funds and moneys collected pursuant to the above-described uniform quality assurance fees. Existing law provides that this rate methodology shall cease to be implemented on July 31, 2011, with these provisions to be repealed on January 1, 2012. Existing law provides, for the 2009–10 and 2010–11 rate years, that the maximum annual increase in the weighted average Medi-Cal reimbursement rate required for purposes of the above-described provisions shall not exceed 5% of the weighted average Medi-Cal reimbursement rate for the prior fiscal year.

This bill would, instead, provide that for the 2009–10 and 2010–11 rate years, the weighted average Medi-Cal reimbursement rate required for purposes of the above-described provisions shall not be increased with respect to the weighted average Medi-Cal reimbursement rate for the 2008–09 rate year.

Existing law requires the director to reduce provider payments for certain classes of health facilities for dates of service on and after March 1, 2009, by 5% for Medi-Cal fee-for-service benefits.

This bill would prohibit Medi-Cal reimbursement rates applicable to the classes of providers to which the above-described payment

reduction applies for services rendered during the 2009–10 rate year and each rate year thereafter from exceeding the reimbursement rates that were applicable to those classes of facilities in the 2008–09 rate year, with certain exceptions.

Existing law requires the department to establish a pilot program to provide continuous skilled nursing care as a benefit under the Medi-Cal program when those services are provided pursuant to a federal waiver. This provision is repealed as of January 1, 2010.

This bill would instead, repeal the pilot program if and when the federal Centers for Medicare and Medicaid Services approve a federal waiver or approve a Medicaid State Plan amendment to make the pilot program a permanent program. The bill would set forth provisions for the permanent program that are similar to the provisions of the pilot program and would make these permanent program provisions operative upon the date federal approval is obtained. The bill would make other conforming changes.

Existing law provides for the State Supplementary Program for the Aged, Blind, and Disabled (SSP), which requires the State Department of Social Services to contract with the United States Secretary of Health and Human Services to make payments to SSP recipients to supplement supplemental security income (SSI) payments made available pursuant to the federal Social Security Act.

Under existing law, benefit payments under the SSP program are calculated by establishing the maximum level of nonexempt income and federal (SSI) and state (SSP) benefits for each category of eligible recipient. The state SSP payment is the amount, when added to the nonexempt income and SSI benefits available to the recipient, which would be required to provide the maximum benefit payment.

Existing law authorizes the State Department of Health Care Services, to the extent that federal financial participation is available, to exercise options under federal law to implement a program to provide Medi-Cal benefits for designated aged, blind, and disabled persons who meet specified income standards.

This bill would require the State Department of Health Care Services, to the extent that federal financial participation is available, to exercise an option under federal law to extend full-scope Medi-Cal benefits to individuals who are ineligible to receive those benefits under certain aid programs, including SSI/SSP, as a result of a specified July 1, 2009, reduction in SSI/SSP maximum aid payments. This bill would identify the applicable income and resource standards and methodologies to

be utilized for its purposes, and would require an income disregard to be applied, as specified, to adjust the applicable income standard to that which was in place on May 1, 2009.

This bill would authorize the department to implement these revised Medi-Cal eligibility provisions through all-county letters or similar instructions, and would cease implementation of these provisions when SSI/SSP program payment levels increase beyond those in effect on May 1, 2009. The bill would require the department to seek any approvals from the federal Centers for Medicare and Medicaid Services necessary to implement these provisions.

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. Under existing law, personal care services provided to an individual who is eligible for Medi-Cal benefits as a categorically needy person are a Medi-Cal covered benefit. Personal care services are also a covered benefit under the IHSS program.

Existing law provides for the payment of a supplementary benefit under the IHSS program to any eligible aged, blind, or disabled person who is receiving Medi-Cal personal care services and who would otherwise be deemed a categorically needy recipient under the IHSS program. Existing law extends application of this provision to any aged, blind, or disabled person who is receiving Medi-Cal benefits and eligible for services under a federal waiver program known as the IHSS Plus waiver, and who would otherwise be deemed a categorically needy recipient under the IHSS program.

This bill would require the State Department of Health Care Services to seek approval of the IHSS Plus option, an amendment to the Medicaid state plan to provide self-directed personal assistance services under the state plan, to the extent that federal financial participation is available, in order to provide IHSS services as a Medi-Cal benefit. The bill would require these services to be rendered under the administrative direction of the State Department of Social Services, as specified.

This bill would exclude residents of designated health and care facilities from receiving the services provided pursuant to the bill. It

would authorize the State Department of Health Care Services to implement the IHSS Plus option provisions through all-county letters or similar instructions, and to adopt emergency regulations.

This bill would require the Director of Health Care Services to notify the Legislature of any modifications to IHSS benefits, eligibility, and operational requirements necessary for the state plan amendment to become effective.

Existing law, the Medi-Cal Hospital/Uninsured Care Demonstration Project Act authorizes the director to, pursuant to a federal waiver, use modified funding methodologies to maximize the use of federal funds to resolve Medi-Cal reimbursement inequities experienced by public and private disproportionate share hospitals. The demonstration project provides for specified stabilization funding to be provided for prescribed purposes.

This bill would, notwithstanding those provisions, require that for each of the 2008–09 and 2009–10 fiscal years, the amount available for these purposes shall be reduced by prescribed amounts which sum shall be retained in, or transferred to, the General Fund. This bill would authorize the department to increase federal claiming from the safety net care pool for state-funded programs if necessary to achieve prescribed savings.

It would also, for the 2009–10 fiscal years, make a prescribed reduction from allocations to distressed hospitals, as defined, and would transfer the amount of this transfer to the General Fund.

Under existing law, the State Department of Mental Health is required to implement managed mental health care for Medi-Cal recipients through fee-for-service or capitated contracts with counties, counties acting jointly, qualified individuals or organizations, or nongovernmental entities. The State Department of Mental Health is responsible for assuming specified program oversight authority, including, but not limited to, oversight of certain utilization controls.

This bill would, if federal approval is obtained, authorize public agencies that meet certain conditions to, in addition to reimbursement or other payments that the agency would otherwise receive for Medi-Cal specialty mental health services, receive supplemental Medi-Cal reimbursement equal to the amount of federal financial participation received as a result of claims submitted by the State Department of Health Care Services for certain expenditures related to specialty mental health services that are allowable expenditures under federal law.

Under existing law, one of the benefits provided for under the Medi-Cal program is adult day health care services. Existing law contains eligibility criteria for these services, and requires that adult day health care center provide core services, as defined.

This bill would provide that, commencing 30 days after the effective date of the bill, adult day health care is covered for a maximum of three days per week, until the date that the Director of Health Care Services executes a declaration specifying that provisions described below relating to adult day health care services, are operative, at which time these services are covered for a maximum of 5 days per week.

Under existing law, treatment authorization requests may be granted for adult day health care services for up to 6 months.

Under existing law, one of the eligibility criteria applicable to adult day health care services is that the Medi-Cal beneficiary requires assistance and supervision in performing prescribed activities.

This bill, subject to federal approval, would permit treatment authorization requests for a period of up to 12 months, would modify eligibility criteria to require, with certain exceptions, that the beneficiary need substantial human assistance in performing the prescribed activities, and would modify certain elements of the core services, with all of these provisions to be operative upon the execution of a declaration by the director that all necessary methods and procedures necessary to implement the treatment authorization request provisions have been met.

This bill would require the State Department of Mental Health, by no later than March 1, 2011, to provide the legislative budget and policy committees with an analysis of selected county and subcontractor costs for the 2009–10 fiscal year that are not wholly reimbursed by the schedule of maximum allowances rates, as specified.

This bill would require the California Health and Human Services Agency to develop an action plan regarding coordination of core programmatic functions between the State Department of Mental Health and the State Department of Health Care Services.

Under existing law, for certain hospitals that receive Medi-Cal reimbursement from the State Department of Health Care Services and that are not under contract with the department pursuant to specified existing law, interim payments and cost report settlements for inpatient hospital services provided on and after July 1, 2008, are reduced by 10%, as specified. Existing law revises the amount of these payments, beginning on October 1, 2008, pursuant to a specified formula. Existing

law exempts certain small and rural hospitals and certain open health facility planning areas from this revised formula. Existing law, for purposes of interim payments, specifically provides that open health facility planning areas with 3 or more hospitals with licensed general acute care beds are not exempt from this revised formula. Existing law, for purposes of the cost report settlements, specifically provides that open health facility planning areas with more than 3 hospitals with licensed general acute care beds are not exempt from this revised formula.

This bill would revise both of the above provisions to prohibit a state-owned or state-operated hospital from being included in determining the number of hospitals in an open health facility planning area.

This bill would revise the cost report settlement provision by requiring that an open health facility planning area have 3 or more specified hospitals, instead of more than 3 specified hospitals.

This bill would revise the exemption for small and rural hospitals, as specified.

The bill would require the state Department of Health Care Services to provide the Legislature with a quarterly update regarding the implementation of the federal American Recovery and Reinvestment Act of 2009, as specified. It would also require the department to provide, in a timely manner, the applicable fiscal and policy committees of the Legislature with copies of all federal audits and their findings that pertain to the Medi-Cal program.

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.

This bill would provide that no reimbursement is required by this act for a specified reason.

The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. The Governor issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on December 19, 2008.

This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on December 19, 2008, pursuant to the California Constitution.

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

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

1 SECTION 1. Section 293 is added to the Financial Code, to
2 read:
3 293. (a) An officer of a financial institution, within the meaning
4 of Section 1101(1) of the federal Right to Financial Privacy Act
5 of 1978 (12 U.S.C. Sec. 3401(1)), shall furnish the State
6 Department of Health Care Services or its designee with
7 information in the possession of the bank or company regarding
8 the assets of any person who is applying for, or is receiving
9 assistance or benefits from, the State Department of Health Care
10 Services and has provided authorization pursuant to Section
11 14013.5 of the Welfare and Institutions Code.
12 (b) The obtaining of financial records by the State Department
13 of Health Care Services, or its designee, pursuant to this section
14 shall be subject to the cost reimbursement requirements of Section
15 1115(a) of the federal Right to Financial Privacy Act of 1978 (12
16 U.S.C. Sec. 3415(a)) and shall be at no cost to the applicant,
17 recipient, or any other person, as defined in paragraph (3) of
18 subdivision (c) of Section 14013.5 of the Welfare and Institutions
19 Code.
20 (c) An authorization obtained by the State Department of Health
21 Care Services, or its designee, under Section 14013.5 of the
22 Welfare and Institutions Code shall be considered as meeting the
23 requirements of Section 1103(a) of the federal Right to Financial
24 Privacy Act of 1978 (12 U.S.C. Sec. 3403(a)) and, notwithstanding
25 Section 1104(a) of the federal Right to Financial Privacy Act of
26 1978 (12 U.S.C. Sec. 3404(a)), need not be furnished to the
27 financial institution.
28 (d) The certification requirements of Section 1103(b) of the
29 federal Right to Financial Privacy Act of 1978 (12 U.S.C. Sec.
30 3403(b)) shall not apply to requests by the State Department of
31 Health Care Services, or its designee, pursuant to an authorization
32 provided under Section 14013.5 of the Welfare and Institutions
33 Code.
34 (e) A request by the State Department of Health Care Services,
35 or its designee, pursuant to an authorization provided under

1 *Section 14013.5 of the Welfare and Institutions Code shall be*
2 *deemed to meet the requirements of Section 1104(a)(3) of the*
3 *federal Right to Financial Privacy Act of 1978 (12 U.S.C. Sec.*
4 *3404(a)(3)) and of Section 1102 of the act (12 U.S.C. Sec. 3402),*
5 *relating to a reasonable description of financial records.*

6 *SEC. 2. Section 1250 of the Health and Safety Code is amended*
7 *to read:*

8 1250. As used in this chapter, “health facility” means any
9 facility, place, or building that is organized, maintained, and
10 operated for the diagnosis, care, prevention, and treatment of
11 human illness, physical or mental, including convalescence and
12 rehabilitation and including care during and after pregnancy, or
13 for any one or more of these purposes, for one or more persons,
14 to which the persons are admitted for a 24-hour stay or longer, and
15 includes the following types:

16 (a) “General acute care hospital” means a health facility having
17 a duly constituted governing body with overall administrative and
18 professional responsibility and an organized medical staff that
19 provides 24-hour inpatient care, including the following basic
20 services: medical, nursing, surgical, anesthesia, laboratory,
21 radiology, pharmacy, and dietary services. A general acute care
22 hospital may include more than one physical plant maintained and
23 operated on separate premises as provided in Section 1250.8. A
24 general acute care hospital that exclusively provides acute medical
25 rehabilitation center services, including at least physical therapy,
26 occupational therapy, and speech therapy, may provide for the
27 required surgical and anesthesia services through a contract with
28 another acute care hospital. In addition, a general acute care
29 hospital that, on July 1, 1983, provided required surgical and
30 anesthesia services through a contract or agreement with another
31 acute care hospital may continue to provide these surgical and
32 anesthesia services through a contract or agreement with an acute
33 care hospital. The general acute care hospital operated by the State
34 Department of Developmental Services at Agnews Developmental
35 Center may, until June 30, 2007, provide surgery and anesthesia
36 services through a contract or agreement with another acute care
37 hospital. Notwithstanding the requirements of this subdivision, a
38 general acute care hospital operated by the Department of
39 Corrections and Rehabilitation or the Department of Veterans
40 Affairs may provide surgery and anesthesia services during normal

1 weekday working hours, and not provide these services during
2 other hours of the weekday or on weekends or holidays, if the
3 general acute care hospital otherwise meets the requirements of
4 this section

5 A “general acute care hospital” includes a “rural general acute
6 care hospital.” However, a “rural general acute care hospital” shall
7 not be required by the department to provide surgery and anesthesia
8 services. A “rural general acute care hospital” shall meet either of
9 the following conditions:

10 (1) The hospital meets criteria for designation within peer group
11 six or eight, as defined in the report entitled Hospital Peer Grouping
12 for Efficiency Comparison, dated December 20, 1982.

13 (2) The hospital meets the criteria for designation within peer
14 group five or seven, as defined in the report entitled Hospital Peer
15 Grouping for Efficiency Comparison, dated December 20, 1982,
16 and has no more than 76 acute care beds and is located in a census
17 dwelling place of 15,000 or less population according to the 1980
18 federal census.

19 (b) “Acute psychiatric hospital” means a health facility having
20 a duly constituted governing body with overall administrative and
21 professional responsibility and an organized medical staff that
22 provides 24-hour inpatient care for mentally disordered,
23 incompetent, or other patients referred to in Division 5
24 (commencing with Section 5000) or Division 6 (commencing with
25 Section 6000) of the Welfare and Institutions Code, including the
26 following basic services: medical, nursing, rehabilitative,
27 pharmacy, and dietary services.

28 (c) “Skilled nursing facility” means a health facility that provides
29 skilled nursing care and supportive care to patients whose primary
30 need is for availability of skilled nursing care on an extended basis.

31 (d) “Intermediate care facility” means a health facility that
32 provides inpatient care to ambulatory or nonambulatory patients
33 who have recurring need for skilled nursing supervision and need
34 supportive care, but who do not require availability of continuous
35 skilled nursing care.

36 (e) “Intermediate care facility/developmentally disabled
37 habilitative” means a facility with a capacity of 4 to 15 beds that
38 provides 24-hour personal care, habilitation, developmental, and
39 supportive health services to 15 or fewer ~~developmentally disabled~~
40 persons *with developmental disabilities* who have intermittent

1 recurring needs for nursing services, but have been certified by a
2 physician and surgeon as not requiring availability of continuous
3 skilled nursing care.

4 (f) “Special hospital” means a health facility having a duly
5 constituted governing body with overall administrative and
6 professional responsibility and an organized medical or dental staff
7 that provides inpatient or outpatient care in dentistry or maternity.

8 (g) “Intermediate care facility/developmentally disabled” means
9 a facility that provides 24-hour personal care, habilitation,
10 developmental, and supportive health services to ~~developmentally~~
11 ~~disabled clients~~ *persons with developmental disabilities* whose
12 primary need is for developmental services and who have a
13 recurring but intermittent need for skilled nursing services.

14 (h) “Intermediate care facility/developmentally
15 ~~disabled—nursing~~ *disabled-nursing*” means a facility with a
16 capacity of 4 to 15 beds that provides 24-hour personal care,
17 developmental services, and nursing supervision for
18 ~~developmentally disabled~~ *persons with developmental disabilities*
19 who have intermittent recurring needs for skilled nursing care but
20 have been certified by a physician and surgeon as not requiring
21 continuous skilled nursing care. The facility shall serve medically
22 fragile persons ~~who have~~ *with developmental disabilities* or *who*
23 demonstrate significant developmental delay that may lead to a
24 developmental disability if not treated.

25 (i) (1) “Congregate living health facility” means a residential
26 home with a capacity, except as provided in paragraph (4), of no
27 more than 12 beds, that provides inpatient care, including the
28 following basic services: medical supervision, 24-hour skilled
29 nursing and supportive care, pharmacy, dietary, social, recreational,
30 and at least one type of service specified in paragraph (2). The
31 primary need of congregate living health facility residents shall
32 be for availability of skilled nursing care on a recurring,
33 intermittent, extended, or continuous basis. This care is generally
34 less intense than that provided in general acute care hospitals but
35 more intense than that provided in skilled nursing facilities.

36 (2) Congregate living health facilities shall provide one of the
37 following services:

38 (A) Services for persons who are mentally alert, ~~physically~~
39 ~~disabled~~ *persons with physical disabilities*, who may be ventilator
40 dependent.

1 (B) Services for persons who have a diagnosis of terminal
2 illness, a diagnosis of a life-threatening illness, or both. Terminal
3 illness means the individual has a life expectancy of six months
4 or less as stated in writing by his or her attending physician and
5 surgeon. A “life-threatening illness” means the individual has an
6 illness that can lead to a possibility of a termination of life within
7 five years or less as stated in writing by his or her attending
8 physician and surgeon.

9 (C) Services for persons who are catastrophically and severely
10 disabled. A *person who is* catastrophically and severely disabled
11 ~~person~~ means a person whose origin of disability was acquired
12 through trauma or nondegenerative neurologic illness, for whom
13 it has been determined that active rehabilitation would be beneficial
14 and to whom these services are being provided. Services offered
15 by a congregate living health facility to a *person who is*
16 catastrophically disabled ~~person~~ shall include, but not be limited
17 to, speech, physical, and occupational therapy.

18 (3) A congregate living health facility license shall specify which
19 of the types of persons described in paragraph (2) to whom a
20 facility is licensed to provide services.

21 (4) (A) A facility operated by a city and county for the purposes
22 of delivering services under this section may have a capacity of
23 59 beds.

24 (B) A congregate living health facility not operated by a city
25 and county servicing persons who are terminally ill, persons who
26 have been diagnosed with a life-threatening illness, or both, that
27 is located in a county with a population of 500,000 or more persons
28 may have not more than 25 beds for the purpose of serving *persons*
29 *who are terminally ill* ~~persons~~.

30 (C) A congregate living health facility not operated by a city
31 and county serving persons who are catastrophically and severely
32 disabled, as defined in subparagraph (C) of paragraph (2) that is
33 located in a county of 500,000 or more persons may have not more
34 than 12 beds for the purpose of serving *persons who are*
35 catastrophically and severely disabled ~~persons~~.

36 (5) A congregate living health facility shall have a
37 noninstitutional, homelike environment.

38 (j) (1) “Correctional treatment center” means a health facility
39 operated by the Department of Corrections *and Rehabilitation*, the
40 Department of the Youth Authority *Corrections and Rehabilitation*,

1 *Division of Juvenile Facilities*, or a county, city, or city and county
2 law enforcement agency that, as determined by the state
3 department, provides inpatient health services to that portion of
4 the inmate population who do not require a general acute care level
5 of basic services. This definition shall not apply to those areas of
6 a law enforcement facility that houses inmates or wards that may
7 be receiving outpatient services and are housed separately for
8 reasons of improved access to health care, security, and protection.
9 The health services provided by a correctional treatment center
10 shall include, but are not limited to, all of the following basic
11 services: physician and surgeon, psychiatrist, psychologist, nursing,
12 pharmacy, and dietary. A correctional treatment center may provide
13 the following services: laboratory, radiology, perinatal, and any
14 other services approved by the state department.

15 (2) Outpatient surgical care with anesthesia may be provided,
16 if the correctional treatment center meets the same requirements
17 as a surgical clinic licensed pursuant to Section 1204, with the
18 exception of the requirement that patients remain less than 24
19 hours.

20 (3) Correctional treatment centers shall maintain written service
21 agreements with general acute care hospitals to provide for those
22 inmate physical health needs that cannot be met by the correctional
23 treatment center.

24 (4) Physician and surgeon services shall be readily available in
25 a correctional treatment center on a 24-hour basis.

26 (5) It is not the intent of the Legislature to have a correctional
27 treatment center supplant the general acute care hospitals at the
28 California Medical Facility, the California Men's Colony, and the
29 California Institution for Men. This subdivision shall not be
30 construed to prohibit the Department of Corrections *and*
31 *Rehabilitation* from obtaining a correctional treatment center
32 license at these sites.

33 (k) "Nursing facility" means a health facility licensed pursuant
34 to this chapter that is certified to participate as a provider of care
35 either as a skilled nursing facility in the federal Medicare Program
36 under Title XVIII of the federal Social Security Act or as a nursing
37 facility in the federal Medicaid Program under Title XIX of the
38 federal Social Security Act, or as both.

39 (l) Regulations defining a correctional treatment center described
40 in subdivision (j) that is operated by a county, city, or city and

1 county, the Department of Corrections *and Rehabilitation*, or the
 2 Department of the Youth Authority *Corrections and Rehabilitation*,
 3 *Division of Juvenile Facilities*, shall not become effective prior
 4 to, or if effective, shall be inoperative until January 1, 1996, and
 5 until that time these correctional facilities are exempt from any
 6 licensing requirements.

7 (m) “*Intermediate care facility/developmentally*
 8 *disabled-continuous nursing (ICF/DD-CN)*” means a home-like
 9 facility with a capacity of four to eight, inclusive, beds that provides
 10 24-hour personal care, developmental services, and nursing
 11 supervision for persons with developmental disabilities who have
 12 continuous needs for skilled nursing care and have been certified
 13 by a physician and surgeon as warranting continuous skilled
 14 nursing care. The facility shall serve medically fragile persons
 15 who have developmental disabilities or demonstrate significant
 16 developmental delay that may lead to a developmental disability
 17 if not treated. ICF/DD-CN facilities shall be subject to licensure
 18 under this chapter upon adoption of licensing regulations in
 19 accordance with Section 1275.3. A facility providing continuous
 20 skilled nursing services to persons with developmental disabilities
 21 pursuant to Section 14132.20 or 14995.10 of the Welfare and
 22 Institutions Code shall apply for licensure under this subdivision
 23 within 90 days after the regulations become effective, and may
 24 continue to operate pursuant to those sections until its licensure
 25 application is either approved or denied.

26 SEC. 3. Section 1265.5 of the Health and Safety Code is
 27 amended to read:

28 1265.5. (a) (1) Prior to the initial licensure or renewal of a
 29 license of any person or persons to operate or manage an
 30 intermediate care facility/developmentally disabled habilitative,
 31 an intermediate care facility/developmentally disabled-nursing,
 32 *an intermediate care facility/developmentally disabled-continuous*
 33 *nursing*, or an intermediate care facility/developmentally disabled,
 34 other than an intermediate care facility/developmentally disabled
 35 operated by the state, that secures criminal record clearances for
 36 its employees through a method other than as specified in this
 37 section or upon the hiring of direct care staff by any of these
 38 facilities, the department shall secure from the Department of
 39 Justice criminal offender record information to determine whether
 40 the applicant, facility administrator or manager, any direct care

1 staff, or any other adult living in the same location, has ever been
2 convicted of a crime other than a minor traffic violation.

3 (2) (A) The criminal record clearance shall require the applicant
4 to submit electronic fingerprint images and related information of
5 the facility administrator or manager, and any direct care staff, or
6 any other adult living in the same location, to the Department of
7 Justice. Applicants shall be responsible for any cost associated
8 with capturing or transmitting the fingerprint images and related
9 information.

10 (B) The criminal record clearance shall be completed prior to
11 direct staff contact with residents of the facility. A criminal record
12 clearance shall be complete when the department has obtained the
13 person's criminal record information from the Department of
14 Justice and has determined that he or she is not disqualified from
15 engaging in the activity for which clearance is required.

16 (3) (A) The Licensing and Certification Program shall issue an
17 All Facilities Letter (AFL) to facility licensees when it determines
18 that both of the following criteria have been met for a period of
19 30 days:

20 (i) The program receives, within three business days, 95 percent
21 of its total responses indicating no evidence of recorded criminal
22 information from the Department of Justice.

23 (ii) The program processes 95 percent of its total responses
24 requiring disqualification in accordance with subdivision (b), with
25 notices mailed to the facility no later than 45 days after the date
26 that the criminal offender record information report is received
27 from the Department of Justice.

28 (B) After the AFL is issued, facilities shall not allow newly
29 hired facility administrators, managers, direct care staff, or any
30 other adult living in the same location to have direct contact with
31 clients or residents of the facility prior to completion of the criminal
32 record clearance. A criminal record clearance shall be complete
33 when the department has obtained the person's criminal offender
34 record information search response from the Department of Justice
35 and has determined that the person is not disqualified from
36 engaging in the activity for which clearance is required.

37 (C) An applicant or certificate holder who may be disqualified
38 on the basis of a criminal conviction shall provide the department
39 with a certified copy of the judgment of each conviction. In
40 addition, the individual may, during a period of two years after

1 the department receives the criminal record report, provide the
2 department with evidence of good character and rehabilitation in
3 accordance with subdivision (c). Upon receipt of a new application
4 for certification of the individual, the department may receive and
5 consider the evidence during the two-year period without requiring
6 additional fingerprint imaging to clear the individual.

7 (D) The department's Licensing and Certification Program shall
8 explore and implement methods for maximizing its efficiency in
9 processing criminal record clearances within the requirements of
10 law, including a streamlined clearance process for persons that
11 have been disqualified on the basis of criminal convictions that do
12 not require automatic denial pursuant to subdivision (b).

13 (4) An applicant and any other person specified in this
14 subdivision, as part of the background clearance process, shall
15 provide information as to whether or not the person has any prior
16 criminal convictions, has had any arrests within the past 12-month
17 period, or has any active arrests, and shall certify that, to the best
18 of his or her knowledge, the information provided is true. This
19 requirement is not intended to duplicate existing requirements for
20 individuals who are required to submit fingerprint images as part
21 of a criminal background clearance process. Every applicant shall
22 provide information on any prior administrative action taken
23 against him or her by any federal, state, or local governmental
24 agency and shall certify that, to the best of his or her knowledge,
25 the information provided is true. An applicant or other person
26 required to provide information pursuant to this section that
27 knowingly or willfully makes false statements, representations, or
28 omissions may be subject to administrative action, including, but
29 not limited to, denial of his or her application or exemption or
30 revocation of any exemption previously granted.

31 (b) (1) The application for licensure or renewal shall be denied
32 if the criminal record indicates that the person seeking initial
33 licensure or renewal of a license referred to in subdivision (a) has
34 been convicted of a violation or attempted violation of any one or
35 more of the following Penal Code provisions: Section 187,
36 subdivision (a) of Section 192, Section 203, 205, 206, 207, 209,
37 210, 210.5, 211, 220, 222, 243.4, 245, 261, 262, or 264.1, Sections
38 265 to 267, inclusive, Section 273a, 273d, 273.5, or 285,
39 subdivisions (c), (d), (f), and (g) of Section 286, Section 288,
40 subdivisions (c), (d), (f), and (g) of Section 288a, Section 288.5,

1 289, 289.5, 368, 451, 459, 470, 475, 484, or 484b, Sections 484d
2 to 484j, inclusive, or Section 487, 488, 496, 503, 518, or 666,
3 unless any of the following applies:

4 (A) The person was convicted of a felony and has obtained a
5 certificate of rehabilitation under Chapter 3.5 (commencing with
6 Section 4852.01) of Title 6 of Part 3 of the Penal Code and the
7 information or accusation against the person has been dismissed
8 pursuant to Section 1203.4 of the Penal Code with regard to that
9 felony.

10 (B) The person was convicted of a misdemeanor and the
11 information or accusation against the person has been dismissed
12 pursuant to Section 1203.4 or 1203.4a of the Penal Code.

13 (C) The person was convicted of a felony or a misdemeanor,
14 but has previously disclosed the fact of each conviction to the
15 department and the department has made a determination in
16 accordance with law that the conviction does not disqualify the
17 person.

18 (2) The application for licensure or renewal shall be denied if
19 the criminal record of the person includes a conviction in another
20 state for an offense that, if committed or attempted in this state,
21 would have been punishable as one or more of the offenses set
22 forth in paragraph (1), unless evidence of rehabilitation comparable
23 to the dismissal of a misdemeanor or a certificate of rehabilitation
24 as set forth in subparagraph (A) or (B) of paragraph (1) is provided
25 to the department.

26 (c) If the criminal record of a person described in subdivision
27 (a) indicates any conviction other than a minor traffic violation or
28 other than a conviction listed in subdivision (b), the department
29 may deny the application for licensure or renewal. In determining
30 whether or not to deny the application for licensure or renewal
31 pursuant to this subdivision, the department shall take into
32 consideration the following factors as evidence of good character
33 and rehabilitation:

34 (1) The nature and seriousness of the offense under consideration
35 and its relationship to their employment duties and responsibilities.

36 (2) Activities since conviction, including employment or
37 participation in therapy or education, that would indicate changed
38 behavior.

1 (3) The time that has elapsed since the commission of the
2 conduct or offense referred to in paragraph (1) or (2) and the
3 number of offenses.

4 (4) The extent to which the person has complied with any terms
5 of parole, probation, restitution, or any other sanction lawfully
6 imposed against the person.

7 (5) Any rehabilitation evidence, including character references,
8 submitted by the person.

9 (6) Employment history and current employer recommendations.

10 (7) Circumstances surrounding the commission of the offense
11 that would demonstrate the unlikelihood of repetition.

12 (8) The granting by the Governor of a full and unconditional
13 pardon.

14 (9) A certificate of rehabilitation from a superior court.

15 (d) Nothing in this section shall be construed to require a
16 criminal record check of a person receiving services in an
17 intermediate care facility/developmentally disabled habilitative,
18 intermediate care facility/developmentally disabled-nursing,
19 *intermediate care facility/developmentally disabled-continuous*
20 *nursing*, or intermediate care facility/developmentally disabled.

21 (e) For purposes of this section, “direct care staff” means all
22 facility staff who are trained and experienced in the care of persons
23 with developmental disabilities and who directly provide program
24 and nursing services to clients. Administrative and licensed
25 personnel shall be considered direct care staff when directly
26 providing program and nursing services to clients. Persons
27 employed as consultants and acting as direct care staff shall be
28 subject to the same requirements for a criminal record clearance
29 as other direct care staff. However, the employing facility shall
30 not be required to pay any costs associated with that criminal record
31 clearance.

32 (f) Upon the employment of any person specified in subdivision
33 (a), and prior to any contact with clients or residents, the facility
34 shall ensure that electronic fingerprint images are submitted to the
35 Department of Justice for the purpose of obtaining a criminal record
36 check.

37 (g) The department shall develop procedures to ensure that any
38 licensee, direct care staff, or certificate holder for whom a criminal
39 record has been obtained pursuant to this section or Section 1338.5

1 or 1736 shall not be required to obtain multiple criminal record
2 clearances.

3 (h) In addition to the persons who are not required to obtain
4 multiple criminal record clearances pursuant to subdivision (g), a
5 person shall not be required to obtain a separate criminal record
6 clearance if the person meets all of the following criteria:

7 (1) The person is employed as a consultant and acts as direct
8 care staff.

9 (2) The person is a registered nurse, licensed vocational nurse,
10 physical therapist, occupational therapist, or speech-language
11 pathologist.

12 (3) The person has obtained a criminal record clearance as a
13 prerequisite to holding a license or certificate to provide direct
14 care services.

15 (4) The person has a license or certificate to provide direct care
16 service that is in good standing with the appropriate licensing or
17 certification board.

18 (5) The person is providing time-limited specialized clinical
19 care or services.

20 (6) The person is not left alone with the client.

21 (i) If, at any time, the department determines that it does not
22 meet the standards specified in clauses (i) and (ii) of subparagraph
23 (A) of paragraph (3) of subdivision (a), for a period of 90
24 consecutive days, the requirements in paragraph (3) of subdivision
25 (a) shall be suspended until the department determines that it has
26 met those standards for a period of 90 consecutive days.

27 (j) During any period of time in which paragraph (3) of
28 subdivision (a) is inoperative, facilities may allow newly hired
29 facility administrators, managers, direct care staff, or any other
30 adult living in the same location to have direct contact with clients
31 or residents of the facility after those persons have submitted
32 live-scan fingerprint images to the Department of Justice, and the
33 department shall issue an AFL advising of this change in the
34 statutory requirement.

35 (k) Notwithstanding any other provision of law, the department
36 is authorized to provide an individual with a copy of his or her
37 state or federal level criminal offender record information search
38 response as provided to that department by the Department of
39 Justice if the department has denied a criminal background
40 clearance based on this information and the individual makes a

1 written request to the department for a copy specifying an address
 2 to which it is to be sent. The state or federal level criminal offender
 3 record information search response shall not be modified or altered
 4 from its form or content as provided by the Department of Justice
 5 and shall be provided to the address specified by the individual in
 6 his or her written request. The department shall retain a copy of
 7 the individual’s written request and the response and date provided.

8 *SEC. 4. Section 1266 of the Health and Safety Code is amended*
 9 *to read:*

10 1266. (a) The Licensing and Certification Division shall be
 11 supported entirely by federal funds and special funds by no earlier
 12 than the beginning of the 2009–10 fiscal year unless otherwise
 13 specified in statute, or unless funds are specifically appropriated
 14 from the General Fund in the annual Budget Act or other enacted
 15 legislation. For the 2007–08 fiscal year, General Fund support
 16 shall be provided to offset licensing and certification fees in an
 17 amount of not less than two million seven hundred eighty-two
 18 thousand dollars (\$2,782,000).

19 (b) (1) The Licensing and Certification Program fees for the
 20 2006–07 fiscal year shall be as follows:

23	Type of Facility	Fee	
24	General Acute Care Hospitals	\$ 134.10	per bed
25	Acute Psychiatric Hospitals	\$ 134.10	per bed
26	Special Hospitals	\$ 134.10	per bed
27	Chemical Dependency Recovery Hospitals	\$ 123.52	per bed
28	Skilled Nursing Facilities	\$ 202.96	per bed
29	Intermediate Care Facilities	\$ 202.96	per bed
30	Intermediate Care Facilities - Developmentally		
31	Disabled	\$ 592.29	per bed
32	Intermediate Care Facilities - Developmentally		
33	Disabled - Habilitative	\$1,000.00	per facility
34	Intermediate Care Facilities - Developmentally		
35	Disabled - Nursing	\$1,000.00	per facility
36	Home Health Agencies	\$2,700.00	per facility
37	Referral Agencies	\$5,537.71	per facility
38	Adult Day Health Centers	\$4,650.02	per facility
39	Congregate Living Health Facilities	\$ 202.96	per bed
40	Psychology Clinics	\$ 600.00	per facility

1	Primary Clinics - Community and Free	\$ 600.00	per facility
2	Specialty Clinics - Rehab Clinics		
3	(For profit)	\$2,974.43	per facility
4	(Nonprofit)	\$ 500.00	per facility
5	Specialty Clinics - Surgical and Chronic	\$1,500.00	per facility
6	Dialysis Clinics	\$1,500.00	per facility
7	Pediatric Day Health/Respite Care	\$ 142.43	per bed
8	Alternative Birthing Centers	\$2,437.86	per facility
9	Hospice	\$1,000.00	per facility
10	Correctional Treatment Centers	\$ 590.39	per bed

11
12 *(2) In the first year of licensure for intermediate care*
13 *facility/developmentally disabled-continuous nursing (ICF/DD-CN)*
14 *facilities, the licensure fee for those facilities shall be equivalent*
15 *to the licensure fee for intermediate care facility/developmentally*
16 *disabled-nursing facilities during the same year. Thereafter, the*
17 *licensure fee for ICF/DD-CN facilities shall be established*
18 *pursuant to subdivisions (c) and (d).*

19 (c) Commencing February 1, 2007, and every February 1
20 thereafter, the department shall publish a list of estimated fees
21 pursuant to this section. The calculation of estimated fees and the
22 publication of the report and list of estimated fees shall not be
23 subject to the rulemaking requirements of Chapter 3.5
24 (commencing with Section 11340) of Part 1 of Division 3 of Title
25 2 of the Government Code.

26 (d) By February 1 of each year, the department shall prepare
27 the following reports and shall make those reports, and the list of
28 estimated fees required to be published pursuant to subdivision
29 (c), available to the public by submitting them to the Legislature
30 and posting them on the department's *Internet* Web site:

31 (1) The department shall prepare a report of all costs for
32 activities of the Licensing and Certification Program. At a
33 minimum, this report shall include a narrative of all baseline
34 adjustments and their calculations, a description of how each
35 category of facility was calculated, descriptions of assumptions
36 used in any calculations, and shall recommend Licensing and
37 Certification Program fees in accordance with the following:

38 (A) Projected workload and costs shall be grouped for each fee
39 category, *including workload costs for facility categories that have*

1 *been established by statute and for which licensing regulations*
2 *and procedures are under development.*

3 (B) Cost estimates, and the estimated fees, shall be based on
4 the appropriation amounts in the Governor's proposed budget for
5 the next fiscal year, with and without policy adjustments to the fee
6 methodology.

7 (C) The allocation of program, operational, and administrative
8 overhead, and indirect costs to fee categories shall be based on
9 generally accepted cost allocation methods. Significant items of
10 costs shall be directly charged to fee categories if the expenses can
11 be reasonably identified to the fee category that caused them.
12 Indirect and overhead costs shall be allocated to all fee categories
13 using a generally accepted cost allocation method.

14 (D) The amount of federal funds and General Fund moneys to
15 be received in the budget year shall be estimated and allocated to
16 each fee category based upon an appropriate metric.

17 (E) The fee for each category shall be determined by dividing
18 the aggregate state share of all costs for the Licensing and
19 Certification Program by the appropriate metric for the category
20 of licensure. Amounts actually received for new licensure
21 applications, including change of ownership applications, and late
22 payment penalties, pursuant to Section 1266.5, during each fiscal
23 year shall be calculated and 95 percent shall be applied to the
24 appropriate fee categories in determining Licensing and
25 Certification Program fees for the second fiscal year following
26 receipt of those funds. The remaining 5 percent shall be retained
27 in the fund as a reserve until appropriated.

28 (2) (A) The department shall prepare a staffing and systems
29 analysis to ensure efficient and effective utilization of fees
30 collected, proper allocation of departmental resources to licensing
31 and certification activities, survey schedules, complaint
32 investigations, enforcement and appeal activities, data collection
33 and dissemination, surveyor training, and policy development.

34 (B) The analysis under this paragraph shall be made available
35 to interested persons and shall include all of the following:

36 (i) The number of surveyors and administrative support
37 personnel devoted to the licensing and certification of health care
38 facilities.

39 (ii) The percentage of time devoted to licensing and certification
40 activities for the various types of health facilities.

1 (iii) The number of facilities receiving full surveys and the
2 frequency and number of follow up visits.

3 (iv) The number and timeliness of complaint investigations.

4 (v) Data on deficiencies and citations issued, and numbers of
5 citation review conferences and arbitration hearings.

6 (vi) Other applicable activities of the licensing and certification
7 division.

8 (e) (1) The department shall adjust the list of estimated fees
9 published pursuant to subdivision (c) if the annual Budget Act or
10 other enacted legislation includes an appropriation that differs
11 from those proposed in the Governor's proposed budget for that
12 fiscal year.

13 (2) The department shall publish a final fee list, with an
14 explanation of any adjustment, by the issuance of an all facilities
15 letter, by posting the list on the department's Internet Web site,
16 and by including the final fee list as part of the licensing application
17 package, within 14 days of the enactment of the annual Budget
18 Act. The adjustment of fees and the publication of the final fee list
19 shall not be subject to the rulemaking requirements of Chapter 3.5
20 (commencing with Section 11340) of Part 1 of Division 3 of Title
21 2 of the Government Code.

22 (f) (1) No fees shall be assessed or collected pursuant to this
23 section from any state department, authority, bureau, commission,
24 or officer, unless federal financial participation would become
25 available by doing so and an appropriation is included in the annual
26 Budget Act for that state department, authority, bureau,
27 commission, or officer for this purpose. No fees shall be assessed
28 or collected pursuant to this section from any clinic that is certified
29 only by the federal government and is exempt from licensure under
30 Section 1206, unless federal financial participation would become
31 available by doing so.

32 (2) For the 2006–07 state fiscal year, no fee shall be assessed
33 or collected pursuant to this section from any general acute care
34 hospital owned by a health care district with 100 beds or less.

35 (g) The Licensing and Certification Program may change annual
36 license expiration renewal dates to provide for efficiencies in
37 operational processes or to provide for sufficient cash flow to pay
38 for expenditures. If an annual license expiration date is changed,
39 the renewal fee shall be prorated accordingly. Facilities shall be

1 provided with a 60-day notice of any change in their annual license
2 renewal date.

3 *SEC. 5. Section 1275.3 of the Health and Safety Code is*
4 *amended to read:*

5 1275.3. (a) The State Department of ~~Public Health Services~~
6 and the State Department of Developmental Services shall jointly
7 develop and implement licensing ~~and Medi-Cal~~ regulations
8 appropriate for intermediate care facilities/developmentally
9 ~~disabled—nursing disabled-nursing and intermediate care~~
10 ~~facility/developmentally disabled-continuous nursing.~~ The Director
11 of Health Services shall adopt these regulations as emergency
12 regulations and, notwithstanding any provision of law, shall
13 transmit emergency regulations adopted pursuant to this
14 subdivision directly to the Secretary of State for filing, and
15 regulations shall become effective immediately upon filing.

16 ~~The adoption of the regulations shall be deemed to be an~~
17 ~~emergency and necessary for the immediate preservation of the~~
18 ~~public peace, health and safety, or general welfare.~~

19 (b) The regulations adopted pursuant to subdivision (a) shall
20 ensure that residents of intermediate care facilities/developmentally
21 ~~disabled—nursing disabled-nursing and intermediate care~~
22 ~~facility/developmentally disabled-continuous nursing~~ receive
23 appropriate medical and nursing services, and developmental
24 program services in a normalized, least restrictive physical and
25 programmatic environment appropriate to individual resident need.

26 In addition, the regulations shall do all of the following:

27 (1) Include provisions for the completion of a clinical and
28 developmental assessment of placement needs, including medical
29 and other needs, and the degree to which they are being met, of
30 clients placed in an intermediate care facility/developmentally
31 ~~disabled—nursing disabled-nursing and intermediate care~~
32 ~~facility/developmentally disabled-continuous nursing~~ and for the
33 monitoring of these needs at regular intervals.

34 (2) Provide for maximum utilization of generic community
35 resources by clients residing in a facility.

36 (3) Require the State Department of Developmental Services
37 to review and approve an applicant's program plan as part of the
38 licensing and certification process.

39 (4) Require that the physician providing the certification that
40 placement in the intermediate care facility/developmentally

1 ~~disabled—nursing~~ *disabled-nursing or intermediate care*
2 *facility/developmentally disabled-continuous nursing* is needed,
3 consult with the physician who was the physician of record at the
4 time the person’s proposed placement is being considered by the
5 interdisciplinary team.

6 (c) Regulations developed pursuant to this section shall include
7 licensing fee schedules appropriate to facilities which will
8 encourage their development.

9 (d) Nothing in this section supersedes the authority of the State
10 Fire Marshal pursuant to Sections 13113, 13113.5, 13143, and
11 13143.6 to the extent that these sections are applicable to
12 community care facilities.

13 *SEC. 6. Section 1326 of the Health and Safety Code is amended*
14 *to read:*

15 1326. As used in this article, “long-term health care facility”
16 means any skilled nursing facility, intermediate care facility,
17 intermediate care facility/developmentally disabled, intermediate
18 care facility/developmentally disabled habilitative, intermediate
19 care facility/developmentally ~~disabled—nursing~~ *disabled-nursing,*
20 *intermediate care facility/developmentally disabled-continuous*
21 *nursing,* or congregate living health facility licensed pursuant to
22 this chapter.

23 *SEC. 7. Section 1337 of the Health and Safety Code is amended*
24 *to read:*

25 1337. (a) The Legislature finds that the quality of patient care
26 in skilled nursing and intermediate care facilities is dependent
27 upon the competence of the personnel who staff its facilities. The
28 Legislature further finds that direct patient care in skilled nursing
29 and intermediate care facilities is currently rendered largely by
30 certified nurse assistants. To assure the availability of trained
31 personnel in skilled nursing and intermediate care facilities, the
32 Legislature intends that all such facilities in this state participate
33 in approved training programs established under this article. This
34 article shall not apply to intermediate care
35 facilities/developmentally disabled habilitative, *intermediate care*
36 *facility/developmentally disabled-nursing, and intermediate care*
37 *facility/developmentally disabled-continuous nursing* which have
38 staff training programs approved by the State Department of
39 Developmental Services, general acute care hospitals, acute
40 psychiatric hospitals, or special hospitals.

1 (b) The requirement that certified nurse assistants obtain a
2 criminal record clearance upon certification and biannually
3 thereafter shall apply regardless of the setting in which the certified
4 nurse assistant is employed.

5 (c) The department shall develop procedures to ensure that
6 certified nurse assistants employed by intermediate care facilities
7 for the developmentally disabled/habilitative and intermediate care
8 facilities for the developmentally disabled/nursing shall not be
9 required to obtain multiple criminal record clearances.

10 (d) For the purpose of this article:

11 (1) “Nurse assistant” means any unlicensed aide, assistant, or
12 orderly, who performs nursing services directed at the safety,
13 comfort, personal hygiene, or protection of patients in a skilled
14 nursing or intermediate care facility.

15 (2) “Approved training program” means a program for the
16 training of nurse assistants that meets the criteria established and
17 approved under this chapter.

18 (3) “Certified nurse assistant” means any person who holds
19 himself or herself out as a certified nurse assistant and who, for
20 compensation, performs basic patient care services directed at the
21 safety, comfort, personal hygiene, and protection of patients, and
22 is certified as having completed the requirements of this article.
23 These services shall not include any services which may only be
24 performed by a licensed person and otherwise shall be performed
25 under the supervision of a registered nurse, as defined in Section
26 2725 of the Business and Professions Code, or a licensed vocational
27 nurse, as defined in Section 2859 of the Business and Professions
28 Code.

29 (4) “State department” means the State Department of *Public*
30 ~~Health Services~~.

31 *SEC. 8. Section 1418 of the Health and Safety Code is amended*
32 *to read:*

33 1418. As used in this chapter:

34 (a) “Long-term health care facility” means any facility licensed
35 pursuant to Chapter 2 (commencing with Section 1250) that is any
36 of the following:

37 (1) Skilled nursing facility.

38 (2) Intermediate care facility.

39 (3) Intermediate care facility/developmentally disabled.

1 (4) Intermediate care facility/developmentally disabled
2 habilitative.

3 (5) Intermediate care facility/developmentally disabled—nursing
4 *disabled-nursing*.

5 (6) Congregate living health facility.

6 (7) Nursing facility.

7 (8) *Intermediate care facility/developmentally*
8 *disabled-continuous nursing*.

9 (b) “Long-term health care facility” also includes a pediatric
10 day health and respite care facility licensed pursuant to Chapter
11 8.6 (commencing with Section 1760).

12 (c) “Long-term health care facility” does not include a general
13 acute care hospital or an acute psychiatric hospital, except for that
14 distinct part of the hospital that provides skilled nursing facility,
15 intermediate care facility, or pediatric day health and respite care
16 facility services.

17 (d) “Licensee” means the holder of a license issued under
18 Chapter 2 (commencing with Section 1250) or Chapter 8.6
19 (commencing with Section 1760) for a long-term health care
20 facility.

21 *SEC. 9. Section 1567.50 of the Health and Safety Code is*
22 *amended to read:*

23 1567.50. (a) Notwithstanding that a community care facility
24 means a place that provides nonmedical care under subdivision
25 (a) of Section 1502, pursuant to Article 3.5 (commencing with
26 Section 4684.50) of Chapter 6 of Division 4.5 of the Welfare and
27 Institutions Code, the department shall jointly implement with the
28 State Department of Developmental Services a pilot project to test
29 the effectiveness of providing special health care and intensive
30 support services to adults in homelike community settings.

31 (b) The State Department of Social Services may license, subject
32 to the following conditions, an Adult Residential Facility for
33 Persons with Special Health Care Needs to provide 24-hour
34 services to up to five adults with developmental disabilities who
35 have special health care and intensive support needs, as defined
36 in subdivisions (f) and (g) of Section 4684.50 of the Welfare and
37 Institutions Code.

38 (1) The State Department of Developmental Services shall be
39 responsible for granting the certificate of program approval for an
40 Adult Residential Facility for Persons with Special Health Care

1 Needs (ARFPSHN). The State Department of Social Services shall
2 not issue a license unless the applicant has obtained a certification
3 of program approval from the State Department of Developmental
4 Services.

5 (2) The State Department of Social Services shall ensure that
6 the ARFPSHN meets the administration requirements under Article
7 2 (commencing with Section 1520) including, but not limited to,
8 requirements relating to fingerprinting and criminal records under
9 Section 1522.

10 (3) The State Department of Social Services shall administer
11 employee actions under Article 5.5 (commencing with Section
12 1558).

13 (4) The regional center shall monitor and enforce compliance
14 of the program and health and safety requirements, including
15 monitoring and evaluating the quality of care and intensive support
16 services. The State Department of Developmental Services shall
17 ensure that the regional center performs these functions.

18 (5) The State Department of Developmental Services may
19 decertify any ARFPSHN that does not comply with program
20 requirements. When the State Department of Developmental
21 Services determines that urgent action is necessary to protect clients
22 of the ARFPSHN from physical or mental abuse, abandonment,
23 or any other substantial threat to their health and safety, the State
24 Department of Developmental Services may request the regional
25 center or centers to remove the clients from the ARFPSHN or
26 direct the regional center or centers to obtain alternative services
27 for the consumers within 24 hours.

28 (6) The State Department of Social Services may initiate
29 proceedings for temporary suspension of the license pursuant to
30 Section 1550.5.

31 (7) The State Department of Developmental Services, upon its
32 decertification, shall inform the State Department of Social
33 Services of the licensee's decertification, with its recommendation
34 concerning revocation of the license, for which the State
35 Department of Social Services may initiate proceedings pursuant
36 to Section 1550.

37 (8) The State Department of Developmental Services and the
38 regional centers shall provide the State Department of Social
39 Services all available documentation and evidentiary support
40 necessary for any enforcement proceedings to suspend the license

1 pursuant to Section 1550.5, to revoke or deny a license pursuant
2 to Section 1551, or to exclude an individual pursuant to Section
3 1558.

4 (9) The State Department of Social Services Community Care
5 Licensing Division shall enter into a memorandum of
6 understanding with the State Department of Developmental
7 Services to outline a formal protocol to address shared
8 responsibilities, including monitoring responsibilities, complaint
9 investigations, administrative actions, and closures.

10 (10) The licensee shall provide documentation that, in addition
11 to the administrator requirements set forth under paragraph (4) of
12 subdivision (a) of Section 4684.63 of the Welfare and Institutions
13 Code, the administrator, prior to employment, has completed a
14 minimum of 35 hours of initial training in the general laws,
15 regulations and policies and procedural standards applicable to
16 facilities licensed by the State Department of Social Services under
17 Article 2 (commencing with Section 1520). Thereafter, the licensee
18 shall provide documentation every two years that the administrator
19 has completed 40 hours of continuing education in the general
20 laws, regulations and policies and procedural standards applicable
21 to adult residential facilities. The training specified in this section
22 shall be provided by a vendor approved by the State Department
23 of Social Services and the cost of the training shall be borne by
24 the administrator or licensee.

25 (c) The article shall remain in effect only until January 1, ~~2010~~
26 ~~2011~~, and as of that date is repealed, unless a later enacted statute
27 extends or deletes that date.

28 (d) This article shall only be implemented to the extent that
29 funds are made available through an appropriation in the annual
30 Budget Act.

31 *SEC. 10. Section 104820 of the Health and Safety Code is*
32 *amended to read:*

33 ~~104820. It is the intent of the Legislature that the~~ *The dental*
34 *disease prevention* program established by this article shall, ~~in~~
35 ~~fiscal years subsequent to the fiscal year in which this section is~~
36 ~~enacted~~, be funded according to customary budget procedures *and*
37 *shall only be implemented upon appropriation of funds by the*
38 *Legislature.*

39 *SEC. 11. Section 105250 of the Health and Safety Code is*
40 *amended to read:*

1 105250. (a) A program is hereby established within the
2 department to meet the requirements of the Residential Lead-Based
3 Paint Hazard Reduction Act of 1992 (42 U.S.C. Sec. 4851 and
4 following) and Title X of the Housing and Community
5 Development Act of 1992 (P.L. 102-550).

6 (b) The department shall implement and administer the program.
7 The department shall have powers and authority consistent with
8 the intent of, and shall adopt regulations to establish the program
9 as an authorized state program pursuant to, Title IV, Sections 402
10 to 404, inclusive, of the Toxic Substances Control Act (15 U.S.C.
11 Sec. 2601 and following).

12 (c) Regulations regarding accreditation of training providers
13 that are adopted pursuant to subdivision (b) shall include, but not
14 be limited to, provisions governing accreditation of providers of
15 health and safety training to employees who engage in or supervise
16 lead-related construction work as defined in Section 6716 of the
17 Labor Code, and certification of employees who have successfully
18 completed that training. Regulations regarding accreditation of
19 training providers shall, as a condition of accreditation, require
20 providers to offer training that meets the requirements of Section
21 6717 of the Labor Code. The department shall, not later than
22 August 1, 1994, adopt regulations establishing fees for the
23 accreditation of training providers, the certification of individuals,
24 and the licensing of entities engaged in lead-related occupations.
25 The fees imposed under this subdivision shall be established at
26 levels not exceeding an amount sufficient to cover the costs of
27 administering and enforcing the standards and regulations adopted
28 under this section. The fees established pursuant to this subdivision
29 shall not be imposed on any state or local government or nonprofit
30 training program.

31 (d) All regulations affecting the training of employees shall be
32 adopted in consultation with the Division of Occupational Safety
33 and Health. The regulations shall include provisions for allocating
34 to the division an appropriate portion of funds to be expended for
35 the program for the division's cost of enforcing compliance with
36 training and certification requirements. The department shall adopt
37 regulations to establish the program on or before August 1, 1994.

38 (e) The department shall review and amend its training,
39 certification, and accreditation regulations adopted under this

1 section as is necessary to ensure continued eligibility for federal
2 and state funding of lead-hazard reduction activities in the state.

3 *(f) Effective July 1, 2010, all fees collected pursuant to*
4 *subdivision (c) shall be deposited in the Lead-Related Construction*
5 *Fund, which is hereby created in the State Treasury. Moneys in*
6 *the fund shall be expended by the department upon appropriation*
7 *by the Legislature for the purposes of this chapter. Moneys in the*
8 *fund are available for cashflow borrowing pursuant to Sections*
9 *16310 and 16381 of the Government Code.*

10 *(g) Of the amount appropriated in Item 4265-001-0070 of*
11 *Section 2.00 of the Budget Act of 2009, five hundred thousand*
12 *dollars (\$500,000) from the Occupational Lead Poisoning*
13 *Prevention Account shall be used to administer the program in*
14 *the 2009–10 fiscal year. These funds shall be repaid to the*
15 *Occupational Lead Poisoning Prevention Account upon a*
16 *determination by the Department of Finance that sufficient moneys*
17 *are available in the Lead-Related Construction Fund. No interest*
18 *shall be paid by the Lead-Related Construction Fund at the time*
19 *of repayment.*

20 *SEC. 12. Section 116565 of the Health and Safety Code is*
21 *amended to read:*

22 116565. (a) Each public water system serving 1,000 or more
23 service connections and any public water system that treats water
24 on behalf of one or more public water systems for the purpose of
25 rendering it safe for human consumption, shall reimburse the
26 department for actual cost incurred by the department for
27 conducting those activities mandated by this chapter relating to
28 the issuance of domestic water supply permits, inspections,
29 monitoring, surveillance, and water quality evaluation that relate
30 to that specific public water system. The amount of reimbursement
31 shall be sufficient to pay, but in no event shall exceed, the
32 department's actual cost in conducting these activities.

33 (b) Each public water system serving less than 1,000 service
34 connections shall pay an annual drinking water operating fee to
35 the department as set forth in this subdivision for costs incurred
36 by the department for conducting those activities mandated by this
37 chapter relating to inspections, monitoring, surveillance, and water
38 quality evaluation relating to public water systems. The total
39 amount of fees shall be sufficient to pay, but in no event shall
40 exceed, the department's actual cost in conducting these activities.

1 Notwithstanding adjustment of actual fees collected pursuant to
 2 Section 100425 as authorized pursuant to subdivision (d) of Section
 3 106590, the ~~maximum~~ amount that shall be paid annually by a
 4 public water system pursuant to this section shall ~~not exceed the~~
 5 ~~following~~ *be as follows*:

Type of public water system	Fee
15—24 service connections	\$250
25—99 service connections	\$400
100—499 service connections	\$500
500—999 service connections	\$700
Noncommunity water systems pursuant to paragraph (1) of subdivision (j) of Section 116275	\$350
Noncommunity water systems exempted pursuant to Section 116282	\$100

17
 18 (1) *Community water systems, six dollars (\$6) per service*
 19 *connection, but not less than two hundred fifty dollars (\$250) per*
 20 *water system, which may be increased by the department, as*
 21 *provided for in subdivision (f), to ten dollars (\$10) per service*
 22 *connection, but not less than two hundred fifty dollars (\$250) per*
 23 *water system.*

24 (2) *Nontransient noncommunity water systems pursuant to*
 25 *subdivision (k) of Section 116275, two dollars (\$2) per person*
 26 *served, but not less than four hundred fifty-six dollars (\$456) per*
 27 *water system, which may be increased by the department, as*
 28 *provided for in subdivision (f), to three dollars (\$3) per person*
 29 *served, but not less than four hundred fifty-six dollars (\$456) per*
 30 *water system.*

31 (3) *Transient noncommunity water systems pursuant to*
 32 *subdivision (k) of Section 116275, eight hundred dollars (\$800)*
 33 *per water system, which may be increased by the department, as*
 34 *provided for in subdivision (f), to one thousand three hundred*
 35 *thirty-five dollars (\$1,335) per water system.*

36 (4) *Noncommunity water systems exempted pursuant to Section*
 37 *116282, one hundred two dollars (\$102) per water system.*

38 (c) For purposes of determining the fees provided for in
 39 subdivision (a), the department shall maintain a record of its actual
 40 costs for pursuing the activities specified in subdivision (a) relative

1 to each system required to pay the fees. The fee charged each
2 system shall reflect the department's actual cost, or in the case of
3 a local primacy agency the local primacy agency's actual cost, of
4 conducting the specified activities.

5 (d) The department shall submit an invoice for cost
6 reimbursement for the activities specified in subdivision (a) to the
7 public water systems no more than twice a year.

8 (1) The department shall submit one estimated cost invoice to
9 public water systems serving 1,000 or more service connections
10 and any public water system that treats water on behalf of one or
11 more public water systems for the purpose of rendering it safe for
12 human consumption. This invoice shall include the actual hours
13 expended during the first six months of the fiscal year. The hourly
14 cost rate used to determine the amount of the estimated cost invoice
15 shall be the rate for the previous fiscal year.

16 (2) The department shall submit a final invoice to the public
17 water system prior to October 1 following the fiscal year that the
18 costs were incurred. The invoice shall indicate the total hours
19 expended during the fiscal year, the reasons for the expenditure,
20 the hourly cost rate of the department for the fiscal year, the
21 estimated cost invoice, and payments received. The amount of the
22 final invoice shall be determined using the total hours expended
23 during the fiscal year and the actual hourly cost rate of the
24 department for the fiscal year. The payment of the estimated
25 invoice, exclusive of late penalty, if any, shall be credited toward
26 the final invoice amount.

27 (3) Payment of the invoice issued pursuant to paragraphs (1)
28 and (2) shall be made within 90 days of the date of the invoice.
29 Failure to pay the amount of the invoice within 90 days shall result
30 in a 10-percent late penalty that shall be paid in addition to the
31 invoiced amount.

32 (e) Any public water system under the jurisdiction of a local
33 primacy agency shall pay the fees specified in this section to the
34 local primacy agency in lieu of the department. This section shall
35 not preclude a local health officer from imposing additional fees
36 pursuant to Section 101325.

37 (f) *The department may increase the fees established in*
38 *subdivision (b) as follows:*

39 (1) *By February 1 of the fiscal year prior to the fiscal year for*
40 *which fees are proposed to be increased, the department shall*

1 *publish a list of fees for the following fiscal year and a report*
2 *showing the calculation of the amount of the fees.*

3 *(2) The department shall make the report and the list of fees*
4 *available to the public by submitting them to the Legislature and*
5 *posting them on the department's Internet Web site.*

6 *(3) The department shall establish the amount of fee increases*
7 *subject to the approval and appropriation by the Legislature.*

8 *SEC. 13. Section 125155.1 is added to the Health and Safety*
9 *Code, to read:*

10 *125155.1. (a) Any person found eligible for services under*
11 *this article whose employer-sponsored health coverage is later*
12 *terminated or any person who applied for services provided under*
13 *this article whose employer-sponsored health coverage was*
14 *terminated during the six-month period prior to the date he or she*
15 *applied for services pursuant to this article shall be determined*
16 *ineligible for the services, unless the reason his or her*
17 *employer-sponsored health coverage was terminated was because*
18 *of one of the following:*

19 *(1) The individual for whom the employer-sponsored coverage*
20 *had been available lost coverage because of one or more of the*
21 *following reasons:*

22 *(A) A loss of employment or a change in employment status.*

23 *(B) A change of address to a ZIP Code that is not covered by*
24 *the employer-sponsored health coverage.*

25 *(C) The individual's employer discontinued health benefits to*
26 *all employees or dependents, or ceased to provide coverage or*
27 *contributions for the category of employees or dependents*
28 *applicable to the person or applicant.*

29 *(D) The death of, or a legal separation or divorce from, the*
30 *individual through whom the applicant was covered.*

31 *(2) The applicant's employer-sponsored health coverage became*
32 *unavailable because the services paid for under that coverage*
33 *attained the lifetime coverage limit.*

34 *(3) Coverage was under a COBRA policy and the COBRA*
35 *coverage period has ended.*

36 *(b) A person who applies for services provided pursuant to this*
37 *article shall certify, at the time of application, under penalty of*
38 *perjury, that he or she was not covered by employer-sponsored*
39 *health coverage during the six-month period prior to the date of*
40 *his or her application or, if he or she was covered by*

1 employer-sponsored health coverage, attest to why one of the
2 reasons listed in subdivision (a) is applicable to him or her and
3 provide documentation from the employer-sponsored health
4 coverage that supports his or her attestation.

5 (c) A person who has been found eligible for services provided
6 pursuant to this article who is covered by employer-sponsored
7 health coverage that is terminated shall notify the Genetically
8 Handicapped Persons Program within 45 days of the effective date
9 of the termination and, when applicable, provide the program with
10 the certification described in subdivision (b).

11 (d) An applicant or eligible person who fails to comply with
12 subdivisions (b) and (c) shall be ineligible for services pursuant
13 to this article for six months. The department shall provide written
14 notice to all persons found to be ineligible pursuant to this section.
15 The notice shall provide information on the ability of the person
16 to appeal or seek a waiver of determinations of ineligibility.

17 (e) The department shall provide a process to appeal decisions
18 of ineligibility based on this section in accordance with the
19 procedures for resolution of complaints and appeals established
20 for applicants and persons eligible for services pursuant to Article
21 5 (commencing with Section 123800) of Chapter 3 of Part 2.

22 (f) The director, on a case-by-case basis, may waive
23 determinations of ineligibility pursuant to this section, or reduce
24 the time periods set forth in subdivision (a) or subdivision (d), if
25 the director determines that the determination or the time periods
26 will result in undue hardship.

27 (g) Notwithstanding Chapter 3.5 (commencing with Section
28 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
29 the department may implement this section by means of Genetically
30 Handicapped Persons Program policy letters. Following
31 consultation with a stakeholder workgroup consisting of, but not
32 limited to, provider associations, provider representatives, and
33 consumer groups to ensure stakeholder participation in the
34 implementation of this section, including, but not limited to, any
35 changes deemed necessary by the department and the stakeholder
36 workgroup to update the application for enrollment form and the
37 development of regulations, the department shall, within 18 months
38 from the effective date of this section, adopt any necessary
39 regulations in accordance with the requirements of Chapter 3.5

1 (commencing with Section 11340) of Part 1 of Division 3 of Title
2 2 of the Government Code.

3 SEC. 14. Section 125157 is added to the Health and Safety
4 Code, to read:

5 125157. (a) The department may require a client under this
6 article to apply to enroll or otherwise participate in any other state
7 or federal program or other contractual or legal entitlement that
8 would provide services to the client that would otherwise be
9 reimbursed pursuant to this article.

10 (b) The department may, when it determines that it is cost
11 effective, pay the premium for, or otherwise subsidize the
12 subscriber cost-sharing obligation for, third-party health coverage
13 for a person eligible for services under this article.

14 (c) The department may, for a person eligible for services under
15 this article, when the person's third-party health coverage would
16 lapse due to loss of employment, change in health status, lack of
17 sufficient income or financial resources, or any other reason,
18 continue the health coverage by paying the costs of continuation
19 of group coverage pursuant to federal law or converting from a
20 group to individual plan, when the department determines that it
21 is cost effective.

22 (d) Notwithstanding Chapter 3.5 (commencing with Section
23 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
24 the department may implement this section by means of Genetically
25 Handicapped Persons Program policy letters. Following
26 consultation with a stakeholder workgroup consisting of, but not
27 limited to, provider associations, provider representatives, and
28 consumer groups to ensure stakeholder participation in the
29 implementation of this section, including, but not limited to, any
30 changes deemed necessary by the department and the stakeholder
31 workgroup to update the application for enrollment form and the
32 development of regulations, the department shall, within 18 months
33 from the effective date of this section, adopt any necessary
34 regulations in accordance with the requirements of Chapter 3.5
35 (commencing with Section 11340) of Part 1 of Division 3 of Title
36 2 of the Government Code.

37 SEC. 15. Section 125165 of the Health and Safety Code is
38 amended to read:

39 125165. (a) The department shall determine and establish an
40 enrollment fee for the services provided pursuant to this article.

1 (b) Beginning July 1, 1993, each client eligible for services shall
2 pay an annual enrollment fee to the department, except as provided
3 in subdivision (f).

4 (c) (1) The annual enrollment fee schedule shall be a sliding
5 scale based upon family size and income and shall be identical to
6 the fee schedule established under Section 123900. The department
7 shall adjust the scale to reflect changes in the federal poverty level.
8 Family size shall be based upon the number of persons living with
9 the applicant who are dependent upon the family income. Family
10 income shall include the total gross income of the applicant and
11 other individuals living with the applicant.

12 (2) Until July 1, 1995, the annual enrollment fee for eligible
13 participants who use the Genetically Handicapped Persons Program
14 but receive only case management services provided by the
15 program shall be determined by using 50 percent of the amount
16 specified in the sliding scale. On or before July 1, 1995, the
17 department shall evaluate the revenue enhancement resulting from
18 the use of this reduced enrollment fee schedule for persons who
19 receive only case management services. After July 1, 1995, all
20 eligible participants shall pay the enrollment fee established
21 pursuant to paragraph (1).

22 (d) Notwithstanding any other subdivision, those persons whose
23 family income exceeds forty thousand dollars (\$40,000) per year
24 and whose cost of care is 20 percent or less of the family's adjusted
25 gross income shall pay either the enrollment fee or the cost of care,
26 whichever is greater. Those persons whose family income exceeds
27 forty thousand dollars (\$40,000) per year and whose cost of care
28 exceeds 20 percent of the family's adjusted gross income shall pay
29 the enrollment fee.

30 (e) Payment of the enrollment fee is a condition of program
31 participation and is independent of any other outstanding
32 obligations to the program. The department may arrange for
33 periodic payment during the year if it determines a lump-sum
34 payment will be a hardship for the family. The director, on a
35 case-by-case basis, may waive or reduce the amount of an
36 enrollment fee if the director determines payment of the fee will
37 result in undue hardship. Otherwise, failure to pay or arrange for
38 payment of the enrollment fee within 60 days of the due date shall
39 result in disenrollment and ineligibility for coverage of treatment
40 services effective 60 days after the due date of the fee.

1 (f) The enrollment fee shall not be charged in the following
2 cases:

3 (1) The client is eligible for the full scope of Medi-Cal benefits,
4 without being required to pay a share of cost, at the time of
5 enrollment fee determination.

6 (2) The family of the client otherwise eligible to receive services
7 has a gross annual income of less than 200 percent of the federal
8 poverty level.

9 (g) Upon determination of program eligibility, the department
10 shall enter into an agreement with the applicant or client legally
11 responsible for that applicant for payment of the enrollment fee.

12 (h) All enrollment fees shall be used in support of the program
13 for services established under this article.

14 (i) *Except as provided in subdivision (j), retroactive to July 1,*
15 *2009, fee determinations and annual redeterminations shall be*
16 *controlled by Section 125166.*

17 (j) *For a client whose eligibility has been determined or*
18 *redetermined prior to July 1, 2009, the provisions of this section*
19 *shall continue to control the fee calculation until the client's next*
20 *annual redetermination.*

21 (k) *This section shall become inoperative on July 1, 2010, and,*
22 *as of January 1, 2011, is repealed, unless a later enacted statute,*
23 *that becomes operative on or before January 1, 2011, deletes or*
24 *extends the dates on which it becomes inoperative and is repealed.*

25 *SEC. 16. Section 125166 is added to the Health and Safety*
26 *Code, to read:*

27 *125166. (a) Retroactive to July 1, 2009, except as provided*
28 *in subdivision (d), each client determined or redetermined by the*
29 *department to be eligible for services provided pursuant to this*
30 *article shall pay an annual enrollment fee to the department as*
31 *set forth in this section.*

32 (b) (1) *There shall be an annual enrollment fee based on the*
33 *client's adjusted gross income or, if the client is a minor, the*
34 *client's parents' or legal guardians' combined adjusted gross*
35 *income, as reported on the relevant state or federal income tax*
36 *forms for the previous tax year. In calculating the enrollment fee*
37 *where both a state and a federal income tax form has been filed,*
38 *the higher of the two adjusted gross income amounts shall be used.*

1 (2) For adjusted gross income between 200 and 299 percent of
2 the federal poverty level, the annual enrollment fee shall be 1.5
3 percent of adjusted gross income.

4 (3) For adjusted gross income equal to or greater than 300
5 percent of the federal poverty level, the annual enrollment fee shall
6 be 3 percent of adjusted gross income.

7 (4) In the event the annual enrollment fee determined pursuant
8 to paragraph (2) or (3) exceeds the cost of care incurred during
9 the applicable year, the department shall reduce the enrollment
10 fee by refund or credit to an amount equal to the cost of care.

11 (c) (1) Payment of the enrollment fee is a condition of program
12 participation.

13 (2) The department may arrange for periodic payment of the
14 fee during the year.

15 (3) The director, on a case-by-case basis, may waive or reduce
16 the amount of an enrollment fee if the director determines payment
17 of the fee will result in undue hardship for the family. Otherwise,
18 failure to pay or arrange for payment of the enrollment fee within
19 60 days of the due date shall result in disenrollment and
20 ineligibility for coverage of treatment services effective 60 days
21 after the due date of the fee.

22 (d) The enrollment fee shall not be charged in the following
23 cases:

24 (1) The client is eligible for the full scope of Medi-Cal benefits,
25 without being required to pay a share of cost, at the time of
26 enrollment fee determination.

27 (2) The client who is otherwise eligible to receive services has,
28 or if the client is a minor, the client's parents or guardians have,
29 an adjusted gross income of less than 200 percent of the federal
30 poverty level.

31 (e) All enrollment fees shall be used in support of the program
32 for services provided pursuant to this article.

33 (f) Notwithstanding Chapter 3.5 (commencing with Section
34 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
35 the department may implement this section by means of Genetically
36 Handicapped Persons Program policy letters. Following
37 consultation with a stakeholder workgroup consisting of, but not
38 limited to, provider associations, provider representatives, and
39 consumers groups to ensure stakeholder participation in the
40 implementation of this section, including, but not limited to, any

1 *changes to update the application for enrollment form and the*
 2 *development of regulations, the department shall, within 18 months*
 3 *from the effective date of this section, adopt regulations in*
 4 *accordance with the requirements of Chapter 3.5 (commencing*
 5 *with Section 11340) of Part 1 of Division 3 of Title 2 of the*
 6 *Government Code.*

7 *SEC. 17. Section 125175 of the Health and Safety Code is*
 8 *amended to read:*

9 125175. The health care benefits and services specified in this
 10 article, to the extent that the benefits and services are neither
 11 provided under any other federal or state law nor provided nor
 12 available under other contractual or legal entitlements of the person,
 13 shall be provided to any patient who is a resident of this state and
 14 is made eligible by this article. After the patient has utilized the
 15 contractual or legal entitlements, the payment liability under
 16 Section 125165 or Section 125166, whichever shall be applicable
 17 at the time, shall then be applied to the remaining cost of
 18 genetically handicapped person's services.

19 *SEC. 18. Section 130500 of the Health and Safety Code is*
 20 *amended to read:*

21 130500. (a) This division shall be known, and may be cited,
 22 as the California Discount Prescription Drug Program.

23 (b) *The provisions of this division shall become operative on*
 24 *or after July 1, 2010.*

25 *SEC. 19. Section 130507 of the Health and Safety Code is*
 26 *amended to read:*

27 130507. (a) On August 1, ~~2010~~ 2013, the department shall
 28 determine whether manufacturer participation in the program has
 29 been sufficient to meet both of the following benchmarks:

30 (1) The number and type of drugs available through the program
 31 are sufficient to give eligible Californians a formulary comparable
 32 to the Medi-Cal list of contract drugs or, if this information is
 33 available to the department, a formulary comparable to that
 34 provided to CalPERS enrollees.

35 (2) The volume weighted average discount of single-source
 36 prescription drugs offered pursuant to this program is equal to or
 37 below any one of the benchmark prices described in subdivision
 38 (a) of Section 130506.

1 (b) On and after August 10, ~~2010~~ 2013, the department shall
2 reassess program outcomes, at least once every year, consistent
3 with the benchmarks described in subdivision (a).

4 *SEC. 20. Section 130509 of the Health and Safety Code is*
5 *amended to read:*

6 130509. (a) The department may require prior authorization
7 in the Medi-Cal program for any drug of a manufacturer if the
8 manufacturer fails to agree to a volume weighted average discount
9 for single-source prescription drugs that is equal to or below any
10 one of the benchmark prices described in subdivision (a) of Section
11 130506 and only to the extent that this requirement does not
12 increase costs to the Medi-Cal program, as determined pursuant
13 to subdivision (c).

14 (b) If prior authorization is required for a drug pursuant to this
15 section, a Medi-Cal beneficiary shall not be denied the continued
16 use of a drug that is part of a prescribed therapy until that drug is
17 no longer prescribed for that beneficiary's therapy. The department
18 shall approve or deny requests for prior authorization necessitated
19 by this section as required by state or federal law.

20 (c) The department, in consultation with the Department of
21 Finance, shall determine the fiscal impact of placing a drug on
22 prior authorization pursuant to this section. In making this
23 determination, the department shall consider all of the following:

24 (1) The net cost of the drug, including any rebates that would
25 be lost if the drug is placed on prior authorization.

26 (2) The projected volume of purchases of the drug, before and
27 after the drug is placed on prior authorization, considering the
28 continuity of care provisions set forth in subdivision (b).

29 (3) The net cost of comparable drugs to which volume would
30 be shifted if a drug is placed on prior authorization, including any
31 additional rebates that would be received.

32 (4) The projected volume of purchases of comparable drugs,
33 before and after the drug is placed on prior authorization.

34 (5) Any other factors determined by the department to be
35 relevant to a determination of the fiscal impact of placing a drug
36 on prior authorization.

37 (d) This section shall be implemented only to the extent
38 permitted under federal law, and in a manner consistent with state
39 and federal laws.

1 (e) This section may apply to any manufacturer that has not
2 negotiated with the department.

3 (f) The department shall notify the Speaker of the Assembly
4 and the President pro Tempore of the Senate that the department
5 is requiring prior authorization no later than five days after making
6 this requirement.

7 (g) (1) Subject to paragraph (2), this section shall become
8 operative on August 1, ~~2010~~ 2013.

9 (2) This section shall become operative only if the department
10 determines that participation by manufacturers has been insufficient
11 to meet both of the benchmarks identified in Section 130507.

12 *SEC. 21. Section 130543 of the Health and Safety Code is*
13 *amended to read:*

14 130543. (a) The director may adopt regulations as are
15 necessary to implement and administer this division.

16 (b) Notwithstanding Chapter 3.5 (commencing with Section
17 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
18 the director may implement this division, in whole or in part, by
19 means of a provider bulletin or other similar instructions, without
20 taking regulatory action, provided that no bulletin or other similar
21 instructions shall remain in effect after August 1, ~~2011~~ 2014. It is
22 the intent that regulations adopted pursuant to this section shall be
23 adopted on or before August 1, ~~2011~~ 2014.

24 *SEC. 22. Section 12739 of the Insurance Code is amended to*
25 *read:*

26 12739. (a) There is hereby created in the State Treasury a
27 special fund known as the Major Risk Medical Insurance Fund
28 that is, notwithstanding Section 13340 of the Government Code,
29 continuously appropriated to the board for the purposes specified
30 in Sections 10127.15 and 12739.1 and Section 1373.62 of the
31 Health and Safety Code.

32 (b) After June 30, 1991, the following amounts shall be
33 deposited annually in the Major Risk Medical Insurance Fund:

34 (1) (A) Eighteen million dollars (\$18,000,000) from the Hospital
35 Services Account in the Cigarette and Tobacco Products Surtax
36 Fund.

37 (B) *Notwithstanding subparagraph (A), for the 2009–10 fiscal*
38 *year, the Controller shall not deposit any amount into the Major*
39 *Risk Medical Insurance Fund from the Hospital Services Account*
40 *in the Cigarette and Tobacco Products Surtax Fund.*

1 (2) (A) Eleven million dollars (\$11,000,000) from the Physician
2 Services Account in the Cigarette and Tobacco Products Surtax
3 Fund.

4 (B) Notwithstanding subparagraph (A), for the 2007–08 fiscal
5 year only, the Controller shall reduce the amount deposited into
6 the Major Risk Medical Insurance Fund from the Physician
7 Services Account in the Cigarette and Tobacco Products Surtax
8 Fund to one million dollars (\$1,000,000).

9 (3) One million dollars (\$1,000,000) from the Unallocated
10 Account in the Cigarette and Tobacco Products Surtax Fund.

11 *SEC. 23. Section 4107 of the Welfare and Institutions Code is*
12 *amended to read:*

13 4107. (a) The security of patients committed pursuant to
14 Section 1026 of, and Chapter 6 (commencing with Section 1367)
15 of Title 10 of Part 2 of, the Penal Code, and former Sections 6316
16 and 6321 of the ~~Welfare and Institutions Code~~, at Patton State
17 Hospital shall be the responsibility of the ~~Director~~ *Secretary* of
18 the Department of Corrections *and Rehabilitation*.

19 (b) The Department of Corrections *and Rehabilitation* and the
20 State Department of Mental Health shall jointly develop a plan to
21 transfer all patients committed to Patton State Hospital pursuant
22 to the provisions in subdivision (a) from Patton State Hospital no
23 later than January 1, 1986, and shall transmit this plan to the Senate
24 Committee on Judiciary and to the Assembly Committee on
25 Criminal Justice, and to the Senate Health and Welfare Committee
26 and Assembly Health Committee by June 30, 1983. The plan shall
27 address whether the transferred patients shall be moved to other
28 state hospitals or to correctional facilities, or both, for commitment
29 and treatment.

30 (c) Notwithstanding any other provision of law, the State
31 Department of Mental Health shall house no more than 1,336
32 patients at Patton State Hospital. However, until September-~~2009~~
33 *2012*, up to 1,530 patients may be housed at the hospital.

34 (d) The Department of Corrections *and Rehabilitation* and the
35 State Department of Mental Health shall jointly develop a plan for
36 ensuring the external and internal security of the hospital during
37 the construction of additional beds at Patton State Hospital and
38 the establishment of related modular program space for which
39 funding is provided in the Budget Act of 2001. No funds shall be
40 expended for the expansion project until 30 days after the date

1 upon which the plan is submitted to the fiscal committees of the
2 Legislature and the Chair of the Joint Legislative Budget
3 Committee.

4 (e) The Department of Corrections *and Rehabilitation* and the
5 State Department of Mental Health shall also jointly develop a
6 plan for ensuring the external and internal security of the hospital
7 upon the occupation of the additional beds at Patton State Hospital.
8 These beds shall not be occupied by patients until the later of the
9 date that is 30 days after the date upon which the plan is submitted
10 to the Chair of the Joint Legislative Budget Committee or the date
11 upon which it is implemented by the departments.

12 (f) This section shall remain in effect only until all patients
13 committed, pursuant to the provisions enumerated in subdivision
14 (a), have been removed from Patton State Hospital and shall have
15 no force or effect on or after that date.

16 *SEC. 24. Section 4684.60 of the Welfare and Institutions Code*
17 *is amended to read:*

18 4684.60. The vrending regional center shall, before placing
19 any consumer into an ARFPSHN, ensure that the ARFPSHN has
20 a license issued by the State Department of Social Services for not
21 more than five adults and a contract with the regional center that
22 includes, at a minimum, all of the following:

23 (a) The names of the regional center and the licensee.

24 (b) The purpose of the pilot project.

25 (c) A requirement that the contractor shall comply with all
26 applicable statutes and regulations, including Section 4681.1.

27 (d) The effective date and termination date of the contract.

28 (e) A requirement that, under no circumstances, shall the
29 contract extend beyond the stated termination date, which shall
30 not be longer than the pilot legislation end date of January 1, ~~2010~~
31 *2011*.

32 (f) The definition of terms.

33 (g) A requirement that the execution of any amendment or
34 modification to the contract be in accordance with all applicable
35 federal and state statutes and regulations and be by mutual
36 agreement of both parties.

37 (h) A requirement that the licensee and the agents and employees
38 of the licensee, in the performance of the contract, shall act in an
39 independent capacity, and not as officers or employees or agents
40 of the regional center.

1 (i) A requirement that the assignment of the contract for
2 consumer services shall not be allowed.

3 (j) The rate of payment per consumer.

4 (k) Incorporation, by reference, of the ARFPSHN's approved
5 program plan.

6 (l) A requirement that the contractor verify, and maintain for
7 the duration of the project, possession of commercial general
8 liability insurance in the amount of at least one million dollars
9 (\$1,000,000) per occurrence.

10 (m) Contractor performance criteria.

11 (n) An agreement to provide, to the evaluation contractor
12 engaged pursuant to subdivision (a) of Section 4684.74, all
13 information necessary for evaluating the project.

14 *SEC. 25. Section 4684.74 of the Welfare and Institutions Code*
15 *is amended to read:*

16 4684.74. (a) By July 1, 2006, the State Department of
17 Developmental Services shall contract with an independent agency
18 or organization to evaluate the pilot project and prepare a written
19 report of its findings. The scope of services for the contractor shall
20 be jointly prepared by the State Department of Developmental
21 Services, the State Department of Social Services, *the State*
22 *Department of Public Health*, and the State Department of Health
23 *Care Services* and, at a minimum, shall address all of the following:

24 (1) The number, business status, and location of all the
25 ARFPSHNs.

26 (2) The number and characteristics of the consumers served.

27 (3) The effectiveness of the pilot project in addressing
28 consumers' health care and intensive support needs.

29 (4) The extent of consumers' community integration and
30 satisfaction.

31 (5) The consumers' access to, and quality of, community-based
32 health care and dental services.

33 (6) The types, amounts, qualifications, and sufficiency of
34 staffing.

35 (7) The overall impressions, problems encountered, and
36 satisfaction with the ARFPSHN service model by ARFPSHN
37 employees, regional center participants, state licensing and
38 monitoring personnel, and consumers and families.

39 (8) The costs of all direct, indirect, and ancillary services.

1 (9) An analysis and summary findings of all ARFPSHN
 2 consumer special incident reports and unusual occurrences reported
 3 during the evaluation period.

4 (10) The recommendations for improving the ARFPSHN service
 5 model.

6 (11) The cost-effectiveness of the ARFPSHN model of care
 7 compared with other existing public and private models of care
 8 serving similar consumers.

9 (b) The contractor’s written report shall be submitted to the
 10 State Department of Developmental Services, the State Department
 11 of Social Services, *the State Department of Public Health, and the*
 12 *State Department of Health Care Services.* The State Department
 13 of Developmental Services shall submit the report to the
 14 appropriate fiscal and policy committees of the Legislature by
 15 January 1, ~~2009~~ 2010.

16 *SEC. 26. Section 4684.75 of the Welfare and Institutions Code*
 17 *is amended to read:*

18 4684.75. (a) The State Department of Developmental Services
 19 may adopt emergency regulations to implement this article. The
 20 adoption, amendment, repeal, or readoption of a regulation
 21 authorized by this section is deemed to be necessary for the
 22 immediate preservation of the public peace, health and safety, or
 23 general welfare, for purposes of Sections 11346.1 and 11349.6 of
 24 the Government Code, and the State Department of Developmental
 25 Services is hereby exempted from the requirement that it describe
 26 specific facts showing the need for immediate action. A certificate
 27 of compliance for these implementing regulations shall be filed
 28 within 24 months following the adoption of the first emergency
 29 regulations filed pursuant to this section.

30 (b) This article shall remain in effect only until January 1, ~~2010~~
 31 ~~2011~~, and as of that date is repealed, unless a later enacted statute
 32 extends or deletes that date.

33 (c) This article shall only be implemented to the extent that
 34 funds are made available through an appropriation in the annual
 35 Budget Act.

36 *SEC. 27. Section 5783 is added to the Welfare and Institutions*
 37 *Code, to read:*

38 5783. (a) *Each eligible public agency, as described in*
 39 *subdivision (b), may, in addition to reimbursement or other*
 40 *payments that the agency would otherwise receive for Medi-Cal*

1 *specialty mental health services, receive supplemental Medi-Cal*
2 *reimbursement to the extent provided for in this section.*

3 *(b) A public agency shall be eligible for supplemental*
4 *reimbursement only if it is a county, city, city and county, or the*
5 *University of California and if, consistent with Section 5778, it*
6 *meets either or both of the following characteristics continuously*
7 *during a state fiscal year:*

8 *(1) Provides, pursuant to the Medi-Cal Specialty Mental Health*
9 *Services Consolidation Waiver (Number CA.17), as approved by*
10 *the federal Centers for Medicare and Medicaid Services, specialty*
11 *mental health services to Medi-Cal beneficiaries in one or more*
12 *of its publically owned and operated facilities.*

13 *(2) Provides or subcontracts for specialty mental health services*
14 *to Medi-Cal beneficiaries as a mental health plan (MHP) pursuant*
15 *to this part.*

16 *(c) (1) Subject to paragraph (2), an eligible public agency's*
17 *supplemental reimbursement pursuant to this section shall be equal*
18 *to the amount of federal financial participation received as a result*
19 *of the claims submitted pursuant to paragraph (2) of subdivision*
20 *(f).*

21 *(2) Notwithstanding paragraph (1), in computing an eligible*
22 *public agency's reimbursement, in no instance shall the*
23 *expenditures certified pursuant to paragraph (1) of subdivision*
24 *(e), when combined with the amount received from other sources*
25 *of payment and with reimbursement from the Medi-Cal program,*
26 *including expenditures otherwise certified for purposes of claiming*
27 *federal financial participation, exceed 100 percent of actual,*
28 *allowable costs, as determined pursuant to California's Medicaid*
29 *State Plan, for the specialty mental health services to which the*
30 *expenditure relates. Supplemental payment may be made on an*
31 *interim basis until the time when actual, allowable costs are finally*
32 *determined.*

33 *(3) The supplemental Medi-Cal reimbursement provided by this*
34 *section shall be distributed under a payment methodology based*
35 *on specialty mental health services provided to Medi-Cal patients*
36 *by each eligible public agency, on a per-visit basis, a*
37 *per-procedure basis, a time basis, in one or more lump sums, or*
38 *on any other federally permissible basis. The State Department of*
39 *Health Care Services shall seek approval from the federal Centers*
40 *for Medicare and Medicaid Services for the payment methodology*

1 to be utilized, and shall not make any payment pursuant to this
2 section prior to obtaining that federal approval.

3 (d) (1) It is the intent of the Legislature in enacting this section
4 to provide the supplemental reimbursement described in this
5 section without any expenditure from the General Fund. The
6 department or the State Department of Health Care Services may
7 require an eligible public agency, as a condition of receiving
8 supplemental reimbursement pursuant to this section, to enter into,
9 and maintain, an agreement with the department for the purposes
10 of implementing this section and reimbursing the department and
11 the State Department of Health Care Services for the costs of
12 administering this section.

13 (2) Expenditures submitted to the department and to the State
14 Department of Health Care Services for purposes of claiming
15 federal financial participation under this section shall have been
16 paid only with funds from the public agencies described in
17 subdivision (b) and certified to the state as provided in subdivision
18 (e).

19 (e) An eligible public agency shall do all of the following:

20 (1) Certify, in conformity with the requirements of Section
21 433.51 of Title 42 of the Code of Federal Regulations, that the
22 claimed expenditures for the specialty mental health services are
23 eligible for federal financial participation.

24 (2) Provide evidence supporting the certification as specified
25 by the department or by the State Department of Health Care
26 Services.

27 (3) Submit data as specified by the department to determine the
28 appropriate amounts to claim as expenditures qualifying for federal
29 financial participation.

30 (4) Keep, maintain, and have readily retrievable, any records
31 specified by the department or by the State Department of Health
32 Care Services to fully disclose reimbursement amounts to which
33 the eligible public agency is entitled, and any other records
34 required by the federal Centers for Medicare and Medicaid
35 Services.

36 (f) (1) The State Department of Health Care Services shall
37 promptly seek any necessary federal approvals for the
38 implementation of this section. If necessary to obtain federal
39 approval, the program shall be limited to those costs that the
40 federal Centers for Medicare and Medicaid Services determines

1 *to be allowable expenditures under Title XIX of the federal Social*
2 *Security Act (Subchapter 19 (commencing with Section 1396) of*
3 *Chapter 7 of Title 42 of the United States Code). If federal approval*
4 *is not obtained for implementation of this section, this section shall*
5 *not be implemented.*

6 *(2) The State Department of Health Care Services shall submit*
7 *claims for federal financial participation for the expenditures*
8 *described in subdivision (e) related to specialty mental health*
9 *services that are allowable expenditures under federal law.*

10 *(3) The State Department of Health Care Services shall, on an*
11 *annual basis, submit any necessary materials to the federal Centers*
12 *for Medicare and Medicaid Services to provide assurances that*
13 *claims for federal financial participation will include only those*
14 *expenditures that are allowable under federal law.*

15 *(4) The department shall collaborate with the State Department*
16 *of Health Care Services to ensure that the department's policies,*
17 *procedures, data, and other relevant materials are available to*
18 *the State Department of Health Care Services as may be required*
19 *for the implementation and administration of this section and for*
20 *the claiming of federal financial participation.*

21 *(g) (1) The director may adopt regulations as are necessary to*
22 *implement this section. The adoption, amendment, repeal, or*
23 *readoption of a regulation authorized by this subdivision shall be*
24 *deemed to be necessary for the immediate preservation of the*
25 *public peace, health and safety, or general welfare, for purposes*
26 *of Sections 11346.1 and 11349.6 of the Government Code, and*
27 *the department is hereby exempted from the requirement that it*
28 *describe specific facts showing the need for immediate action.*

29 *(2) As an alternative to the adoption of regulations pursuant to*
30 *paragraph (1), and notwithstanding Chapter 3.5 (commencing*
31 *with Section 11340) of Part 1 of Division 3 of Title 2 of the*
32 *Government Code, the director may implement and administer*
33 *this article, in whole or in part, by means of provider bulletins or*
34 *similar instructions, without taking regulatory action, provided*
35 *that no bulletin or similar instruction shall remain in effect after*
36 *June 30, 2011. It is the intent that regulations adopted pursuant*
37 *to paragraph (1) shall be in place on or before June 30, 2011.*

38 *SEC. 28. Section 7502.5 of the Welfare and Institutions Code*
39 *is amended to read:*

1 7502.5. The total number of developmental center residents in
 2 the secure treatment facility at Porterville Developmental Center,
 3 *including those residents receiving services in the Porterville*
 4 *Development Center transition treatment program*, shall not exceed
 5 297.

6 *SEC. 29. Section 14005.40 of the Welfare and Institutions Code*
 7 *is amended to read:*

8 14005.40. (a) To the extent federal financial participation is
 9 available, the department shall exercise its option under Section
 10 1902(a)(10)(A)(ii)(X) of the federal Social Security Act (42 U.S.C.
 11 Sec. 1396a(a)(10)(A)(ii)(X), to implement a program for aged and
 12 disabled persons as described in Section 1902(m) of the federal
 13 Social Security Act (42 U.S.C. Sec. 1396a(m)(1)).

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

17 (c) An individual shall satisfy the financial eligibility
 18 requirement of this program if ~~both~~ *all* of the following conditions
 19 are met:

20 (1) Countable income, as determined in accordance with Section
 21 1902(m) of the federal Social Security Act (42 U.S.C. Sec.
 22 1396a(m)), does not exceed an income standard equal to 100
 23 percent of the applicable federal poverty level, plus two hundred
 24 thirty dollars (\$230) for an individual or, in the case of a couple,
 25 three hundred ten dollars (\$310), provided that the income standard
 26 so determined shall not be less than the SSI/SSP payment level
 27 for a disabled individual or, in the case of a couple, the SSI/SSP
 28 payment level for a disabled couple.

29 (2) (A) *For the purposes of calculating countable income under*
 30 *this section, an income exemption shall be applied as necessary*
 31 *to adjust the SSI/SSP payment level as used in this section so that*
 32 *it is the same as the SSI/SSP payment level that was in place on*
 33 *May 1, 2009.*

34 (B) *This additional income exemption shall cease to be*
 35 *implemented when the SSI/SSP payment levels increase beyond*
 36 *those in effect on May 1, 2009.*

37 (C) *Notwithstanding Chapter 3.5 (commencing with Section*
 38 *11340) of Part 1 of Division 3 of Title 2 of the Government Code,*
 39 *the department shall implement this paragraph by means of an*

1 *all-county letter or similar instruction without taking regulatory*
2 *action.*

3 (2)

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

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

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

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

28 (g) (1) For purposes of this section the following definitions
29 apply:

30 (A) “SSI” means the federal Supplemental Security Income
31 program established under Title XVI of the federal Social Security
32 Act.

33 (B) “Income standard” means the applicable income standard
34 including the augmentations specified in paragraph (1) of
35 subdivision (c).

36 (C) The board and care “personal care services” or “PCS”
37 deduction refers to an income disregard that is applied to a resident
38 in a licensed community care facility in lieu of the board and care
39 deduction (equal to the amount by which the basic board and care
40 rate exceeds the income standard in subparagraph (B), of paragraph

1 (1) of subdivision (g)) when the PCS deduction is greater than the
2 board and care deduction.

3 (2) (A) For purposes of this section, the SSI recipient retention
4 amount is the amount by which the SSI maximum payment amount
5 to an individual residing in a licensed community care facility
6 exceeds the maximum amount that the state allows community
7 care facilities to charge a resident who is an SSI recipient.

8 (B) For the purposes of this section, the personal and incidental
9 needs deduction for an individual residing in a licensed community
10 care facility is either of the following:

11 (i) If the board and care deduction is applicable to the individual,
12 the amount, not to exceed the amount by which the SSI recipient
13 retention amount exceeds twenty dollars (\$20), nor to be less than
14 zero, by which the sum of the amount which the individual pays
15 to his or her licensed community care facility and the SSI recipient
16 retention amount exceed the sum of the individual's income
17 standard, the individual's board and care deduction, and twenty
18 dollars (\$20).

19 (ii) If the PCS deduction specified in paragraph (1) of
20 subdivision (g) is applicable to the individual, an amount, not to
21 exceed the amount by which the SSI recipient retention amount
22 exceeds twenty dollars (\$20), nor to be less than zero, by which
23 the sum of the amount which the individual pays to his or her
24 community care facility and the SSI recipient retention amount
25 exceed the sum of the individual's income standard, the
26 individual's PCS deduction and twenty dollars (\$20).

27 (3) In determining the countable income under this section of
28 an individual residing in a licensed community care facility, the
29 individual shall have deducted from his or her income the amount
30 specified in subparagraph (B) of paragraph (2).

31 (h) No later than one month after the effective date of
32 subdivision (g), the department shall submit to the federal medicaid
33 administrator a state plan amendment seeking approval of the
34 income deduction specified in paragraph (3) of subdivision (g),
35 and of federal financial participation for the costs resulting from
36 that income deduction.

37 (i) The deduction prescribed by paragraph (3) of subdivision
38 (g) shall be applied no later than the first day of the fourth month
39 after the month in which the department receives approval for the
40 federal financial participation specified in subdivision (h). Until

1 approval for federal financial participation is received, there shall
2 be no deduction under paragraph (3) of subdivision (g).

3 *SEC. 30. Section 14005.50 is added to the Welfare and
4 Institutions Code, to read:*

5 *14005.50. (a) To the extent that federal financial participation
6 is available, the department shall exercise the option made
7 available under Section 1902(a)(10)(A)(ii)(I) of the federal Social
8 Security Act (42 U.S.C. Sec. 1396a(a)(10)(A)(ii)(I)) to extend
9 full-scope Medi-Cal benefits to individuals who are ineligible for
10 full-scope Medi-Cal benefits under a program listed in subdivision
11 (c) as a result of the July 1, 2009, reduction in the SSI/SSP program
12 maximum aid payments pursuant to Section 12200.019, or any
13 subsequent reductions in maximum aid payments.*

14 *(b) The programs authorized under this section shall utilize the
15 income and resource standards and methodologies of the SSI/SSP
16 program and in addition an income disregard shall be applied as
17 necessary to adjust the income standard to that which was in place
18 for the affected program on May 1, 2009.*

19 *(c) (1) The SSI/SSP program under Title XVI of the federal
20 Social Security Act.*

21 *(2) The Pickle program under the Pickle Amendment to Title
22 XIX of the federal Social Security Act (Public Law 94-566).*

23 *(3) The Disabled Adult Child program under Section 1634 of
24 the federal Social Security Act (42 U.S.C. Sec. 1383c).*

25 *(4) The Disabled Widow or Widower program under Section
26 1634 of the federal Social Security Act (42 U.S.C. Sec. 1383c).*

27 *(d) Notwithstanding subdivision (b), for the purposes of this
28 section, for blind individuals who meet the criteria for blindness
29 as set forth in Section 1614(a)(2) of the federal Social Security
30 Act (42 U.S.C. Sec. 1382c(a)(2)), but who have not been
31 determined to be disabled in accordance with Section 1614(a)(3)
32 of that Act (42 U.S.C. Sec. 1382c(a)(3)), the income and resource
33 standards and methodologies applied in determining eligibility
34 under this section shall be identical to that of the Aged and
35 Disabled Federal Poverty Level program under Section 14005.40.*

36 *(e) The department shall implement an expedited application
37 process to determine the Medi-Cal eligibility under this section
38 for individuals who, based on excess income, are denied eligibility
39 for the SSI/SSP program by the Social Security Administration.
40 The department shall use its best efforts to identify these individuals*

1 from information provided by the Social Security Administration.
2 The department shall also allow these individuals to self-identify
3 by producing a copy of the notice of action that they received from
4 the Social Security Administration informing them that their
5 application for eligibility for the SSI/SSP program was denied
6 based on excess income.

7 (f) Notwithstanding Chapter 3.5 (commencing with Section
8 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
9 the department shall implement this section by means of an
10 all-county letter or similar instruction without taking regulatory
11 action.

12 (g) This section shall cease to be implemented when the SSI/SSP
13 program payment levels increase beyond those in effect on May
14 1, 2009.

15 (h) Nothing in this section shall be read as entitling any
16 individual to Medi-Cal benefits before his or her Medi-Cal
17 eligibility determination has been completed.

18 (i) This section shall not change the procedures for
19 redetermining a beneficiary's eligibility for Medi-Cal benefits.

20 (j) The department shall seek any approvals from the federal
21 Centers for Medicare and Medicaid Services necessary to obtain
22 federal financial participation and to expeditiously implement this
23 section.

24 SEC. 31. Section 14007.9 of the Welfare and Institutions Code
25 is amended to read:

26 14007.9. (a) The department shall adopt the option made
27 available under Section 1902(a)(10)(A)(ii)(XIII) of the federal
28 Social Security Act (42 U.S.C. Sec. 1396a(a)(10)(A)(ii)(XIII)). In
29 order to be eligible for benefits under this section, an individual
30 shall be required to meet all of the following requirements:

31 (1) His or her net countable income is less than 250 percent of
32 the federal poverty level for one person or, if the deeming of
33 spousal income applies to the individual, his or her net countable
34 income is less than 250 percent of the federal poverty level for
35 two persons.

36 (2) He or she is disabled under Title II of the Social Security
37 Act (Subch. 2 (commencing with Sec. 401), Ch. 7, Title 42 U.S.C.),
38 Title XVI of the Social Security Act (Subch. 16 (commencing with
39 Sec. 1381), Ch. 7, Title 42, U.S.C.), or Section 1902(v) of the
40 Social Security Act (42 U.S.C. Sec. 1396a(v)). An individual shall

1 be determined to be eligible under this section without regard to
2 his or her ability to engage in, or actual engagement in, substantial
3 gainful activity, as defined in Section 223(d)(4) of the Social
4 Security Act (42 U.S.C. Sec. 423(d)(4)).

5 (3) Except as otherwise provided in this section, his or her net
6 nonexempt resources, which shall be determined in accordance
7 with the methodology used under Title XVI of the federal Social
8 Security Act (42 U.S.C. Sec. 1381 et seq.), are not in excess of the
9 limits provided for under those provisions.

10 (b) (1) Countable income shall be determined under Section
11 1612 of the federal Social Security Act (42 U.S.C. Sec. 1382a),
12 except that the individual's disability income, including all federal
13 and state disability benefits and private disability insurance, shall
14 be exempted. Resources excluded under Section 1613 of the federal
15 Social Security Act (42 U.S.C. Sec. 1382b) shall be disregarded.

16 (2) Resources in the form of employer or individual retirement
17 arrangements authorized under the Internal Revenue Code shall
18 be exempted as authorized by Section 1902(r) of the federal Social
19 Security Act (42 U.S.C. Sec. 1396a(r)).

20 (3) (A) *For the purposes of calculating countable income under*
21 *this section, an income exemption shall be applied as necessary*
22 *to adjust the income standard so that it is the same as the income*
23 *standard that was in place on May 1, 2009.*

24 (B) *This additional income exemption shall cease to be*
25 *implemented when the SSI/SSP program payment levels increase*
26 *beyond those in effect on May 1, 2009.*

27 (C) *Notwithstanding Chapter 3.5 (commencing with Section*
28 *11340) of Part 1 of Division 3 of Title 2 of the Government Code,*
29 *the department shall implement this paragraph by means of an*
30 *all-county letter or similar instruction without taking regulatory*
31 *action.*

32 (c) Medi-Cal benefits provided under this chapter pursuant to
33 this section shall be available in the same amount, duration, and
34 scope as those benefits are available for persons who are eligible
35 for Medi-Cal benefits as categorically needy persons and as
36 specified in Section 14007.5.

37 (d) Individuals eligible for Medi-Cal benefits under this section
38 shall be subject to the payment of premiums determined under this
39 subdivision. The department shall establish sliding-scale premiums
40 that are based on countable income, with a minimum premium of

1 twenty dollars (\$20) per month and a maximum premium of two
2 hundred fifty dollars (\$250) per month, and shall, by regulations,
3 annually adjust the premiums. Prior to adjustment of any premiums
4 pursuant to this subdivision, the department shall submit a report
5 of proposed premium adjustments to the appropriate committees
6 of the Legislature as part of the annual budget act process.

7 (e) The department shall adopt regulations specifying the process
8 for discontinuance of eligibility under this section for nonpayment
9 of premiums for more than two months by a beneficiary.

10 (f) In order to implement the collection of premiums under this
11 section, the department may develop and execute a contract with
12 a public or private entity to collect premiums, or may amend any
13 existing or future premium-collection contract that it has executed.
14 Notwithstanding any other provision of law, any contract developed
15 and executed or amended pursuant to this subdivision is exempt
16 from the approval of the Director of General Services and from
17 the Public Contract Code.

18 (g) Notwithstanding the rulemaking provisions of Chapter 3.5
19 (commencing with Section 11340) of Part 1 of Division 3 of Title
20 2 of the Government Code, the department shall implement,
21 without taking any regulatory action, this section by means of an
22 all-county letter or similar instruction. Thereafter, the department
23 shall adopt regulations in accordance with the requirements of
24 Chapter 3.5 (commencing with Section 11340) of Part 1 of Division
25 3 of Title 2 of the Government Code.

26 (h) Notwithstanding any other provision of law, this section
27 shall be implemented only if, and to the extent that, the department
28 determines that federal financial participation is available pursuant
29 to Title XIX of the federal Social Security Act (42 U.S.C. Sec.
30 1396 et seq.).

31 (i) Subject to subdivision (h), this section shall be implemented
32 commencing April 1, 2000.

33 *SEC. 32. Section 14011.2 of the Welfare and Institutions Code,*
34 *as amended by Section 61 of Chapter 74 of the Statutes of 2006,*
35 *is amended to read:*

36 14011.2. (a) The department shall require that each applicant
37 for or beneficiary of Medi-Cal, including a child, who is not a
38 recipient of aid under the provisions of Chapter 2 (commencing
39 with Section 11200) or Chapter 3 (commencing with Section

1 12000) shall provide his or her social security account number, or
2 numbers, if he or she has more than one such number.

3 (b) The requirement for a social security account number shall
4 be a condition of eligibility only for the applicant who is seeking
5 or the beneficiary who is receiving (1) full-scope medical benefits
6 or (2), pursuant to Section 14007.5, restricted medical benefits
7 (emergency and pregnancy-related services only), and, in either
8 case, who declares, as required in subdivision (d), that he or she
9 is a citizen or national of the United States, and, if he or she is not
10 a citizen or national of the United States, that he or she has
11 satisfactory immigration status.

12 (c) The requirement for a social security account number shall
13 not be a condition of eligibility for the applicant who is seeking
14 or the beneficiary who is receiving, pursuant to Section 14007.5,
15 restricted medical benefits (emergency and pregnancy-related
16 services only), and who has not made the declaration, as required
17 in subdivision (d), that he or she is not a citizen or national of the
18 United States, and, if he or she is not a citizen or national of the
19 United States, that he or she does not have satisfactory immigration
20 status.

21 (d) Every applicant or beneficiary or, in the case of a child, by
22 the child's caretaker relative or legal guardian on his or her behalf
23 shall declare, under penalty of perjury, that he or she is, or is not
24 any of the following:

- 25 (1) A citizen of the United States.
- 26 (2) A national of the United States.
- 27 (3) An alien who has satisfactory immigration status.

28 (e) (1) Notwithstanding Section 50301.1 of Title 22 of the
29 California Code of Regulations, an individual who declares to be
30 a citizen or national of the United States in accordance with Section
31 1903(i)(22) of the federal Social Security Act (42 U.S.C. Sec.
32 1396b(i)(22)) shall present satisfactory documentary evidence of
33 citizenship or nationality in compliance with Section 1903(x) (42
34 U.S.C. Sec. 1396b(x) of the federal Social Security Act). Except
35 as otherwise provided in Section 14007.2 *and in paragraph (7)*,
36 no services shall be available under this chapter for an individual
37 who fails to comply with the documentation requirements of this
38 section.

39 (2) (A) The documentation required pursuant to paragraph (1)
40 shall be provided once by each individual, as follows:

1 (i) During the initial application process for applicants.

2 (ii) During the redetermination process for existing beneficiaries.

3 (B) If the documentation is obtained from a beneficiary, the
4 county shall maintain a copy of the documentation in the case file
5 of the beneficiary, and shall not request this documentation again.

6 (C) If electronic verification is used, a record of the
7 documentation shall be maintained in the case record and shall not
8 be requested again.

9 (D) Once the required documentation has been obtained by the
10 county, the beneficiary shall not be required to provide it again,
11 even if he or she is transferring to or applying in a new county.

12 (3) To the extent that federal financial participation is available,
13 the department shall provide for exceptions or alternatives to the
14 documentation requirements imposed by this subdivision as a
15 means of providing individuals with increased flexibility and ability
16 to provide satisfactory documentary evidence within a reasonable
17 period of time. These exceptions or alternatives may include, but
18 shall not be limited to, using an expanded list of acceptable
19 documents, relying on electronic data matches for birth certificates,
20 relying on a sworn affidavit of citizenship with respect to an
21 individual who can demonstrate good cause for his or her inability
22 or other failure to provide the required documentation, and relying
23 on other information that may be available electronically.

24 (4) (A) To the extent that federal financial participation is
25 available, the department shall rely on the eligibility determinations
26 for the CalWORKs program or the Aid to Families with Dependent
27 Children-Foster Care program as meeting the requirements of this
28 section.

29 (B) To the extent that federal financial participation is available,
30 an individual shall be deemed to have met the documentation
31 requirements of this subdivision if the individual has been
32 determined to be eligible for supplemental security income pursuant
33 to Title XVI of the Social Security Act (42 U.S.C. Sec. 1601 et
34 seq.).

35 (5) The following provisions shall apply to the extent that federal
36 financial participation is available:

37 (A) If an individual cooperates in the effort to obtain and present
38 the documentation required under this subdivision, the individual
39 shall be given as much time as is allowed by federal law and policy
40 to present that documentation.

1 (B) During the time period described in subparagraph (A), an
2 applicant shall receive the scope of Medi-Cal benefits for which
3 the applicant is otherwise eligible.

4 (6) To the extent that federal financial participation is available,
5 the county shall do all of the following to assist an individual in
6 obtaining and presenting the documentation required under this
7 subdivision:

8 (A) For an applicant who does not present the required
9 documentation at the time of application, the county, during the
10 time period described in subparagraph (A) of paragraph (5), shall
11 assist the applicant in obtaining that documentation.

12 (B) For a current beneficiary who has not yet documented his
13 or her citizenship, the county shall do the following:

14 (i) If, at the time of annual redetermination, the beneficiary
15 returns the annual redetermination form and, but for the failure to
16 present the required documentation, continued eligibility could be
17 established, the county shall do the following:

18 (I) Review county eligibility files and records, and the Medi-Cal
19 Eligibility Data System, to access those documents. This review
20 shall include a review of any CalWORKs or food stamp files that
21 may exist for the beneficiary.

22 (II) Attempt to reach the beneficiary by telephone to advise the
23 beneficiary as to the need to obtain and present the required
24 documentation.

25 (III) If the beneficiary fails to respond to the telephone contact
26 or present the required documents, send a second form to the
27 beneficiary that highlights the documentation being requested and
28 informs the beneficiary to contact the county. The form shall be
29 written in a simple, clear, consumer-friendly manner, and shall
30 explain why the documentation is necessary.

31 (IV) If the beneficiary fails to contact the county, the county
32 shall make another attempt to reach the beneficiary by telephone
33 to advise the beneficiary of the need to obtain and present the
34 required documentation.

35 (ii) Document in the case file any efforts made to contact and
36 advise the beneficiary as to the need to obtain and present the
37 required documentation.

38 (C) If a beneficiary fails to present the required documentation
39 after the process required under clause (i), the county shall send a

1 10-day notice of action to indicate that the beneficiary's benefits
2 are reduced to those made available under Section 14007.2.

3 *(7) To the extent federal financial participation is available,*
4 *and only to the extent any necessary federal approvals have been*
5 *obtained, the department may, in its discretion, elect the option*
6 *referenced in Section 1396a(a)(46)(B)(ii) of Title 42 of the United*
7 *States Code to satisfy the requirements of paragraph (1). This*
8 *paragraph shall become operative on January 1, 2010, or when*
9 *all necessary agreements with the Commissioner of Social Security*
10 *are in place, whichever is later. The department may implement*
11 *this paragraph earlier than January 1, 2010, only to the extent*
12 *allowed by federal law or guidance.*

13 ~~(7)~~

14 (8) (A) Any benefits provided in accordance with subparagraph
15 (B) of paragraph (5) shall terminate if any of the following occurs:

16 (i) The individual does not obtain and present the required
17 documentation within the time period provided in subparagraph
18 (A) of paragraph (5).

19 (ii) The documentation is received by the county and the county
20 has made a final determination of eligibility.

21 (B) The termination of Medi-Cal benefits under this paragraph
22 shall occur without the necessity of further review or determination
23 by the department. This shall not affect an individual's right to a
24 hearing with respect to the denial of the application or termination
25 of eligibility resulting from the annual eligibility redetermination.

26 ~~(8)~~

27 (9) Notwithstanding Chapter 3.5 (commencing with Section
28 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
29 the department shall implement this subdivision by means of an
30 all county letter or similar instruction without taking regulatory
31 action. Within three years from the date that this subdivision
32 becomes effective, the department shall adopt regulations in
33 accordance with the requirements of Chapter 3.5 (commencing
34 with Section 11340) of Part 1 of Division 3 of Title 2 of the
35 Government Code.

36 ~~(9)~~

37 (10) The department shall notify and consult with advocates,
38 providers, counties, and health plans in implementing, interpreting,
39 or making specific this subdivision.

40 ~~(10)~~

1 (11) The department shall file all necessary state plan
2 amendments to implement the requirements of this subdivision.
3 Upon filing any state plan amendment, the department shall provide
4 the appropriate fiscal committees of the Legislature with a copy
5 of the state plan amendment.

6 ~~(11)~~

7 (12) If any part of this subdivision is in conflict with or does
8 not comply with federal law, the subdivision shall be implemented
9 only to the extent that federal law permits. Any part that is in
10 conflict with or does not comply with federal law shall be severable
11 from the remaining portions of this subdivision.

12 SEC. 33. Section 14013.5 is added to the Welfare and
13 Institutions Code, to read:

14 14013.5. (a) Pursuant to, and only to the extent required by,
15 Section 1940 of the federal Social Security Act (42 U.S.C. Sec.
16 1396w) and subject to the provisions of this section, the department
17 shall implement an asset verification program for the purpose of
18 determining or redetermining the eligibility of an applicant for,
19 or recipient of, Medi-Cal benefits on the basis of being aged, blind,
20 or disabled.

21 (b) (1) Any applicant or recipient described in subdivision (a),
22 and any other person whose resources are required by law to be
23 disclosed to determine the eligibility of the applicant or recipient,
24 shall provide authorization for the department to obtain from any
25 financial institution any financial record held by the institution
26 with respect to the applicant or recipient, and any other person,
27 as applicable, whenever the department determines the record is
28 needed in connection with a determination with respect to the
29 eligibility for, or the amount or extent of, the medical assistance.

30 (2) The department's obtaining of financial records pursuant
31 to this section shall be subject to the cost reimbursement
32 requirements of Section 1115(a) of the federal Right to Financial
33 Privacy Act of 1978 (12 U.S.C. Sec. 3415(a)) and shall be at no
34 cost to the applicant, recipient, or any other person.

35 (3) An authorization under this subdivision shall not be required
36 for any applicant or recipient whose assets have been verified by
37 the federal Social Security Administration.

38 (4) An authorization under this subdivision shall only be
39 required for those applicants and recipients as required by federal
40 law and federal guidance.

1 (c) *As used in this section:*

2 (1) *“Financial institution” has the same meaning as defined in*
3 *Section 1101(1) of the federal Right to Financial Privacy Act of*
4 *1978 (12 U.S.C. Sec. 3401(1)).*

5 (2) *“Financial record” has the same meaning as defined in*
6 *Section 1101(2) of the federal Right to Financial Privacy Act of*
7 *1978 (12 U.S.C. Sec. 3401(2)).*

8 (3) *“Any other person” shall mean the spouse of an applicant*
9 *or recipient, a parent of an unemancipated minor, or any other*
10 *person whose resources are required by federal law to be disclosed*
11 *to determine the eligibility of the applicant or recipient.*

12 (d) *An authorization provided to the department under*
13 *subdivision (b) shall remain effective until the earlier of:*

14 (1) *The rendering of a final adverse decision on the applicant’s*
15 *application for medical assistance.*

16 (2) *The cessation of the recipient’s eligibility for the medical*
17 *assistance.*

18 (3) *The express revocation by the applicant or recipient, or*
19 *other required person, as applicable, of the authorization, in a*
20 *written notification to the department.*

21 (e) (1) *An authorization obtained by the department under*
22 *subdivision (b) shall be considered as meeting the requirements*
23 *of Section 1103(a) of the federal Right to Financial Privacy Act*
24 *of 1978 (12 U.S.C. Sec. 3403(a)) and, notwithstanding Section*
25 *1104(a) of the federal Right to Financial Privacy Act of 1978 (12*
26 *U.S.C. Sec. 3404(a)), need not be furnished to the financial*
27 *institution.*

28 (2) *The certification requirements of Section 1103(b) of the*
29 *federal Right to Financial Privacy Act of 1978 (12 U.S.C. Sec.*
30 *3403(b)) shall not apply to requests by the department or its*
31 *designee pursuant to an authorization provided under subdivision*
32 *(b).*

33 (3) *A request by the department or its designee pursuant to an*
34 *authorization provided under subdivision (b) shall be deemed to*
35 *meet the requirements of Section 1104(a)(3) of the federal Right*
36 *to Financial Privacy Act of 1978 (12 U.S.C. Sec. 3404(a)(3)) and*
37 *of Section 1102 of the act (12 U.S.C. Sec. 3402), relating to a*
38 *reasonable description of financial records.*

39 (f) *If an applicant for, or recipient of, medical assistance, or*
40 *other required person, as applicable, refuses to provide, or revokes,*

1 any authorization made by the applicant or recipient, or other
2 required person, as applicable, for the department to obtain from
3 any financial institution any financial record, the department may,
4 on that basis, determine that the applicant or recipient is ineligible
5 for medical assistance.

6 (g) The department shall provide the applicant or recipient with
7 notice of the asset verification requirement of this section, including
8 privacy protections and the duration and scope of the
9 authorization, prior to the applicant or recipient being requested
10 to provide the authorization required by subdivision (b).

11 (h) The department shall, in coordination with the counties and
12 advocates, develop criteria regarding how and when the
13 authorization required under subdivision (b) will be required, how
14 and when verification will be required, what standards will be
15 used, and the content of the notice to the applicants and recipients
16 described in subdivision (g) concerning the authorization.

17 (i) Notwithstanding the rulemaking provisions of Chapter 3.5
18 (commencing with Section 11340) of Part 1 of Division 3 of Title
19 2 of the Government Code, the department shall implement, without
20 taking any regulatory action, this section by means of an all-county
21 letter or similar instruction. Thereafter, the department shall adopt
22 regulations in accordance with the requirements of Chapter 3.5
23 (commencing with Section 11340) of Part 1 of Division 3 of Title
24 2 of the Government Code.

25 (j) To implement this section, the department may contract with
26 public or private entities that shall be subject to the same
27 requirements and limitations on use and disclosure of information
28 as would apply if the department were to implement this section
29 directly. In order to demonstrate good faith efforts to meet federal
30 implementation requirements of Section 1940 of the federal Social
31 Security Act (42 U.S.C. Sec. 1396w) and to avoid any withholding
32 of federal financial participation, the Legislature hereby determines
33 that an expedited contract process for contracts under this section
34 is necessary. Therefore, contracts under this section shall be
35 exempt from Part 2 (commencing with Section 10100) of Division
36 2 of the Public Contract Code and any policies, procedures, or
37 regulations authorized by that part. Contracts under this section
38 shall be exempt from the requirements of Article 4 (commencing
39 with Section 19130) of Chapter 5 of Part 2 of Division 5 of the
40 Government Code.

1 SEC. 34. Section 14087.9 of the Welfare and Institutions Code
2 is amended to read:

3 14087.9. A combination of counties may contract with the
4 department pursuant to this article for the provision of services ~~on~~
5 a regional basis.

6 SEC. 35. Section 14105.191 of the Welfare and Institutions
7 Code is amended to read:

8 14105.191. (a) Notwithstanding any other provision of law,
9 in order to implement changes in the level of funding for health
10 care services, the director shall reduce provider payments, as
11 specified in this section.

12 (b) (1) Except as otherwise provided in this section, payments
13 shall be reduced by 1 percent for Medi-Cal fee-for-service benefits
14 for dates of service on and after March 1, 2009.

15 (2) Except as provided in subdivision (d), for dates of service
16 on and after March 1, 2009, payments to the following classes of
17 providers shall be reduced by 5 percent for Medi-Cal
18 fee-for-service benefits:

19 (A) Intermediate care facilities, excluding those facilities
20 identified in paragraph (5) of subdivision (d). For purposes of this
21 section, “intermediate care facility” has the same meaning as
22 defined in Section 51118 of Title 22 of the California Code of
23 Regulations.

24 (B) Skilled nursing facilities that are distinct parts of general
25 acute care hospitals. For purposes of this section, “distinct part”
26 has the same meaning as defined in Section 72041 of Title 22 of
27 the California Code of Regulations.

28 (C) Rural swing-bed facilities.

29 (D) Subacute care units that are, or are parts of, distinct parts
30 of general acute care hospitals. For purposes of this subparagraph,
31 “subacute care unit” has the same meaning as defined in Section
32 51215.5 of Title 22 of the California Code of Regulations.

33 (E) Pediatric subacute care units that are, or are parts of, distinct
34 parts of general acute care hospitals. For purposes of this
35 subparagraph, “pediatric subacute care unit” has the same meaning
36 as defined in Section 51215.8 of Title 22 of the California Code
37 of Regulations.

38 (F) Adult day health care centers.

1 (3) Except as provided in subdivision (d), for dates of service
2 on and after March 1, 2009, Medi-Cal fee-for-service payments
3 to pharmacies shall be reduced by 5 percent.

4 (4) Except as provided in subdivision (d), payments shall be
5 reduced by 1 percent for non-Medi-Cal programs described in
6 Article 6 (commencing with Section 124025) of Chapter 3 of Part
7 2 of Division 106 of the Health and Safety Code, and Section
8 14105.18, for dates of service on and after March 1, 2009.

9 (5) For managed health care plans that contract with the
10 department pursuant to this chapter, Chapter 8 (commencing with
11 Section 14200), and Chapter 8.75 (commencing with Section
12 14590), payments shall be reduced by the actuarial equivalent
13 amount of the payment reductions specified in this subdivision
14 pursuant to contract amendments or change orders effective on
15 July 1, 2008, or thereafter.

16 (c) Notwithstanding any other provision of this section,
17 payments to hospitals that are not under contract with the State
18 Department of Health Care Services pursuant to Article 2.6
19 (commencing with Section 14081) for inpatient hospital services
20 provided to Medi-Cal beneficiaries and that are subject to Section
21 14166.245 shall be governed by that section.

22 (d) To the extent applicable, the services, facilities, and
23 payments listed in this subdivision shall be exempt from the
24 payment reductions specified in subdivision (b):

25 (1) Acute hospital inpatient services that are paid under contracts
26 pursuant to Article 2.6 (commencing with Section 14081).

27 (2) Federally qualified health center services, including those
28 facilities deemed to have federally qualified health center status
29 pursuant to a waiver pursuant to subsection (a) of Section 1115 of
30 the federal Social Security Act (42 U.S.C. Sec. 1315(a)).

31 (3) Rural health clinic services.

32 (4) Skilled nursing facilities licensed pursuant to subdivision
33 (c) of Section 1250 of the Health and Safety Code other than those
34 specified in paragraph (2) of subdivision (b).

35 (5) Intermediate care facilities for the developmentally disabled
36 licensed pursuant to subdivision (e), (g), or (h) of Section 1250 of
37 the Health and Safety Code, or facilities providing continuous
38 skilled nursing care to developmentally disabled individuals
39 pursuant to the pilot project established by Section 14495.10.

1 (6) Payments to facilities owned or operated by the State
2 Department of Mental Health or the State Department of
3 Developmental Services.

4 (7) Hospice services.

5 (8) Contract services, as designated by the director pursuant to
6 subdivision ~~(f)~~ (g).

7 (9) Payments to providers to the extent that the payments are
8 funded by means of a certified public expenditure or an
9 intergovernmental transfer pursuant to Section 433.51 of Title 42
10 of the Code of Federal Regulations.

11 (10) Services pursuant to local assistance contracts and
12 interagency agreements to the extent the funding is not included
13 in the funds appropriated to the department in the annual Budget
14 Act.

15 (11) Payments to Medi-Cal managed care plans pursuant to
16 Section 4474.5 for services to consumers transitioning from
17 Agnews Developmental Center into the Counties of Alameda, San
18 Mateo, and Santa Clara pursuant to the Plan for the Closure of
19 Agnews Developmental Center.

20 (12) Breast and cervical cancer treatment provided pursuant to
21 Section 14007.71 and as described in paragraph (3) of subdivision
22 (a) of Section 14105.18 or Article 1.5 (commencing with Section
23 104160) of Chapter 2 of Part 1 of Division 103 of the Health and
24 Safety Code.

25 (13) The Family Planning, Access, Care, and Treatment (Family
26 PACT) Waiver Program pursuant to Section 14105.18.

27 (14) Small and rural hospitals, as defined in Section 124840 of
28 the Health and Safety Code.

29 (e) Subject to the exemptions listed in subdivision (d), the
30 payment reductions required by paragraph (1) of subdivision (b)
31 shall apply to the benefits rendered by any provider who may be
32 authorized to bill for provision of the benefit, including, but not
33 limited to, physicians, podiatrists, nurse practitioners, certified
34 nurse midwives, nurse anesthetists, and organized outpatient
35 clinics.

36 (f) (1) *Notwithstanding any other provision of law, Medi-Cal*
37 *reimbursement rates applicable to the classes of providers*
38 *identified in paragraph (2) of subdivision (b), for services rendered*
39 *during the 2009–10 rate year and each rate year thereafter, shall*

1 not exceed the reimbursement rates that were applicable to those
2 classes of providers in the 2008–09 rate year.

3 (2) In addition to the classes of providers described in
4 paragraph (1), Medi-Cal reimbursement rates applicable to the
5 facilities identified in paragraph (5) of subdivision (d), for services
6 rendered during the 2009–10 rate year and each rate year
7 thereafter, shall not exceed the reimbursement rates that were
8 applicable to those facilities and services in the 2008–09 rate year.

9 (3) Paragraphs (1) and (2) shall not apply to providers that are
10 paid pursuant to Article 3.8 (commencing with Section 14126), or
11 to services, facilities, and payments specified in subdivision (d),
12 with the exception of facilities described in paragraph (5) of
13 subdivision (d).

14 (4) The limitation set forth in this subdivision shall be applied
15 only after the reductions in paragraph (2) of subdivision (b) have
16 been made.

17 ~~(f)~~

18 (g) Notwithstanding Chapter 3.5 (commencing with Section
19 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
20 the department may implement and administer this section by
21 means of provider bulletins, or similar instructions, without taking
22 regulatory action.

23 ~~(g)~~

24 (h) The reductions *and limitations* described in this section shall
25 apply only to payments for benefits when the General Fund share
26 of the payment is paid with funds directly appropriated to the
27 department in the annual Budget Act, and shall not apply to
28 payments for benefits paid with funds appropriated to other
29 departments or agencies.

30 ~~(h)~~

31 (i) The department shall promptly seek any necessary federal
32 approvals for the implementation of this section. To the extent that
33 federal financial participation is not available with respect to any
34 payment that is reduced *or limited* pursuant to this section, the
35 director may elect not to implement ~~such~~ *that* reduction *or*
36 *limitation*.

37 SEC. 36. Section 14105.436 of the Welfare and Institutions
38 Code is amended to read:

39 14105.436. (a) Effective July 1, 2002, all pharmaceutical
40 manufacturers shall provide to the department a state rebate, in

1 addition to rebates pursuant to other provisions of state or federal
2 law, for any drug products that have been added to the Medi-Cal
3 list of contract drugs pursuant to Section 14105.43 or 14133.2 and
4 reimbursed through the Medi-Cal outpatient fee-for-service drug
5 program. The state rebate shall be negotiated as necessary between
6 the department and the pharmaceutical manufacturer. The
7 negotiations shall take into account offers such as rebates,
8 discounts, disease management programs, and other cost savings
9 offerings and shall be retroactive to July 1, 2002.

10 (b) The department may use existing administrative mechanisms
11 for any drug for which the department does not obtain a rebate
12 pursuant to subdivision (a). The department may only use those
13 mechanisms in the event that, by February 1, 2003, the
14 manufacturer refuses to provide the additional rebate. *This*
15 *subdivision shall become inoperative on January 1, 2010.*

16 ~~(e) In no event shall a beneficiary be denied continued use of a~~
17 ~~drug that is part of a prescribed therapy and that is the subject of~~
18 ~~an administrative mechanism pursuant to subdivision (b) until the~~
19 ~~prescribed therapy is no longer prescribed.~~

20 (c) *For purposes of this section, "Medi-Cal utilization data"*
21 *means the data used by the department to reimburse providers*
22 *under all programs that qualify for federal drug rebates pursuant*
23 *to Section 1927 of the federal Social Security Act (42 U.S.C. Sec.*
24 *1396r-8) or that otherwise qualify for federal funds under Title*
25 *XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.)*
26 *pursuant to the Medicaid state plan or waivers. Medi-Cal*
27 *utilization data excludes data from covered entities identified in*
28 *Section 256b(a)(4) of Title 42 of the United States Code in*
29 *accordance with Sections 256b(a)(5)(A) and 1396r-8(a)(5)(C) of*
30 *Title 42 of the United States Code, and those capitated plans that*
31 *include a prescription drug benefit in the capitated rate and that*
32 *have negotiated contracts for rebates or discounts with*
33 *manufacturers.*

34 (d) *Retroactive to July 1, 2009, all pharmaceutical*
35 *manufacturers shall provide to the department a state rebate, in*
36 *addition to rebates pursuant to other provisions of state or federal*
37 *law, equal to an amount not less than 10 percent of the average*
38 *manufacturer price based on Medi-Cal utilization data for any*
39 *drug products that have been added to the Medi-Cal list of contract*
40 *drugs pursuant to Section 14105.43 or 14133.2.*

1 (e) *Pharmaceutical manufacturers shall, by January 1, 2010,*
2 *enter into a supplemental rebate agreement for the rebate required*
3 *in subdivision (d) for drug products added to the Medi-Cal list of*
4 *contract drugs on or before December 31, 2009.*

5 (f) *Effective January 1, 2010, all pharmaceutical manufacturers*
6 *who have not entered into a supplemental rebate agreement*
7 *pursuant to subdivisions (d) and (e), shall provide to the*
8 *department a state rebate, in addition to rebates pursuant to other*
9 *provisions of state or federal law, equal to an amount not less than*
10 *20 percent of the average manufacturer price based on Medi-Cal*
11 *utilization data for any drug products that have been added to the*
12 *Medi-Cal list of contract drugs pursuant to Section 14105.43 or*
13 *14133.2 prior to January 1, 2010. If the pharmaceutical*
14 *manufacturer does not enter into a supplemental rebate agreement*
15 *by March 1, 2010, the manufacturer's drug product shall be made*
16 *available only through an approved treatment authorization*
17 *request pursuant to subdivision (h).*

18 (g) *For a drug product added to the Medi-Cal list of contract*
19 *drugs pursuant to Section 14105.43 or 14133.2 on or after January*
20 *1, 2010, a pharmaceutical manufacturer shall provide to the*
21 *department a state rebate pursuant to subdivision (d). If the*
22 *pharmaceutical manufacturer does not enter into a supplemental*
23 *rebate agreement within 60 days after the addition of the drug to*
24 *the Medi-Cal list of contract drugs, the manufacturer shall provide*
25 *to the department a state rebate equal to not less than 20 percent*
26 *of the average manufacturers price based on Medi-Cal utilization*
27 *data for any drug products that have been added to the Medi-Cal*
28 *list of contract drugs pursuant to Section 14105.43 or 14133.2. If*
29 *the pharmaceutical manufacturer does not enter into a*
30 *supplemental rebate agreement within 120 days after the addition*
31 *of the drug to the Medi-Cal list of contract drugs, the*
32 *pharmaceutical manufacturer's drug product shall be made*
33 *available only through an approved treatment authorization*
34 *request pursuant to subdivision (h). For supplemental rebate*
35 *agreements executed more than 120 days after the addition of the*
36 *drug product to the Medi-Cal list of contract drugs, the state rebate*
37 *shall equal an amount not less than 20 percent of the average*
38 *manufacturers price based on Medi-Cal utilization data for any*
39 *drug products that have been added to the Medi-Cal list of contract*
40 *drugs pursuant to Section 14105.43 or 14133.2.*

1 (h) Notwithstanding any other provision of law, drug products
2 added to the Medi-Cal list of contract drugs pursuant to Section
3 14105.43 or 14133.2 of manufacturers who do not execute an
4 agreement to pay additional rebates pursuant to this section, shall
5 be available only through an approved treatment authorization
6 request.

7 (i) For drug products added on or before December 31, 2009,
8 a beneficiary may obtain a drug product that requires a treatment
9 authorization request pursuant to subdivision (h) if the beneficiary
10 qualifies for continuing care status. To be eligible for continuing
11 care status, a beneficiary must be taking the drug product and the
12 department must have record of a reimbursed claim for the drug
13 product with a date of service that is within 100 days prior to the
14 date the drug product was placed on treatment authorization
15 request status. A beneficiary may remain eligible for continuing
16 care status, provided that a claim is submitted for the drug product
17 in question at least every 100 days and the date of service of the
18 claim is within 100 days of the date of service of the last claim
19 submitted for the same drug product.

20 (j) Changes made to the Medi-Cal list of contract drugs under
21 this section shall be exempt from the requirements of the
22 Administrative Procedure Act (Chapter 3.5 (commencing with
23 Section 11340), Chapter 4 (commencing with Section 11370), and
24 Chapter 5 (commencing with Section 11500) of Part 1 of Division
25 3 of Title 2 of the Government Code), and shall not be subject to
26 the review and approval of the Office of Administrative Law.

27 SEC. 37. Section 14105.45 of the Welfare and Institutions Code
28 is amended to read:

29 14105.45. (a) For purposes of this section, the following
30 definitions shall apply:

31 (1) "Average manufacturers price" means the price reported to
32 the department by the Centers for Medicare and Medicaid Services
33 pursuant to Section 1927 of the Social Security Act (42 U.S.C.
34 Sec. 1396r-8). In the event an average manufacturer's price is not
35 available, the department shall use the direct price as the average
36 manufacturer's price.

37 (2) "Average wholesale price" means the price for a drug
38 product listed as the average wholesale price in the department's
39 primary price reference source.

1 (3) “Direct price” means the price for a drug product purchased
2 by a pharmacy directly from a drug manufacturer listed in the
3 department’s primary reference source.

4 (4) “Estimated acquisition cost” means the department’s best
5 estimate of the price generally and currently paid by providers for
6 a drug product sold by a particular manufacturer or principal labeler
7 in a standard package.

8 (5) “Federal upper limit” means the maximum per unit
9 reimbursement when established by the Centers for Medicare and
10 Medicaid Services and published by the department in Medi-Cal
11 pharmacy provider bulletins and manuals.

12 (6) “Generically equivalent drugs” means drug products with
13 the same active chemical ingredients of the same strength, quantity,
14 and dosage form, and of the same generic drug name, as determined
15 by the United States Adopted Names (USAN) and accepted by the
16 federal Food and Drug Administration (FDA), as those drug
17 products having the same chemical ingredients.

18 (7) “Legend drug” means any drug whose labeling states
19 “Caution: Federal law prohibits dispensing without prescription,”
20 “Rx only,” or words of similar import.

21 (8) “Maximum allowable ingredient cost” (MAIC) means the
22 maximum amount the department will reimburse Medi-Cal
23 pharmacy providers for generically equivalent drugs.

24 (9) “Innovator multiple source drug,” “noninnovator multiple
25 source drug,” and “single source drug” have the same meaning as
26 those terms are defined in Section 1396r-8(k)(7) of Title 42 of the
27 United States Code.

28 (10) “Nonlegend drug” means any drug whose labeling does
29 not contain the statement referenced in paragraph (7).

30 (11) “Selling price” means the price used in the establishment
31 of the estimated acquisition cost. The department shall base the
32 selling price on the average manufacturer’s price plus a percent
33 markup determined by the department to be necessary for the
34 selling price to represent the average purchase price paid by retail
35 pharmacies in California. The selling price shall not be considered
36 confidential and shall be subject to disclosure under the California
37 Public Records Act (Chapter 3.5 (commencing with Section 6250)
38 of Division 7 of Title 1 of the Government Code).

39 (12) *“Volume weighted average” means the aggregated average*
40 *volume for generically equivalent drugs, weighted by each drug’s*

1 *percentage of the total volume in the Medi-Cal fee-for-service*
2 *program during the previous six months. For purposes of this*
3 *paragraph, volume is based on the standard billing unit used for*
4 *the generically equivalent drugs.*

5 (13) “Wholesaler acquisition cost” means the price for a drug
6 product listed as the wholesaler acquisition cost in the
7 department’s primary price reference source.

8 (b) (1) Reimbursement to Medi-Cal pharmacy providers for
9 legend and nonlegend drugs shall consist of the estimated
10 acquisition cost of the drug plus a professional fee for dispensing.
11 The professional fee shall be seven dollars and twenty-five cents
12 (\$7.25) per dispensed prescription. The professional fee for legend
13 drugs dispensed to a beneficiary residing in a skilled nursing
14 facility or intermediate care facility shall be eight dollars (\$8) per
15 dispensed prescription. For purposes of this paragraph “skilled
16 nursing facility” and “intermediate care facility” shall have the
17 same meaning as defined in Division 5 (commencing with Section
18 70001) of Title 22 of the California Code of Regulations.

19 (2) The department shall establish the estimated acquisition cost
20 of legend and nonlegend drugs as follows:

21 (A) For single source and innovator multiple source drugs, the
22 estimated acquisition cost shall be equal to the lowest of the
23 average wholesale price minus 17 percent, the selling price, the
24 federal upper limit, or the MAIC.

25 (B) For noninnovator multiple source drugs, the estimated
26 acquisition cost shall be equal to the lowest of the average
27 wholesale price minus 17 percent, the selling price, the federal
28 upper limit, or the MAIC.

29 (3) For purposes of paragraph (2), the department shall establish
30 a list of MAICs for generically equivalent drugs, which shall be
31 published in pharmacy provider bulletins and manuals. *The*
32 *department shall establish a MAIC only when three or more*
33 *generically equivalent drugs are available for purchase and*
34 *dispensing by retail pharmacies in California.* The department
35 shall update the list of MAICs and establish additional MAICs in
36 accordance with all of the following:

37 (A) The department shall base the MAIC on the mean of the
38 average manufacturer’s price of drugs generically equivalent to
39 the particular innovator drug plus a percent markup determined

1 by the department to be necessary for the MAIC to represent the
2 average purchase price paid by retail pharmacies in California.

3 *(B) If average manufacturer prices are unavailable, the*
4 *department shall establish the MAIC in either of the following*
5 *ways:*

6 *(i) Based on the volume weighted average of wholesaler*
7 *acquisition costs of drugs generically equivalent to the particular*
8 *innovator drug plus a percent markup determined by the*
9 *department to be necessary for the MAIC to represent the average*
10 *purchase price paid by retail pharmacies in California.*

11 *(ii) Pursuant to a contract with a vendor for the purpose of*
12 *surveying drug price information, collecting data, and calculating*
13 *a proposed MAIC.*

14 *(C) The department may enter into contracts with a vendor for*
15 *the purpose of this section on a bid or nonbid basis. In order to*
16 *achieve maximum cost savings, the Legislature declares that an*
17 *expedited process for contracts under this section is necessary.*
18 *Therefore, contracts entered into on a nonbid basis shall be exempt*
19 *from Chapter 2 (commencing with Section 10290) of Part 2 of*
20 *Division 2 of the Public Contract Code.*

21 ~~(B)~~

22 *(D) The department shall update MAICs at least every three*
23 *months and notify Medi-Cal providers at least 30 days prior to the*
24 *effective date of a MAIC.*

25 *(E) The department shall establish a process for providers to*
26 *seek a change to a specific MAIC when the providers believe the*
27 *MAIC does not reflect current available market prices. If the*
28 *department determines a MAIC change is warranted, the*
29 *department may update a specific MAIC prior to notifying*
30 *providers.*

31 *(F) In determining the average purchase price, the department*
32 *shall consider the provider-related costs of the products that*
33 *include, but are not limited to, shipping, handling, storage, and*
34 *delivery. Costs of the provider that are included in the costs of the*
35 *dispensing shall not be used to determine the average purchase*
36 *price.*

37 *(c) The department shall update the Medi-Cal claims processing*
38 *system to reflect the selling price of drugs not later than 30 days*
39 *after receiving the average manufacturer's price.*

1 (d) In order to maintain beneficiary access to prescription drug
2 services, no later than 30 days after the department initially
3 implements selling price as a component of estimated acquisition
4 cost, pursuant to paragraph (2) of subdivision (b), the department
5 shall make a one-time adjustment to the dispensing fees paid to
6 pharmacy providers in accordance with paragraph (1) of
7 subdivision (b). This change shall only be made if selling price
8 results in a lower aggregate drug reimbursement. Any increase in
9 dispensing fee made pursuant to this subdivision shall not exceed
10 the aggregate savings associated with the implementation of selling
11 price. At least 30-days prior to implementing the dispensing fee
12 increase, the department shall issue a copy of the department's
13 request for federal approval pursuant to subdivision (e), to the
14 chairperson in each house that considers appropriations and the
15 Chairperson of the Joint Legislative Budget Committee, or
16 whatever lesser time the Chairperson of the Joint Legislative
17 Budget Committee or his or her designee may determine.

18 (e) The director shall implement this section in a manner that
19 is consistent with federal Medicaid law and regulations. The
20 director shall seek any necessary federal approvals for the
21 implementation of this section. This section shall be implemented
22 only to the extent that federal approval is obtained.

23 (f) Notwithstanding Chapter 3.5 (commencing with Section
24 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
25 the department may take the actions specified in this section by
26 means of a provider bulletin or notice, policy letter, or other similar
27 instructions, without taking regulatory action.

28 (g) The department shall issue a Medi-Cal pharmacy
29 reimbursement fact sheet to the chairperson of the committee in
30 each house of the Legislature that considers appropriations no later
31 than March 1, 2008. The reimbursement fact sheet shall contain,
32 but not be limited to, available data and information regarding the
33 change in reimbursement due to the federal Deficit Reduction Act
34 of 2005 implementation of average manufacturer's price based
35 federal upper limits, the implementation of selling price, change
36 in the average wholesale price reported to the department by the
37 primary price reference source, change in pharmacy dispensing
38 fees, prescription drug volume trends, and the number of active
39 Medi-Cal pharmacy providers. The fact sheet shall also contain
40 general information and definitions regarding drug pricing

1 terminology and a description of pharmacy claims processing in
2 Medi-Cal.

3 *SEC. 38. Section 14105.455 is added to the Welfare and
4 Institutions Code, to read:*

5 *14105.455. (a) Pharmacy providers shall submit their usual
6 and customary charge when billing the Medi-Cal program for
7 prescribed drugs.*

8 *(b) “Usual and customary charge” means the lower of the
9 following:*

10 *(1) The lowest price reimbursed to the pharmacy by other
11 third-party payers in California, excluding Medi-Cal managed
12 care plans and Medicare Part D prescription drug plans.*

13 *(2) The lowest price routinely offered to any segment of the
14 general public.*

15 *(c) Donations or discounts provided to a charitable organization
16 are not considered usual and customary charges.*

17 *(d) Pharmacy providers shall keep and maintain records of
18 their usual and customary charges for a period of three years from
19 the date the service was rendered.*

20 *(e) Payment to pharmacy providers shall be the lower of the
21 pharmacy’s usual and customary charge or the reimbursement
22 rate pursuant to subdivision (b) of Section 14105.45.*

23 *(f) Notwithstanding Chapter 3.5 (commencing with Section
24 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
25 the department may take the actions specified in this section by
26 means of a provider bulletin or notice, policy letter, or other
27 similar instructions, without taking regulatory action.*

28 *SEC. 39. Section 14105.46 is added to the Welfare and
29 Institutions Code, to read:*

30 *14105.46. (a) For purposes of this section:*

31 *(1) “Covered entity” means a provider defined as a covered
32 entity in Section 256b of Title 42 of the United States Code.*

33 *(2) “340B” means the discount drug purchasing program
34 described in Section 256b of Title 42 of the United States Code.*

35 *(b) A covered entity shall dispense only 340B drugs to Medi-Cal
36 beneficiaries.*

37 *(c) If a covered entity is unable to purchase a specific 340B
38 drug, the covered entity may dispense a drug purchased at regular
39 drug wholesale rates to a Medi-Cal beneficiary. If a covered entity
40 dispenses a drug purchased at regular drug wholesale rates*

1 pursuant to this subdivision, the covered entity is required to
2 maintain documentation of their inability to obtain the 340B drug.

3 (d) A covered entity shall bill an amount not to exceed the
4 entity's actual acquisition cost for the drug, as charged by the
5 manufacturer at a price consistent with Section 256b of Title 42
6 of the United States Code plus the professional fee pursuant to
7 Section 14105.45 or the dispensing fee pursuant to Section
8 14132.01.

9 (e) A covered entity shall identify a 340B drug on the claim
10 submitted to the Medi-Cal program for reimbursement.

11 (f) 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 may take the actions specified in this section by
14 means of a provider bulletin or notice, policy letter, or other
15 similar instructions, without taking regulatory action.

16 SEC. 40. Section 14110.55 of the Welfare and Institutions Code
17 is amended to read:

18 14110.55. For the purposes of the pilot program established
19 under Section 14495.10, or, if Section 14495.10 is repealed and
20 replaced by Section 14132.20, then under the program implemented
21 pursuant to Section 14132.20, the department shall develop a
22 reimbursement rate for continuous skilled nursing care services
23 provided by a participating health facility to developmentally
24 disabled individuals who meet the federal waiver eligibility criteria
25 or Medi-Cal State Plan amendment criteria. The reimbursement
26 rate shall be determined in accordance with a methodology that
27 shall be developed by the department. The department may elect
28 to establish individual patient-specific rates.

29 SEC. 41. Section 14126.033 of the Welfare and Institutions
30 Code is amended to read:

31 14126.033. (a) This article, including Section 14126.031, shall
32 be funded as follows:

33 (1) General Fund moneys appropriated for purposes of this
34 article pursuant to Section 6 of the act adding this section shall be
35 used for increasing rates, except as provided in Section 14126.031,
36 for freestanding skilled nursing facilities, and shall be consistent
37 with the approved methodology required to be submitted to the
38 federal Centers for Medicare and Medicaid Services pursuant to
39 Article 7.6 (commencing with Section 1324.20) of Chapter 2 of
40 Division 2 of the Health and Safety Code.

1 (2) (A) Notwithstanding Section 14126.023, for the 2005–06
2 rate year, the maximum annual increase in the weighted average
3 Medi-Cal rate required for purposes of this article shall not exceed
4 8 percent of the weighted average Medi-Cal reimbursement rate
5 for the 2004–05 rate year as adjusted for the change in the cost to
6 the facility to comply with the nursing facility quality assurance
7 fee for the 2005–06 rate year, as required under subdivision (b) of
8 Section 1324.21 of the Health and Safety Code, plus the total
9 projected Medi-Cal cost to the facility of complying with new state
10 or federal mandates.

11 (B) Beginning with the 2006–07 rate year, the maximum annual
12 increase in the weighted average Medi-Cal reimbursement rate
13 required for purposes of this article shall not exceed 5 percent of
14 the weighted average Medi-Cal reimbursement rate for the prior
15 fiscal year, as adjusted for the projected cost of complying with
16 new state or federal mandates.

17 (C) Beginning with the 2007–08 rate year and continuing
18 through the 2008–09 rate year, the maximum annual increase in
19 the weighted average Medi-Cal reimbursement rate required for
20 purposes of this article shall not exceed 5.5 percent of the weighted
21 average Medi-Cal reimbursement rate for the prior fiscal year, as
22 adjusted for the projected cost of complying with new state or
23 federal mandates.

24 (D) For the 2009–10 and 2010–11 rate years, ~~the maximum~~
25 ~~annual increase in~~ the weighted average Medi-Cal reimbursement
26 rate required for purposes of this article shall not exceed 5 percent
27 ~~of~~ *be increased with respect to* the weighted average Medi-Cal
28 reimbursement rate for the ~~prior fiscal~~ 2008–09 rate year, as
29 adjusted for the projected cost of complying with new state or
30 federal mandates.

31 (E) To the extent that new rates are projected to exceed the
32 adjusted limits calculated pursuant to ~~subparagraph~~ *subparagraphs*
33 (A) to (D), inclusive, as applicable, the department shall adjust the
34 ~~increase to~~ each skilled nursing facility’s projected rate for the
35 applicable rate year by an equal percentage.

36 (b) The rate methodology shall cease to be implemented on and
37 after July 31, 2011.

38 (c) (1) It is the intent of the Legislature that the implementation
39 of this article result in individual access to appropriate long-term
40 care services, quality resident care, decent wages and benefits for

1 nursing home workers, a stable workforce, provider compliance
2 with all applicable state and federal requirements, and
3 administrative efficiency.

4 (2) Not later than December 1, 2006, the Bureau of State Audits
5 shall conduct an accountability evaluation of the department's
6 progress toward implementing a facility-specific reimbursement
7 system, including a review of data to ensure that the new system
8 is appropriately reimbursing facilities within specified cost
9 categories and a review of the fiscal impact of the new system on
10 the General Fund.

11 (3) Not later than January 1, 2007, to the extent information is
12 available for the three years immediately preceding the
13 implementation of this article, the department shall provide baseline
14 information in a report to the Legislature on all of the following:

15 (A) The number and percent of freestanding skilled nursing
16 facilities that complied with minimum staffing requirements.

17 (B) The staffing levels prior to the implementation of this article.

18 (C) The staffing retention rates prior to the implementation of
19 this article.

20 (D) The numbers and percentage of freestanding skilled nursing
21 facilities with findings of immediate jeopardy, substandard quality
22 of care, or actual harm, as determined by the certification survey
23 of each freestanding skilled nursing facility conducted prior to the
24 implementation of this article.

25 (E) The number of freestanding skilled nursing facilities that
26 received state citations and the number and class of citations issued
27 during calendar year 2004.

28 (F) The average wage and benefits for employees prior to the
29 implementation of this article.

30 (4) Not later than January 1, 2009, the department shall provide
31 a report to the Legislature that does both of the following:

32 (A) Compares the information required in paragraph (2) to that
33 same information two years after the implementation of this article.

34 (B) Reports on the extent to which residents who had expressed
35 a preference to return to the community, as provided in Section
36 1418.81 of the Health and Safety Code, were able to return to the
37 community.

38 (5) The department may contract for the reports required under
39 this subdivision.

1 (d) This section shall become inoperative on July 31, 2011, and
2 as of January 1, 2012, is repealed, unless a later enacted statute,
3 that is enacted before January 1, 2012, deletes or extends the dates
4 on which it becomes inoperative and is repealed.

5 *SEC. 42. Section 14132 of the Welfare and Institutions Code*
6 *is amended to read:*

7 14132. The following is the schedule of benefits under this
8 chapter:

9 (a) Outpatient services are covered as follows:

10 Physician, hospital or clinic outpatient, surgical center,
11 respiratory care, optometric, chiropractic, psychology, podiatric,
12 occupational therapy, physical therapy, speech therapy, audiology,
13 acupuncture to the extent federal matching funds are provided for
14 acupuncture, and services of persons rendering treatment by prayer
15 or healing by spiritual means in the practice of any church or
16 religious denomination insofar as these can be encompassed by
17 federal participation under an approved plan, subject to utilization
18 controls.

19 (b) Inpatient hospital services, including, but not limited to,
20 physician and podiatric services, physical therapy and occupational
21 therapy, are covered subject to utilization controls.

22 (c) Nursing facility services, subacute care services, and services
23 provided by any category of intermediate care facility for the
24 developmentally disabled, including podiatry, physician, nurse
25 practitioner services, and prescribed drugs, as described in
26 subdivision (d), are covered subject to utilization controls.
27 Respiratory care, physical therapy, occupational therapy, speech
28 therapy, and audiology services for patients in nursing facilities
29 and any category of intermediate care facility for the
30 developmentally disabled are covered subject to utilization controls.

31 (d) (1) Purchase of prescribed drugs is covered subject to the
32 Medi-Cal List of Contract Drugs and utilization controls.

33 (2) Purchase of drugs used to treat erectile dysfunction or any
34 off-label uses of those drugs are covered only to the extent that
35 federal financial participation is available.

36 (3) (A) To the extent required by federal law, the purchase of
37 outpatient prescribed drugs, for which the prescription is executed
38 by a prescriber in written, nonelectronic form on or after April 1,
39 2008, is covered only when executed on a tamper resistant
40 prescription form. The implementation of this paragraph shall

1 conform to the guidance issued by the federal Centers of Medicare
2 and Medicaid Services but shall not conflict with state statutes on
3 the characteristics of tamper resistant prescriptions for controlled
4 substances, including Section 11162.1 of the Health and Safety
5 Code. The department shall provide providers and beneficiaries
6 with as much flexibility in implementing these rules as allowed
7 by the federal government. The department shall notify and consult
8 with appropriate stakeholders in implementing, interpreting, or
9 making specific this paragraph.

10 (B) Notwithstanding Chapter 3.5 (commencing with Section
11 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
12 the department may take the actions specified in subparagraph (A)
13 by means of a provider bulletin or notice, policy letter, or other
14 similar instructions without taking regulatory action.

15 (e) Outpatient dialysis services and home hemodialysis services,
16 including physician services, medical supplies, drugs and
17 equipment required for dialysis, are covered, subject to utilization
18 controls.

19 (f) Anesthesiologist services when provided as part of an
20 outpatient medical procedure, nurse anesthetist services when
21 rendered in an inpatient or outpatient setting under conditions set
22 forth by the director, outpatient laboratory services, and X-ray
23 services are covered, subject to utilization controls. Nothing in
24 this subdivision shall be construed to require prior authorization
25 for anesthesiologist services provided as part of an outpatient
26 medical procedure or for portable X-ray services in a nursing
27 facility or any category of intermediate care facility for the
28 developmentally disabled.

29 (g) Blood and blood derivatives are covered.

30 (h) (1) Emergency and essential diagnostic and restorative
31 dental services, except for orthodontic, fixed bridgework, and
32 partial dentures that are not necessary for balance of a complete
33 artificial denture, are covered, subject to utilization controls. The
34 utilization controls shall allow emergency and essential diagnostic
35 and restorative dental services and prostheses that are necessary
36 to prevent a significant disability or to replace previously furnished
37 prostheses which are lost or destroyed due to circumstances beyond
38 the beneficiary's control. Notwithstanding the foregoing, the
39 director may by regulation provide for certain fixed artificial
40 dentures necessary for obtaining employment or for medical

1 conditions that preclude the use of removable dental prostheses,
2 and for orthodontic services in cleft palate deformities administered
3 by the department's California Children Services Program.

4 (2) For persons 21 years of age or older, the services specified
5 in paragraph (1) shall be provided subject to the following
6 conditions:

7 (A) Periodontal treatment is not a benefit.

8 (B) Endodontic therapy is not a benefit except for vital
9 pulpotomy.

10 (C) Laboratory processed crowns are not a benefit.

11 (D) Removable prosthetics shall be a benefit only for patients
12 as a requirement for employment.

13 (E) The director may, by regulation, provide for the provision
14 of fixed artificial dentures that are necessary for medical conditions
15 that preclude the use of removable dental prostheses.

16 (F) Notwithstanding the conditions specified in subparagraphs
17 (A) to (E), inclusive, the department may approve services for
18 persons with special medical disorders subject to utilization review.

19 (3) Paragraph (2) shall become inoperative July 1, 1995.

20 (i) Medical transportation is covered, subject to utilization
21 controls.

22 (j) Home health care services are covered, subject to utilization
23 controls.

24 (k) Prosthetic and orthotic devices and eyeglasses are covered,
25 subject to utilization controls. Utilization controls shall allow
26 replacement of prosthetic and orthotic devices and eyeglasses
27 necessary because of loss or destruction due to circumstances
28 beyond the beneficiary's control. Frame styles for eyeglasses
29 replaced pursuant to this subdivision shall not change more than
30 once every two years, unless the department so directs.

31 Orthopedic and conventional shoes are covered when provided
32 by a prosthetic and orthotic supplier on the prescription of a
33 physician and when at least one of the shoes will be attached to a
34 prosthesis or brace, subject to utilization controls. Modification
35 of stock conventional or orthopedic shoes when medically
36 indicated, is covered subject to utilization controls. When there is
37 a clearly established medical need that cannot be satisfied by the
38 modification of stock conventional or orthopedic shoes,
39 custom-made orthopedic shoes are covered, subject to utilization
40 controls.

1 Therapeutic shoes and inserts are covered when provided to
2 beneficiaries with a diagnosis of diabetes, subject to utilization
3 controls, to the extent that federal financial participation is
4 available.

5 (l) Hearing aids are covered, subject to utilization controls.
6 Utilization controls shall allow replacement of hearing aids
7 necessary because of loss or destruction due to circumstances
8 beyond the beneficiary's control.

9 (m) Durable medical equipment and medical supplies are
10 covered, subject to utilization controls. The utilization controls
11 shall allow the replacement of durable medical equipment and
12 medical supplies when necessary because of loss or destruction
13 due to circumstances beyond the beneficiary's control. The
14 utilization controls shall allow authorization of durable medical
15 equipment needed to assist a disabled beneficiary in caring for a
16 child for whom the disabled beneficiary is a parent, stepparent,
17 foster parent, or legal guardian, subject to the availability of federal
18 financial participation. The department shall adopt emergency
19 regulations to define and establish criteria for assistive durable
20 medical equipment in accordance with the rulemaking provisions
21 of the Administrative Procedure Act (Chapter 3.5 (commencing
22 with Section 11340) of Part 1 of Division 3 of Title 2 of the
23 Government Code).

24 (n) Family planning services are covered, subject to utilization
25 controls.

26 (o) Inpatient intensive rehabilitation hospital services, including
27 respiratory rehabilitation services, in a general acute care hospital
28 are covered, subject to utilization controls, when either of the
29 following criteria are met:

30 (1) A patient with a permanent disability or severe impairment
31 requires an inpatient intensive rehabilitation hospital program as
32 described in Section 14064 to develop function beyond the limited
33 amount that would occur in the normal course of recovery.

34 (2) A patient with a chronic or progressive disease requires an
35 inpatient intensive rehabilitation hospital program as described in
36 Section 14064 to maintain the patient's present functional level as
37 long as possible.

38 (p) (I) Adult day health care is covered in accordance with
39 Chapter 8.7 (commencing with Section 14520).

1 (2) Commencing 30 days after the effective date of the act that
2 added this paragraph, and notwithstanding the number of days
3 previously approved through a treatment authorization request,
4 adult day health care is covered for a maximum of three days per
5 week.

6 (3) As provided in accordance with paragraph (4), adult day
7 health care is covered for a maximum of five days per week.

8 (4) As of the date that the director makes the declaration
9 described in subdivision (g) of Section 14525.1, paragraph (2)
10 shall become inoperative and paragraph (3) shall become
11 operative.

12 (q) (1) Application of fluoride, or other appropriate fluoride
13 treatment as defined by the department, other prophylaxis treatment
14 for children 17 years of age and under, are covered.

15 (2) All dental hygiene services provided by a registered dental
16 hygienist in alternative practice pursuant to Sections 1768 and
17 1770 of the Business and Professions Code may be covered as
18 long as they are within the scope of Denti-Cal benefits and they
19 are necessary services provided by a registered dental hygienist
20 in alternative practice.

21 (r) (1) Paramedic services performed by a city, county, or
22 special district, or pursuant to a contract with a city, county, or
23 special district, and pursuant to a program established under Article
24 3 (commencing with Section 1480) of Chapter 2.5 of Division 2
25 of the Health and Safety Code by a paramedic certified pursuant
26 to that article, and consisting of defibrillation and those services
27 specified in subdivision (3) of Section 1482 of the article.

28 (2) All providers enrolled under this subdivision shall satisfy
29 all applicable statutory and regulatory requirements for becoming
30 a Medi-Cal provider.

31 (3) This subdivision shall be implemented only to the extent
32 funding is available under Section 14106.6.

33 (s) In-home medical care services are covered when medically
34 appropriate and subject to utilization controls, for beneficiaries
35 who would otherwise require care for an extended period of time
36 in an acute care hospital at a cost higher than in-home medical
37 care services. The director shall have the authority under this
38 section to contract with organizations qualified to provide in-home
39 medical care services to those persons. These services may be
40 provided to patients placed in shared or congregate living

1 arrangements, if a home setting is not medically appropriate or
2 available to the beneficiary. As used in this section, “in-home
3 medical care service” includes utility bills directly attributable to
4 continuous, 24-hour operation of life-sustaining medical equipment,
5 to the extent that federal financial participation is available.

6 As used in this subdivision, in-home medical care services,
7 include, but are not limited to:

8 (1) Level of care and cost of care evaluations.

9 (2) Expenses, directly attributable to home care activities, for
10 materials.

11 (3) Physician fees for home visits.

12 (4) Expenses directly attributable to home care activities for
13 shelter and modification to shelter.

14 (5) Expenses directly attributable to additional costs of special
15 diets, including tube feeding.

16 (6) Medically related personal services.

17 (7) Home nursing education.

18 (8) Emergency maintenance repair.

19 (9) Home health agency personnel benefits which permit
20 coverage of care during periods when regular personnel are on
21 vacation or using sick leave.

22 (10) All services needed to maintain antiseptic conditions at
23 stoma or shunt sites on the body.

24 (11) Emergency and nonemergency medical transportation.

25 (12) Medical supplies.

26 (13) Medical equipment, including, but not limited to, scales,
27 gurneys, and equipment racks suitable for paralyzed patients.

28 (14) Utility use directly attributable to the requirements of home
29 care activities which are in addition to normal utility use.

30 (15) Special drugs and medications.

31 (16) Home health agency supervision of visiting staff which is
32 medically necessary, but not included in the home health agency
33 rate.

34 (17) Therapy services.

35 (18) Household appliances and household utensil costs directly
36 attributable to home care activities.

37 (19) Modification of medical equipment for home use.

38 (20) Training and orientation for use of life-support systems,
39 including, but not limited to, support of respiratory functions.

1 (21) Respiratory care practitioner services as defined in Sections
2 3702 and 3703 of the Business and Professions Code, subject to
3 prescription by a physician and surgeon.

4 Beneficiaries receiving in-home medical care services are entitled
5 to the full range of services within the Medi-Cal scope of benefits
6 as defined by this section, subject to medical necessity and
7 applicable utilization control. Services provided pursuant to this
8 subdivision, which are not otherwise included in the Medi-Cal
9 schedule of benefits, shall be available only to the extent that
10 federal financial participation for these services is available in
11 accordance with a home- and community-based services waiver.

12 (t) Home- and community-based services approved by the
13 United States Department of Health and Human Services may be
14 covered to the extent that federal financial participation is available
15 for those services under waivers granted in accordance with Section
16 1396n of Title 42 of the United States Code. The director may
17 seek waivers for any or all home- and community-based services
18 approvable under Section 1396n of Title 42 of the United States
19 Code. Coverage for those services shall be limited by the terms,
20 conditions, and duration of the federal waivers.

21 (u) Comprehensive perinatal services, as provided through an
22 agreement with a health care provider designated in Section
23 14134.5 and meeting the standards developed by the department
24 pursuant to Section 14134.5, subject to utilization controls.

25 The department shall seek any federal waivers necessary to
26 implement the provisions of this subdivision. The provisions for
27 which appropriate federal waivers cannot be obtained shall not be
28 implemented. Provisions for which waivers are obtained or for
29 which waivers are not required shall be implemented
30 notwithstanding any inability to obtain federal waivers for the
31 other provisions. No provision of this subdivision shall be
32 implemented unless matching funds from Subchapter XIX
33 (commencing with Section 1396) of Chapter 7 of Title 42 of the
34 United States Code are available.

35 (v) Early and periodic screening, diagnosis, and treatment for
36 any individual under 21 years of age is covered, consistent with
37 the requirements of Subchapter XIX (commencing with Section
38 1396) of Chapter 7 of Title 42 of the United States Code.

39 (w) Hospice service which is Medicare-certified hospice service
40 is covered, subject to utilization controls. Coverage shall be

1 available only to the extent that no additional net program costs
2 are incurred.

3 (x) When a claim for treatment provided to a beneficiary
4 includes both services which are authorized and reimbursable
5 under this chapter, and services which are not reimbursable under
6 this chapter, that portion of the claim for the treatment and services
7 authorized and reimbursable under this chapter shall be payable.

8 (y) Home- and community-based services approved by the
9 United States Department of Health and Human Services for
10 beneficiaries with a diagnosis of AIDS or ARC, who require
11 intermediate care or a higher level of care.

12 Services provided pursuant to a waiver obtained from the
13 Secretary of the United States Department of Health and Human
14 Services pursuant to this subdivision, and which are not otherwise
15 included in the Medi-Cal schedule of benefits, shall be available
16 only to the extent that federal financial participation for these
17 services is available in accordance with the waiver, and subject to
18 the terms, conditions, and duration of the waiver. These services
19 shall be provided to individual beneficiaries in accordance with
20 the client’s needs as identified in the plan of care, and subject to
21 medical necessity and applicable utilization control.

22 The director may under this section contract with organizations
23 qualified to provide, directly or by subcontract, services provided
24 for in this subdivision to eligible beneficiaries. Contracts or
25 agreements entered into pursuant to this division shall not be
26 subject to the Public Contract Code.

27 (z) Respiratory care when provided in organized health care
28 systems as defined in Section 3701 of the Business and Professions
29 Code, and as an in-home medical service as outlined in subdivision
30 (s).

31 (aa) (1) There is hereby established in the department, a
32 program to provide comprehensive clinical family planning
33 services to any person who has a family income at or below 200
34 percent of the federal poverty level, as revised annually, and who
35 is eligible to receive these services pursuant to the waiver identified
36 in paragraph (2). This program shall be known as the Family
37 Planning, Access, Care, and Treatment (Family PACT) Waiver
38 Program.

39 (2) The department shall seek a waiver for a program to provide
40 comprehensive clinical family planning services as described in

1 paragraph (8). The program shall be operated only in accordance
2 with the waiver and the statutes and regulations in paragraph (4)
3 and subject to the terms, conditions, and duration of the waiver.
4 The services shall be provided under the program only if the waiver
5 is approved by the federal Centers for Medicare and Medicaid
6 Services in accordance with Section 1396n of Title 42 of the United
7 States Code and only to the extent that federal financial
8 participation is available for the services.

9 (3) Solely for the purposes of the waiver and notwithstanding
10 any other provision of law, the collection and use of an individual's
11 social security number shall be necessary only to the extent
12 required by federal law.

13 (4) Sections 14105.3 to 14105.39, inclusive, 14107.11, 24005,
14 and 24013, and any regulations adopted under these statutes shall
15 apply to the program provided for under this subdivision. No other
16 provision of law under the Medi-Cal program or the State-Only
17 Family Planning Program shall apply to the program provided for
18 under this subdivision.

19 (5) Notwithstanding Chapter 3.5 (commencing with Section
20 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
21 the department may implement, without taking regulatory action,
22 the provisions of the waiver after its approval by the federal Health
23 Care Financing Administration and the provisions of this section
24 by means of an all-county letter or similar instruction to providers.
25 Thereafter, the department shall adopt regulations to implement
26 this section and the approved waiver in accordance with the
27 requirements of Chapter 3.5 (commencing with Section 11340) of
28 Part 1 of Division 3 of Title 2 of the Government Code. Beginning
29 six months after the effective date of the act adding this
30 subdivision, the department shall provide a status report to the
31 Legislature on a semiannual basis until regulations have been
32 adopted.

33 (6) In the event that the Department of Finance determines that
34 the program operated under the authority of the waiver described
35 in paragraph (2) is no longer cost effective, this subdivision shall
36 become inoperative on the first day of the first month following
37 the issuance of a 30-day notification of that determination in
38 writing by the Department of Finance to the chairperson in each
39 house that considers appropriations, the chairpersons of the
40 committees, and the appropriate subcommittees in each house that

1 considers the State Budget, and the Chairperson of the Joint
2 Legislative Budget Committee.

3 (7) If this subdivision ceases to be operative, all persons who
4 have received or are eligible to receive comprehensive clinical
5 family planning services pursuant to the waiver described in
6 paragraph (2) shall receive family planning services under the
7 Medi-Cal program pursuant to subdivision (n) if they are otherwise
8 eligible for Medi-Cal with no share of cost, or shall receive
9 comprehensive clinical family planning services under the program
10 established in Division 24 (commencing with Section 24000) either
11 if they are eligible for Medi-Cal with a share of cost or if they are
12 otherwise eligible under Section 24003.

13 (8) For purposes of this subdivision, “comprehensive clinical
14 family planning services” means the process of establishing
15 objectives for the number and spacing of children, and selecting
16 the means by which those objectives may be achieved. These
17 means include a broad range of acceptable and effective methods
18 and services to limit or enhance fertility, including contraceptive
19 methods, federal Food and Drug Administration approved
20 contraceptive drugs, devices, and supplies, natural family planning,
21 abstinence methods, and basic, limited fertility management.
22 Comprehensive clinical family planning services include, but are
23 not limited to, preconception counseling, maternal and fetal health
24 counseling, general reproductive health care, including diagnosis
25 and treatment of infections and conditions, including cancer, that
26 threaten reproductive capability, medical family planning treatment
27 and procedures, including supplies and followup, and
28 informational, counseling, and educational services.
29 Comprehensive clinical family planning services shall not include
30 abortion, pregnancy testing solely for the purposes of referral for
31 abortion or services ancillary to abortions, or pregnancy care that
32 is not incident to the diagnosis of pregnancy. Comprehensive
33 clinical family planning services shall be subject to utilization
34 control and include all of the following:

35 (A) Family planning related services and male and female
36 sterilization. Family planning services for men and women shall
37 include emergency services and services for complications directly
38 related to the contraceptive method, federal Food and Drug
39 Administration approved contraceptive drugs, devices, and

1 supplies, and followup, consultation, and referral services, as
2 indicated, which may require treatment authorization requests.

3 (B) All United States Department of Agriculture, federal Food
4 and Drug Administration approved contraceptive drugs, devices,
5 and supplies that are in keeping with current standards of practice
6 and from which the individual may choose.

7 (C) Culturally and linguistically appropriate health education
8 and counseling services, including informed consent, that include
9 all of the following:

- 10 (i) Psychosocial and medical aspects of contraception.
- 11 (ii) Sexuality.
- 12 (iii) Fertility.
- 13 (iv) Pregnancy.
- 14 (v) Parenthood.
- 15 (vi) Infertility.
- 16 (vii) Reproductive health care.
- 17 (viii) Preconception and nutrition counseling.
- 18 (ix) Prevention and treatment of sexually transmitted infection.
- 19 (x) Use of contraceptive methods, federal Food and Drug
20 Administration approved contraceptive drugs, devices, and
21 supplies.
- 22 (xi) Possible contraceptive consequences and followup.
- 23 (xii) Interpersonal communication and negotiation of
24 relationships to assist individuals and couples in effective
25 contraceptive method use and planning families.

26 (D) A comprehensive health history, updated at the next periodic
27 visit (between 11 and 24 months after initial examination) that
28 includes a complete obstetrical history, gynecological history,
29 contraceptive history, personal medical history, health risk factors,
30 and family health history, including genetic or hereditary
31 conditions.

32 (E) A complete physical examination on initial and subsequent
33 periodic visits.

34 (ab) Purchase of prescribed enteral formulae is covered, subject
35 to the Medi-Cal list of enteral formulae and utilization controls.

36 (ac) Diabetic testing supplies are covered when provided by a
37 pharmacy, subject to utilization controls.

38 *SEC. 43. Section 14132.20 is added to the Welfare and*
39 *Institutions Code, to read:*

1 14132.20. (a) The department shall establish a program to
2 provide continuous skilled nursing care to persons with
3 developmental disabilities as a benefit of the Medi-Cal program,
4 when those services are provided in accordance with an approved
5 federal waiver or Medi-Cal State Plan amendment meeting the
6 requirements of subdivision (b). “Continuous skilled nursing care”
7 means medically necessary care provided by, or under the
8 supervision of, a registered nurse within his or her scope of
9 practice, seven days a week, 24 hours per day, in a facility
10 participating in the program. Continuous skilled nursing care
11 shall include a minimum of eight hours per day provided by or
12 under the direct supervision of a registered nurse. Each facility
13 providing continuous skilled nursing care in the program shall
14 have a minimum of one registered nurse or one licensed vocational
15 nurse awake and in the facility at all times when a consumer is
16 present.

17 (b) The department shall submit to the federal Centers for
18 Medicare and Medicaid Services, a request, developed in
19 consultation with the State Department of Public Health, the State
20 Department of Developmental Services, and the Association of
21 Regional Center Agencies, to provide continuous skilled nursing
22 care services under a federal waiver pursuant to Section 1915(c)
23 of the federal Social Security Act (42 U.S.C. Sec. 1396n(c)) or
24 pursuant to a Medi-Cal State Plan amendment.

25 (c) (1) The program shall provide continuous skilled nursing
26 care to persons with developmental disabilities in the least
27 restrictive home-like setting.

28 (2) Participation in the program shall be restricted to facilities
29 that meet all eligibility requirements. The facilities shall be
30 approved by the department, in consultation with the State
31 Department of Public Health, the State Department of
32 Developmental Services, and the appropriate regional center
33 agencies, and shall meet the requirements of subdivision (f).

34 (d) Under the program established by this section, a person
35 with developmental disabilities shall be eligible to receive
36 continuous skilled nursing care if all of the following conditions
37 are met:

38 (1) The person with developmental disabilities meets the criteria
39 specified in the federal waiver or the Medi-Cal State Plan
40 amendment.

1 (2) *The person with developmental disabilities resides in a*
2 *facility that meets the provider participation criteria as specified*
3 *in the federal waiver or the Medi-Cal State Plan amendment.*

4 (3) *The continuous skilled nursing care services are provided*
5 *in accordance with the federal waiver or the Medi-Cal State Plan*
6 *amendment.*

7 (e) *The services provided to persons with developmental*
8 *disabilities under the program, pursuant to Section 1915(c) of the*
9 *federal Social Security Act (42 U.S.C. Sec. 1396n(c)), shall not*
10 *result in costs that exceed the fiscal limit established in the federal*
11 *waiver.*

12 (f) *A facility seeking to participate in the program shall provide*
13 *care for persons with developmental disabilities who require the*
14 *availability of continuous skilled nursing care in accordance with*
15 *the terms of the federal waiver or the Medi-Cal State Plan*
16 *amendment. During participation in the program, the facility shall*
17 *comply with all the terms and conditions of the federal waiver or*
18 *the Medi-Cal State Plan amendment.*

19 (g) *In implementing this article, the department may enter into*
20 *contracts for the provision of essential administration and other*
21 *services. Contracts entered into under this section may be on a*
22 *noncompetitive bid basis and shall be exempt from the*
23 *requirements of Chapter 2 (commencing with Section 10290) of*
24 *Part 2 of Division 2 of the Public Contract Code.*

25 (h) *This section shall not become operative unless and until the*
26 *federal Centers for Medicare and Medicaid Services approve a*
27 *federal waiver pursuant to Section 1915(c) of the Social Security*
28 *Act (42 U.S.C. Sec. 1396n(c)) or approve a Medi-Cal State Plan*
29 *amendment to implement the program authorized by this section.*
30 *If the federal Centers for Medicare and Medicaid Services provide*
31 *the aforementioned approval, the Director of Health Care Services*
32 *shall execute a declaration stating that this approval has been*
33 *granted. The director shall retain the declaration and this section*
34 *shall become operative on the date that the director executes a*
35 *declaration pursuant to this subdivision.*

36 *SEC. 44. Section 14132.951 of the Welfare and Institutions*
37 *Code is amended to read:*

38 14132.951. (a) *It is the intent of the Legislature that the State*
39 *Department of Health Services seek approval of a Medicaid waiver*
40 *under the federal Social Security Act in order that the services*

1 available under Article 7 (commencing with Section 12300) of
2 Chapter 3, known as the In-Home Supportive Services program,
3 may be provided as a Medi-Cal benefit under this chapter, to the
4 extent federal financial participation is available. The waiver shall
5 be known as the “IHSS Plus waiver.”

6 (b) To the extent feasible, the IHSS Plus waiver described in
7 subdivision (a) shall incorporate the eligibility requirements,
8 benefits, and operational requirements of the In-Home Supportive
9 Services program ~~as it exists on the effective date of this section.~~
10 The director shall have discretion to modify eligibility
11 requirements, benefits, and operational requirements as needed to
12 secure approval of the Medicaid waiver.

13 (c) Upon implementation of the IHSS Plus waiver, and to the
14 extent federal financial participation is available, the services
15 available through the In-Home Supportive Services program shall
16 be furnished as benefits of the Medi-Cal program through the IHSS
17 Plus waiver to persons who meet the eligibility requirements of
18 the IHSS Plus waiver. The benefits shall be limited by the terms
19 and conditions of the IHSS Plus waiver and by the availability of
20 federal financial participation.

21 (d) Upon implementation of the IHSS Plus waiver:

22 (1) A person who is eligible for the IHSS Plus waiver shall no
23 longer be eligible to receive services under the In-Home Supportive
24 Services program to the extent those services are available through
25 the IHSS Plus waiver.

26 (2) A person shall not be eligible to receive services pursuant
27 to the IHSS Plus waiver to the extent those services are available
28 pursuant to Section 14132.95.

29 (e) Services provided pursuant to this section shall be rendered,
30 under the administrative direction of the State Department of Social
31 Services, in the manner authorized in Article 7 (commencing with
32 Section 12300) of Chapter 3, for the In-Home Supportive Services
33 program.

34 (f) Services shall not be provided to residents of facilities
35 licensed by the department, and shall not be provided to residents
36 of a community care facility or a residential care facility for the
37 elderly licensed by the State Department of Social Services.

38 (g) To the extent permitted by federal law, reimbursement rates
39 for services shall be equal to the rates in each county for the same
40 mode of services in the In-Home Supportive Services program

1 pursuant to Article 7 (commencing with Section 12300) of Chapter
2 3.

3 (h) (1) Notwithstanding the Administrative Procedure Act,
4 Chapter 3.5 (commencing with Section 11340) of Part 1 of Division
5 3 of Title 2 of the Government Code, the department may
6 implement the provisions of this section through all-county welfare
7 director letters or similar publications. Actions taken to implement,
8 interpret, or make specific this section shall not be subject to the
9 Administrative Procedure Act or to the review and approval of the
10 Office of Administrative Law. Upon request of the department,
11 the Office of Administrative Law shall publish the regulations in
12 the California Code of Regulations. All county welfare director
13 letters or similar publications authorized pursuant to this section
14 shall remain in effect for no more than 18 months.

15 (2) The department may also adopt emergency regulations
16 implementing the provisions of this section. The adoption of
17 regulations implementing this section shall be deemed an
18 emergency and necessary for the immediate preservation of the
19 public peace, health, safety, or general welfare. The emergency
20 regulations authorized by this section shall be exempt from review
21 by the Office of Administrative Law. Any emergency regulations
22 authorized by this section shall be submitted to the Office of
23 Administrative Law for filing with the Secretary of State and shall
24 remain in effect for no more than 18 months by which time final
25 regulations shall be adopted. The department shall seek input from
26 the entities listed in Section 12305.72 when developing the
27 regulations, all county welfare director letters, or similar
28 publications.

29 (i) In the event of a conflict between the terms of the IHSS Plus
30 waiver and any provision of this part or any regulation, all-county
31 welfare directors letters or similar publications adopted for the
32 purpose of implementing this part, the terms of the waiver shall
33 control to the extent that the services are covered by the waiver.
34 If the department determines that a conflict exists, the department
35 shall issue updated instructions to counties for the purposes of
36 implementing necessary program changes. The department shall
37 post a copy of, or a link to, the instructions on its Web site.

38 (j) (1) Notwithstanding subdivision (b) or any other provision
39 of this section, the department shall not waive or modify the

1 provisions of Section 12301.2, 12301.6, 12302.25, 12306.1, or
2 12309.

3 (2) Upon receipt of the IHSS Plus waiver, the director shall
4 report to the Legislature on any modifications in benefits or
5 eligibility and operational requirements of the In-Home Supportive
6 Services program required for receipt of the waiver.

7 *SEC. 45. Section 14132.952 is added to the Welfare and*
8 *Institutions Code, to read:*

9 *14132.952. (a) The department shall seek approval of an*
10 *amendment to the Medicaid state plan pursuant to Section 1396n(j)*
11 *of Title 42 of the United States Code to provide self-directed*
12 *personal assistance services under the state plan in order that the*
13 *services available under Article 7 (commencing with Section*
14 *12300) of Chapter 3, known as the In-Home Supportive Services*
15 *(IHSS) program, may be provided as a Medi-Cal benefit under*
16 *this chapter, to the extent that federal financial participation is*
17 *available. This program shall be known as the "IHSS Plus option."*

18 *(b) To the extent feasible, the IHSS Plus option shall incorporate*
19 *the eligibility requirements, benefits, and operational requirements*
20 *of the In-Home Supportive Services program pursuant to Article*
21 *7 (commencing with Section 12300) of Chapter 3. The director*
22 *shall have the discretion to modify these eligibility requirements,*
23 *benefits, and operational requirements to the extent necessary to*
24 *secure federal approval of the Medicaid state plan amendment.*

25 *(c) The services available through the IHSS Plus waiver*
26 *pursuant to Section 14132.951 shall be furnished as benefits under*
27 *the IHSS Plus option to the extent that federal financial*
28 *participation is available to persons who meet the eligibility*
29 *requirements of the IHSS Plus option. Upon implementation of the*
30 *IHSS Plus option, a person who is eligible for services under the*
31 *IHSS Plus option shall no longer be eligible to receive services*
32 *under Section 14132.951.*

33 *(d) Upon implementation of the IHSS Plus option:*

34 *(1) A person who is eligible for the IHSS Plus option shall not*
35 *be eligible to receive services under the In-Home Supportive*
36 *Services program pursuant to Article 7 (commencing with Section*
37 *12300) of Chapter 3 to the extent those services are available*
38 *through the IHSS Plus option.*

1 (2) *A person shall not be eligible to receive services pursuant*
2 *to the IHSS Plus option to the extent those services are available*
3 *pursuant to Section 14132.95.*

4 (e) *Services provided pursuant to this section shall be rendered,*
5 *under the administrative direction of the State Department of Social*
6 *Services, in the manner authorized in Article 7 (commencing with*
7 *Section 12300) of Chapter 3, for the In-Home Supportive Services*
8 *program.*

9 (f) *Services shall not be provided to residents of facilities*
10 *licensed by the State Department of Public Health, and shall not*
11 *be provided to residents of a community care facility or a*
12 *residential care facility for the elderly licensed by the State*
13 *Department of Social Services.*

14 (g) *To the extent permitted by federal law, reimbursement rates*
15 *for services under the IHSS Plus option shall be equal to the rates*
16 *in each county for the same mode of services in the In-Home*
17 *Supportive Services program pursuant to Article 7 (commencing*
18 *with Section 12300) of Chapter 3.*

19 (h) (1) *Notwithstanding the Administrative Procedure Act*
20 *(Chapter 3.5 (commencing with Section 11340) of Part 1 of*
21 *Division 3 of Title 2 of the Government Code) the department may*
22 *implement the provisions of this section through all-county welfare*
23 *director letters or similar publications. Actions taken to implement,*
24 *interpret, or make specific this section shall not be subject to the*
25 *Administrative Procedure Act or to the review and approval of the*
26 *Office of Administrative Law. Upon request of the department, the*
27 *Office of Administrative Law shall publish the regulations in the*
28 *California Code of Regulations. All county welfare director letters*
29 *or similar publications authorized pursuant to this section shall*
30 *remain in effect for no more than 18 months.*

31 (2) *The department may also adopt emergency regulations*
32 *implementing the provisions of this section. The adoption of*
33 *regulations implementing this section shall be deemed an*
34 *emergency and necessary for the immediate preservation of the*
35 *public peace, health, safety, or general welfare. The emergency*
36 *regulations authorized by this section shall be exempt from review*
37 *and approval by the Office of Administrative Law. Any emergency*
38 *regulations authorized by this section shall be submitted to the*
39 *Office of Administrative Law for filing with the Secretary of State*
40 *and shall remain in effect for no more than 18 months by which*

1 *time final regulations shall be adopted. The department shall seek*
2 *input from the entities listed in Section 12305.72 when developing*
3 *the regulations, all-county welfare director letters, or similar*
4 *publications.*

5 *(i) (1) Notwithstanding subdivision (b) or any other provision*
6 *of this section, the department shall not waive or modify the*
7 *provisions of Section 12301.2, 12301.6, 12302.25, 12306.1, or*
8 *12309.*

9 *(2) Upon the federal Centers for Medicare and Medicaid*
10 *Services' approval of the Medicaid state plan amendment known*
11 *as the "IHSS Plus option," the director shall notify the Legislature*
12 *of any modifications in benefits or eligibility and operational*
13 *requirements of the In-Home Supportive Services program required*
14 *for that Medicaid state plan amendment to become effective.*

15 *SEC. 46. Section 14166.20 of the Welfare and Institutions Code*
16 *is amended to read:*

17 14166.20. (a) With respect to each project year, the total
18 amount of stabilization funding shall be the sum of the following:

19 (1) (A) Federal Medicaid funds available in the Health Care
20 Support Fund, established pursuant to Section 14166.21, reduced
21 by the amount necessary to meet the baseline funding amount, or
22 the adjusted baseline funding amount, as appropriate, for project
23 years after the 2005–06 project year for each designated public
24 hospital, project year private DSH hospitals in the aggregate, and
25 nondesignated public hospitals in the aggregate as determined in
26 Sections 14166.5, 14166.13, and 14166.18, respectively, taking
27 into account all other payments to each hospital under this article.
28 This amount shall be not less than zero.

29 (B) For purposes of subparagraph (A), federal Medicaid funds
30 available in the Health Care Support Fund shall not include health
31 care coverage initiative amounts identified under paragraph (2) of
32 subdivision (e) of Section 14166.9.

33 (2) The state general funds that were made available due to the
34 receipt of federal funding for previously state-funded programs
35 through the safety net care pool and any federal Medicaid hospital
36 reimbursements resulting from these expenditures, unless otherwise
37 recognized under paragraph (1), to the extent those funds are in
38 excess of the amount necessary to meet the baseline funding
39 amount, or the adjusted baseline funding amount, as appropriate,
40 for project years after the 2005–06 project year for each designated

1 public hospital, for project year private DSH hospitals in the
2 aggregate, and for nondesignated public hospitals in the aggregate,
3 as determined in Sections 14166.5, 14166.13, and 14166.18,
4 respectively.

5 (3) To the extent not included in paragraph (1) or (2), the amount
6 of the increase in state General Fund expenditures for Medi-Cal
7 inpatient hospital services for the project year for project year
8 private DSH hospitals and nondesignated public hospitals,
9 including amounts expended in accordance with paragraph (1) of
10 subdivision (c) of Section 14166.23, that exceeds the expenditure
11 amount for the same purpose and the same hospitals necessary to
12 provide the aggregate baseline funding amounts applicable to the
13 project determined pursuant to Sections 14166.13 and 14166.18,
14 and any direct grants to designated public hospitals for services
15 under the demonstration project.

16 (4) To the extent not included in paragraph (2), federal Medicaid
17 funds received by the state as a result of the General Fund
18 expenditures described in paragraph (3).

19 (5) The federal Medicaid funds received by the state as a result
20 of federal financial participation with respect to Medi-Cal payments
21 for inpatient hospital services made to project year private DSH
22 hospitals and to nondesignated public hospitals for services
23 rendered during the project year, the state share of which was
24 derived from intergovernmental transfers or certified public
25 expenditures of any public entity that does not own or operate a
26 public hospital.

27 (6) Federal safety net care pool funds claimed and received for
28 inpatient hospital services rendered under the health care coverage
29 initiative identified under paragraph (3) of subdivision (e) of
30 Section 14166.9.

31 (b) With respect to the 2005–06, 2006–07, and subsequent
32 project years, the stabilization funding determined under
33 subdivision (a) shall be allocated as follows:

34 (1) Eight million dollars (\$8,000,000) shall be paid to San Mateo
35 Medical Center. All or a portion of this amount may be paid as
36 disproportionate share hospital payments in addition to the
37 hospital's allocation that would otherwise be determined under
38 Section 14166.6. The amount provided for in this paragraph shall
39 be disregarded in the application of the limitations described in

1 paragraph (3) of subdivision (a) of Section 14166.6, and in
2 paragraph (1) of subdivision (a) of Section 14166.7.

3 (2) (A) Ninety-six million two hundred twenty-eight thousand
4 dollars (\$96,228,000) shall be allocated to designated public
5 hospitals to be paid in accordance with Section 14166.75.

6 (B) Forty-two million two hundred twenty-eight thousand dollars
7 (\$42,228,000) shall be allocated to private DSH hospitals to be
8 paid in accordance with Section 14166.14.

9 (C) Five hundred forty-four thousand dollars (\$544,000) shall
10 be allocated to nondesignated public hospitals to be paid in
11 accordance with Section 14166.17.

12 (D) In the event that stabilization funding is less than one
13 hundred forty-seven million dollars (\$147,000,000), the amounts
14 allocated to designated public hospitals, private DSH hospitals,
15 and nondesignated public hospitals under this paragraph shall be
16 reduced proportionately.

17 (3) (A) An amount equal to the lesser of 10 percent of the total
18 amount determined under subdivision (a) or twenty-three million
19 five hundred thousand dollars (\$23,500,000), but at least fifteen
20 million three hundred thousand dollars (\$15,300,000), shall be
21 made available for additional payments to distressed hospitals that
22 participate in the selective provider contracting program under
23 Article 2.6 (commencing with Section 14081), including designated
24 public hospitals, in amounts to be determined by the California
25 Medical Assistance Commission. The additional payments to
26 designated public hospitals shall be negotiated by the California
27 Medical Assistance Commission, but shall be paid by the
28 department in the form of a direct grant rather than as Medi-Cal
29 payments.

30 (B) Notwithstanding subparagraph (A) and solely for the
31 2006–07 fiscal year, if the amount that otherwise would be made
32 available for additional payments to distressed hospitals under
33 subparagraph (A) is equal to or greater than eighteen million three
34 hundred thousand dollars (\$18,300,000), that amount shall be
35 reduced by eighteen million three hundred thousand dollars
36 (\$18,300,000) and the state's obligation to make these payments
37 shall be reduced by this amount. In the event the amount that
38 otherwise would be made available under subparagraph (A) is less
39 than eighteen million three hundred thousand dollars (\$18,300,000),
40 but greater than or equal to the minimum amount of fifteen million

1 three hundred thousand dollars (\$15,300,000), then the amount
2 available under this paragraph shall be zero and the state's
3 obligation to make these payments shall be zero.

4 *(C) Notwithstanding subparagraph (A) and solely for the*
5 *2008–09 and 2009–10 fiscal years, the amount to be made*
6 *available shall be reduced by fifteen million three hundred*
7 *thousand dollars (\$15,300,000) in each of the two years. The funds*
8 *generated from this reduction shall be retained in the General*
9 *Fund.*

10 (4) An amount equal to 0.64 percent of the total amount
11 determined under subdivision (a), to nondesignated public hospitals
12 to be paid in accordance with Section 14166.19.

13 (5) The amount remaining after subtracting the amount
14 determined in paragraphs (1) and (2), subparagraph (A) of
15 paragraph (3), and paragraph (4), without taking into account
16 ~~subparagraph~~ *subparagraphs (B) and (C) of paragraph (3)*, shall
17 be allocated as follows:

18 (A) Sixty percent to designated public hospitals to be paid in
19 accordance with Section 14166.75.

20 (B) Forty percent to project year private DSH hospitals to be
21 paid in accordance with Section 14166.14.

22 (c) By April 1 of the year following the project year for which
23 the payment is made, and after taking into account final amounts
24 otherwise paid or payable to hospitals under this article, the director
25 shall calculate in accordance with subdivision (a), allocate in
26 accordance with subdivision (b), and pay to hospitals in accordance
27 with Sections 14166.75, 14166.14, and 14166.19, as applicable,
28 the stabilization funding.

29 (d) For purposes of determining amounts paid or payable to
30 hospitals under subdivision (c), the department shall apply the
31 following:

32 (1) In determining amounts paid or payable to designated public
33 hospitals that are based on allowable costs incurred by the hospital,
34 or the governmental entity with which it is affiliated, the following
35 shall apply:

36 (A) If the final payment amount is based on the hospital's
37 Medicare cost report, the department shall rely on the cost report
38 filed with the Medicare fiscal intermediary for the project year for
39 which the calculation is made, reduced by a percentage that
40 represents the average percentage change from total reported costs

1 to final costs for the three most recent cost reporting periods for
2 which final determinations have been made, taking into account
3 all administrative and judicial appeals. Protested amounts shall
4 not be considered in determining the average percentage change
5 unless the same or similar costs are included in the project year
6 cost report.

7 (B) If the final payment amount is based on costs not included
8 in subparagraph (A), the reported costs as of the date the
9 determination is made under subdivision (c), shall be reduced by
10 10 percent.

11 (C) In addition to adjustments required in subparagraphs (A)
12 and (B), the department shall adjust amounts paid or payable to
13 designated public hospitals by any applicable deferrals or
14 disallowances identified by the federal Centers for Medicare and
15 Medicaid Services as of the date the determination is made under
16 subdivision (c) not otherwise reflected in subparagraphs (A) and
17 (B).

18 (2) Amounts paid or payable to project year private DSH
19 hospitals and nondesignated public hospitals shall be determined
20 by the most recently available Medi-Cal paid claims data increased
21 by a percentage to reflect an estimate of amounts remaining unpaid.

22 (e) The department shall consult with hospital representatives
23 regarding the appropriate calculation of stabilization funding before
24 stabilization funds are paid to hospitals. The calculation may be
25 comprised of multiple steps involving interim computations and
26 assumptions as may be necessary to determine the total amount
27 of stabilization funding under subdivision (a) and the allocations
28 under subdivision (b). No later than 30 days after this consultation,
29 the department shall establish a final determination of stabilization
30 funding that shall not be modified for any reason other than
31 mathematical errors or mathematical omissions on the part of the
32 department.

33 (f) The department shall distribute 75 percent of the estimated
34 stabilization funding on an interim basis throughout the project
35 year.

36 (g) The allocation and payment of stabilization funding shall
37 not reduce the amount otherwise paid or payable to a hospital under
38 this article or any other provision of law, unless the reduction is
39 required by the demonstration project's Special Terms and
40 Conditions or by federal law.

1 (h) It is the intent of the Legislature that the amendments made
2 to Sections 14166.12 and to this section by the act that added this
3 subdivision in the 2007–08 Regular Session shall not be construed
4 to amend or otherwise alter the ongoing structure of the
5 department’s Medicaid Demonstration Project and Waiver
6 approved by the federal Centers for Medicare and Medicaid
7 Services to begin on September 1, 2005.

8 *SEC. 47. Section 14166.225 of the Welfare and Institutions*
9 *Code is amended to read:*

10 14166.225. (a) In order to implement changes in the level of
11 funding for health care services, the director shall reduce safety
12 net care pool payments as specified in this section.

13 (b) Notwithstanding the provisions of this article, safety net
14 care pool payments made to the designated public hospitals and
15 the South Los Angeles Medical Services Preservation Fund, for
16 services rendered on or after ~~the first day of the month following~~
17 ~~90 days after the operative date of this section~~ *June 30, 2010*, shall
18 be reduced by 10 percent, but in no event shall the total amount
19 of the reduction exceed fifty-four million two-hundred thousand
20 dollars (\$54,200,000).

21 (c) (1) Notwithstanding Section 14166.22 and any other
22 provision of this article, the department shall increase federal
23 claiming from the safety net care pool for the state-funded
24 programs listed in subdivision (a) of Section 14166.22 above the
25 amount necessary to maintain stabilization funding to private
26 hospitals, nondesignated public hospitals, and distressed hospitals
27 pursuant to Section 14166.20, by an amount equivalent to the
28 reduction made pursuant to subdivision (b), but only to the extent
29 that the state-only funded programs have sufficient costs available
30 for the claiming of federal funds from the safety net care pool.

31 (2) *If necessary to reach the full amount of the reduction set*
32 *forth in subdivision (b), the department may increase federal*
33 *claiming from the safety net care pool for the state-funded*
34 *programs listed in subdivision (a) of Section 14166.22 for fiscal*
35 *years prior to the 2009–10 fiscal year, but only to the extent that*
36 *the state-only funded programs have sufficient costs available in*
37 *fiscal years prior to the 2009–10 fiscal year that were not*
38 *previously the basis for claiming federal funds.*

39 (d) *The General Fund savings generated pursuant to subdivision*
40 *(c) shall be made available to the General Fund and shall not be*

1 *subject to the provisions of subdivisions (b) and (d) of Section*
2 *14166.22.*

3 ~~(e)~~

4 (e) Notwithstanding Chapter 3.5 (commencing with Section
5 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
6 the department may implement this section by means of a provider
7 bulletin, or other similar instruction, without taking regulatory
8 action.

9 *SEC. 48. Section 14166.23 of the Welfare and Institutions Code*
10 *is amended to read:*

11 14166.23. (a) For purposes of this section, “distressed
12 hospitals” are hospitals that participate in selective providers
13 contracting under Article 2.6 (commencing with Section 14081)
14 and that meet all of the following requirements, as determined by
15 the California Medical Assistance Commission in its discretion:

16 (1) The hospital serves a substantial volume of Medi-Cal patients
17 measured either as a percentage of the hospital’s overall volume
18 or by the total volume of Medi-Cal services furnished by the
19 hospital.

20 (2) The hospital is a critical component of the Medi-Cal
21 program’s health care delivery system, such that the Medi-Cal
22 health care delivery system would be significantly disrupted if the
23 hospital reduced its Medi-Cal services or no longer participated
24 in the Medi-Cal program.

25 (3) The hospital is facing a significant financial hardship that
26 may impair its ability to continue its range of services for the
27 Medi-Cal program.

28 (b) The Distressed Hospital Fund is hereby created in the State
29 Treasury.

30 (c) Notwithstanding Section 13340 of the Government Code,
31 the fund shall be continuously appropriated to the department for
32 the purposes specified in this section.

33 (d) Except as otherwise limited by this section, the fund shall
34 consist of all of the following:

35 (1) The amounts transferred to the fund pursuant to subdivision
36 (e).

37 (2) Any additional amounts appropriated to the fund by the
38 Legislature.

39 (3) Any interest that accrues on amounts in the fund.

1 (e) The following amounts shall be transferred to the fund from
2 the prior supplemental funds at the beginning of each project year.

3 (1) Twenty percent of the amount in the prior supplemental
4 funds on the effective date of this article, less any and all payments
5 for services rendered prior to July 1, 2005, but paid after July 1,
6 2005.

7 (2) Interest that accrued on the prior supplemental funds during
8 the prior project year.

9 (3) *Notwithstanding paragraph (1), solely for the 2009–10 fiscal*
10 *year, the amount of funds transferred shall be reduced by six*
11 *million one hundred and ninety-one thousand dollars (\$6,191,000).*
12 *The funds generated from this reduction shall be transferred to*
13 *the General Fund.*

14 (f) No distributions, payments, transfers, or disbursements shall
15 be made from the prior supplemental funds except as set forth in
16 this section.

17 (g) Moneys in the fund shall be used as the source for the
18 nonfederal share of payments to hospitals under this section.

19 (h) Except as otherwise provided in subdivision (j), moneys
20 shall be applied to obtain federal financial participation to the
21 extent available in accordance with customary Medi-Cal accounting
22 procedures for purposes of payments under this section.
23 Distributions from the fund shall be supplemental to any other
24 Medi-Cal reimbursement received by the hospitals, including
25 amounts that hospitals receive under the selective provider
26 contracting program, and shall not affect provider rates paid under
27 the selective provider contracting program.

28 (i) Subject to subdivision (j), all amounts that are in the fund
29 shall be available for negotiation by the California Medical
30 Assistance Commission, along with corresponding federal financial
31 participation, for additional payments to distressed hospitals. These
32 amounts shall be paid under contracts entered into by the
33 department and negotiated by the California Medical Assistance
34 Commission pursuant to Article 2.6 (commencing with Section
35 14081), provided that any amounts payable to a designated public
36 hospital shall be paid in the form of a direct grant of state general
37 funds pursuant to a contract negotiated by the California Medical
38 Assistance Commission. The commission shall not consider the
39 lack of federal financial participation in direct grants to designated

1 public hospitals in determining which hospital may receive funding
2 under this section.

3 (j) After April 1, 2007, and each April 1 thereafter, in the event
4 that funding under this article is insufficient to meet the adjusted
5 aggregate baseline funding amounts for a particular project year,
6 as determined in subdivision (d) of Section 14166.5, and in
7 Sections 14166.13 and 14166.18, funds under this section shall
8 first be available for use under contracts negotiated by the
9 California Medical Assistance Commission for hospitals
10 contracting under the selective provider contracting program under
11 Article 2.6 (commencing with Section 14081) in an effort to
12 address the insufficiency, to the extent funds under this section
13 are available on or after April 1 for the particular project year.

14 (k) Any funds remaining in the fund at the end of a fiscal year
15 shall be carried forward for use in the following fiscal year.

16 *SEC. 49. Section 14166.245 of the Welfare and Institutions*
17 *Code, as amended by Section 57 of Chapter 758 of the Statutes of*
18 *2008, is amended to read:*

19 14166.245. (a) The Legislature finds and declares that the state
20 faces a fiscal crisis that requires unprecedented measures to be
21 taken to reduce General Fund expenditures to avoid reducing vital
22 government services necessary for the protection of the health,
23 safety, and welfare of the citizens of the State of California.

24 (b) (1) Notwithstanding any other provision of law, except as
25 provided in Article 2.93 (commencing with Section 14091.3), for
26 hospitals that receive Medi-Cal reimbursement from the State
27 Department of Health Care Services and that are not under contract
28 with the State Department of Health Care Services pursuant to
29 Article 2.6 (commencing with Section 14081) of Chapter 7 of Part
30 3 of Division 9, the amounts paid as interim payments for inpatient
31 hospital services provided on and after July 1, 2008, shall be
32 reduced by 10 percent.

33 (2) (A) Beginning on October 1, 2008, amounts paid that are
34 calculated pursuant to paragraph (1) shall not exceed the applicable
35 regional average per diem contract rate for tertiary hospitals and
36 for all other hospitals established as specified in subparagraph (C),
37 reduced by 5 percent, multiplied by the number of Medi-Cal
38 covered inpatient days for which the interim payment is being
39 made.

1 (B) This paragraph shall not apply to small and rural hospitals
2 specified in Section 124840 of the Health and Safety Code, or to
3 hospitals in open health facility planning areas that were open
4 health facility planning areas on October 1, 2008, unless either of
5 the following apply:

6 (i) The open health facility planning area at any time on or after
7 July 1, 2005, was a closed health facility planning area as
8 determined by the California Medical Assistance Commission.

9 (ii) The open health facility planning area has three or more
10 hospitals with licensed general acute care beds. *State-owned or*
11 *operated hospitals shall not be included in determining whether*
12 *this clause shall apply.*

13 (C) (i) For purposes of this subdivision and subdivision (c), the
14 average regional per diem contract rates shall be derived from
15 unweighted average contract per diem rates that are publicly
16 available on June 1 of each year, trended forward based on the
17 trends in the California Medical Assistance Commission’s Annual
18 Report to the Legislature. For tertiary hospitals, and for all other
19 hospitals, the regional average per diem contract rates shall be
20 based on the geographic regions in the California Medical
21 Assistance Commission’s Annual Report to the Legislature. The
22 applicable average regional per diem contract rates for tertiary
23 hospitals and for all other hospitals shall be published by the
24 department on or before October 1, 2008, and these rates shall be
25 updated annually for each state fiscal year and shall become
26 effective each July 1, thereafter. Supplemental payments shall not
27 be included in this calculation.

28 (ii) For purposes of clause (i), both the federal and nonfederal
29 share of the designated public hospital cost-based rates shall be
30 included in the determination of the average contract rates by
31 multiplying the hospital’s interim rate, established pursuant to
32 Section 14166.4 and that is in effect on June 1 of each year, by
33 two.

34 (iii) For the purposes of this section, a tertiary hospital is a
35 children’s hospital specified in Section 10727, or a hospital that
36 has been designated as a Level I or Level II trauma center by the
37 Emergency Medical Services Authority established pursuant to
38 Section 1797.1 of the Health and Safety Code.

39 (D) For purposes of this section, the terms “open health facility
40 planning area” and “closed health facility planning area” shall

1 have the same meaning and be applied in the same manner as used
2 by the California Medical Assistance Commission in the
3 implementation of the hospital contracting program authorized in
4 Article 2.6 (commencing with Section 14081).

5 (c) (1) Notwithstanding any other provision of law, for hospitals
6 that receive Medi-Cal reimbursement from the State Department
7 of Health Care Services and that are not under contract with the
8 State Department of Health Care Services, pursuant to Article 2.6
9 (commencing with Section 14081), the reimbursement amount
10 paid by the department for inpatient services provided to Medi-Cal
11 recipients for dates of service on and after July 1, 2008, shall not
12 exceed the amount determined pursuant to paragraph (3).

13 (2) For purposes of this subdivision, the reimbursement for
14 inpatient services includes the amounts paid for all categories of
15 inpatient services allowable by Medi-Cal. The reimbursement
16 includes the amounts paid for routine services, together with all
17 related ancillary services.

18 (3) When calculating a hospital's cost report settlement for a
19 hospital's fiscal period that includes any dates of service on and
20 after July 1, 2008, the settlement for dates of service on and after
21 July 1, 2008, shall be limited to the lesser of the following:

22 (A) Ninety percent of the hospital's audited allowable cost per
23 day for those services multiplied by the number of Medi-Cal
24 covered inpatient days in the hospital's fiscal year on or after July
25 1, 2008.

26 (B) Beginning for dates of service on and after October 1, 2008,
27 the applicable average regional per diem contract rate established
28 as specified in subparagraph (A) of paragraph (2) of subdivision
29 (b), reduced by 5 percent, multiplied by the number of Medi-Cal
30 covered inpatient days in the hospital's fiscal year, or portion
31 thereof. This subparagraph shall not apply to small and rural
32 hospitals specified in Section 124840 of the Health and Safety
33 Code, or to hospitals in open health facility planning areas that
34 were open health facility planning areas on July 1, 2008, unless
35 either of the following apply:

36 (i) The open health facility planning area at any time on or after
37 July 1, 2005, was a closed health facility planning area as
38 determined by the California Medical Assistance Commission.

39 (ii) The open health facility planning area has ~~more than~~ three
40 *or more* hospitals with licensed general acute care beds.

1 *State-owned or operated hospitals shall not be included in*
2 *determining whether this clause shall apply.*

3 (d) Except as provided in Article 2.93 (commencing with Section
4 14091.3), hospitals that participate in the Selective Provider
5 Contracting Program pursuant to Article 2.6 (commencing with
6 Section 14081) and designated public hospitals under Section
7 14166.1, except Los Angeles County Martin Luther King,
8 Jr./Charles R. Drew Medical Center and Tuolumne General
9 Hospital, shall be exempt from the limitations required by this
10 section.

11 (e) Notwithstanding the rulemaking provisions of Chapter 3.5
12 (commencing with Section 11340) of Part 1 of Division 3 of Title
13 2 of the Government Code, the director may implement and
14 administer this section by means of provider bulletins, or other
15 similar instructions, without taking regulatory action.

16 (f) The director shall promptly seek all necessary federal
17 approvals in order to implement this section, including necessary
18 amendments to the state plan.

19 (g) (1) Notwithstanding any other provision of this section,
20 small and rural hospitals, as defined in Section 124840 of the
21 Health and Safety Code, shall be exempt from the payment
22 reductions set forth in this section for dates of service on and after
23 November 1, 2008, *through and including June 30, 2009.*
24 *Retroactive to, and after, July 1, 2009, small and rural hospitals*
25 *as defined in this paragraph shall be subject to the reductions set*
26 *forth in paragraph (1) of subdivision (b) and subparagraph (A)*
27 *of paragraph (3) of subdivision (c), but shall be exempt from the*
28 *provisions of subparagraph (A) of paragraph (2) of subdivision*
29 *(b) and subparagraph (B) of paragraph (3) of subdivision (c).*

30 (2) *Notwithstanding any other provision of this section, hospitals*
31 *that are certified by Medicare as Medical Critical Access Providers*
32 *shall be exempt from the payment reductions set forth in this*
33 *section for dates of service on and after July 1, 2009.*

34 (h) For hospitals that are subject to clauses (i) and (ii) of
35 subparagraph (B) of paragraph (2) of subdivision (b) and that
36 choose to contract pursuant to Article 2.6 (commencing with
37 Section 14081), the California Medical Assistance Commission
38 shall negotiate rates taking into account factors specified in Section
39 14083.

1 (i) (1) In January 2010 and in January 2011, the department
2 and the California Medical Assistance Commission shall submit
3 a written report to the policy and fiscal committees of the
4 Legislature on the implementation and impact of the changes made
5 by this section, including, but not limited to, the impact of those
6 changes on the number of hospitals that are contract and
7 noncontract, patient access, and cost savings to the state.

8 (2) On or before January 1, 2012, the department, in consultation
9 with the California Medical Assistance Commission, shall report
10 on the implementation of this section. The report shall include,
11 but not be limited to, information and analyses addressing patient
12 access, capacity and needs within the health facility planning area,
13 reimbursement of hospital costs, changes in the number of open
14 and closed health facility planning areas, the impact of this section
15 on the extent of hospital contracting, and fiscal impact on the state.

16 (j) This section shall remain in effect only until January 1, 2013,
17 and as of that date is repealed, unless a later enacted statute, that
18 is enacted before January 1, 2013, deletes or extends that date.

19 *SEC. 50. Section 14495.10 of the Welfare and Institutions Code*
20 *is amended to read:*

21 14495.10. (a) The department shall establish a pilot program
22 to provide continuous skilled nursing care as a benefit of the
23 Medi-Cal program, when those services are provided in accordance
24 with an approved federal waiver meeting the requirements of
25 subdivision (b). “Continuous skilled nursing care” means medically
26 necessary care provided by, or under the supervision of, a registered
27 nurse within his or her scope of practice, seven days a week, 24
28 hours per day, in a health facility participating in the pilot program.
29 This care shall include a minimum of eight hours per day provided
30 by or under the direct supervision of a registered nurse. Each health
31 facility providing continuous skilled nursing care in the pilot
32 program shall have a minimum of one registered nurse or one
33 licensed vocational nurse awake and in the facility at all times.

34 (b) The department shall submit to the federal Centers for
35 Medicare and Medicaid Services, no later than April 1, 2000, a
36 federal waiver request developed in consultation with the State
37 Department of Developmental Services and the Association of
38 Regional Center Agencies, pursuant to Section 1915(b) of the
39 federal Social Security Act (42 U.S.C. Sec. 1396n(c)) to provide
40 continuous skilled nursing care services under the pilot program.

1 (c) (1) The pilot program shall be conducted to explore more
2 flexible models of health facility licensure to provide continuous
3 skilled nursing care to developmentally disabled individuals in the
4 least restrictive health facility setting, and to evaluate the effect of
5 the pilot program on the health, safety, and quality of life of
6 individuals, and the cost-effectiveness of this care. The evaluation
7 shall include a review of the pilot program by an independent
8 agency.

9 (2) Participation in the pilot program shall include 10 health
10 facilities provided that the facilities meet all eligibility
11 requirements. The facilities shall be approved by the department,
12 in consultation with the State Department of Developmental
13 Services and the appropriate regional center agencies, and shall
14 meet the requirements of subdivision (e). Priority shall be given
15 to facilities with four to six beds, to the extent those facilities meet
16 all other eligibility requirements.

17 (d) Under the pilot program established in this section, a
18 developmentally disabled individual is eligible to receive
19 continuous skilled nursing care if all of the following conditions
20 are met:

21 (1) The developmentally disabled individual meets the criteria
22 as specified in the federal waiver.

23 (2) The developmentally disabled individual resides in a health
24 facility that meets the provider participation criteria as specified
25 in the federal waiver.

26 (3) The continuous skilled nursing care services are provided
27 in accordance with the federal waiver.

28 (4) The continuous skilled nursing care services provided to the
29 developmentally disabled individual do not result in costs that
30 exceed the fiscal limit established in the federal waiver.

31 (e) A health facility seeking to participate in the pilot program
32 shall provide care for developmentally disabled individuals who
33 require the availability of continuous skilled nursing care, in
34 accordance with the terms of the pilot program. During
35 participation in the pilot program, the health facility shall comply
36 with all the terms and conditions of the federal waiver described
37 in subdivision (b), and shall not be subject to licensure or inspection
38 under Chapter 2 (commencing with Section 1250) of Division 2
39 of the Health and Safety Code. Upon termination of the pilot
40 program and verification of compliance with Section 1265 of the

1 Health and Safety Code, the department shall immediately reinstate
 2 the participating health facility's previous license for the balance
 3 of time remaining on the license when the health facility began
 4 participation in the pilot program.

5 (f) The department shall implement this pilot program only to
 6 the extent it can demonstrate fiscal neutrality, as required under
 7 the terms of the federal waiver, and only if the department has
 8 obtained the necessary approvals to implement the pilot program
 9 and receives federal financial participation from the federal Centers
 10 for Medicare and Medicaid Services.

11 (g) In implementing this article, the department may enter into
 12 contracts for the provision of essential administration and other
 13 services. Contracts entered into under this section may be on a
 14 noncompetitive bid basis and shall be exempt from the
 15 requirements of Chapter 2 (commencing with Section 10290) of
 16 Part 2 of Division 2 of the Public Contract Code.

17 ~~(h) This section shall remain in effect only until January 1, 2010,~~
 18 ~~and as of that date is repealed, unless a later enacted statute that~~
 19 ~~becomes effective on or before January 1, 2010, deletes or extends~~
 20 ~~that date.~~

21 *(h) This section shall be repealed if and when the federal*
 22 *Centers for Medicare and Medicaid Services approve a federal*
 23 *waiver pursuant to Section 1915(c) of the federal Social Security*
 24 *Act (42 U.S.C. Sec. 1396n(c)) or approve a state plan amendment*
 25 *to make this pilot program a permanent program. If the federal*
 26 *Centers for Medicare and Medicaid Services provide that approval,*
 27 *the Director of Health Care Services shall execute a declaration*
 28 *stating that this approval has been granted. The director shall*
 29 *retain the declaration and this section shall be repealed on the*
 30 *date that the director executes a declaration pursuant to this*
 31 *subdivision.*

32 *SEC. 51. Section 14522.4 is added to the Welfare and*
 33 *Institutions Code, to read:*

34 *14522.4. (a) The following definitions shall apply for the*
 35 *purposes of this chapter:*

36 *(1) "Activities of daily living (ADL)" means activities performed*
 37 *by the participant for essential living purposes, including bathing,*
 38 *dressing, self-feeding, toileting, ambulation, and transferring.*

1 (2) “Instrumental activities of daily living (IADL)” means
2 functions or tasks of independent living limited to hygiene and
3 medication management.

4 (3) “Personal health care provider” means the participant’s
5 personal physician, physician’s assistant, or nurse practitioner,
6 operating within his or her scope of practice.

7 (4) “Care coordination” means the process of obtaining
8 information from, or providing information to, the participant, the
9 participant’s family, the participant’s personal health care
10 provider, or social services agencies to facilitate the delivery of
11 services designed to meet the needs of the participant, as identified
12 by one or more members of the multidisciplinary team.

13 (5) “Facilitated participation” means an interaction to support
14 a participant’s involvement in a group or individual activity,
15 whether or not the participant takes active part in the activity itself.

16 (6) “Group work” means a social work service in which a
17 variety of therapeutic methods are applied within a small group
18 setting to promote participants’ self-expression and positive
19 adaptation to their environment.

20 (7) “Professional nursing” means services provided by a
21 registered nurse or licensed vocational nurse functioning within
22 his or her scope of practice.

23 (8) “Psychosocial” means a participant’s psychological status
24 in relation to the participant’s social and physical environment.

25 (9) “Assistance” means verbal or physical prompting or aid,
26 including cueing, supervision, stand-by assistance, or hands-on
27 support to complete the task correctly.

28 (10) “Substantial human assistance” means direct, hands-on
29 assistance provided by a qualified caregiver, which entails
30 physically helping the participant perform the essential elements
31 of the ADLs and IADLs. It entails more than cueing, supervision,
32 or stand-by assistance to perform the ADLs and IADLs. It also
33 includes the performance of the entire ADL or IADL for
34 participants totally dependent on human assistance.

35 (11) (a) “Cognitive impairment” means the loss or
36 deterioration of intellectual capacity characterized by impairments
37 in short- or long-term memory, language, concentration and
38 attention, orientation to people, place, or time, visual-spatial
39 abilities or executive functions, or both, including, but not limited
40 to, judgment, reasoning, or the ability to inhibit behaviors that

1 *interfere with social, occupational, or everyday functioning due*
2 *to conditions, including, but not limited to, mild cognitive*
3 *impairment, Alzheimer's disease or other form of dementia, or*
4 *brain injury.*

5 *(b) Upon the date of execution of the declaration described*
6 *under subdivision (g) of Section 14525.1, this section shall become*
7 *operative and Section 14522.3 shall become inoperative and on*
8 *that date is repealed.*

9 *SEC. 52. Section 14525.1 is added to the Welfare and*
10 *Institutions Code, to read:*

11 *14525.1. (a) Except as provided in subdivisions (b) and (c),*
12 *any adult eligible for benefits under Chapter 7 (commencing with*
13 *Section 14000) shall be eligible for adult day health care services*
14 *if that person meets all of the following criteria:*

15 *(1) The person is 18 years of age or older and has one or more*
16 *chronic or postacute medical, cognitive, or mental health*
17 *conditions, and a physician, nurse practitioner, or other health*
18 *care provider has, within his or her scope of practice, requested*
19 *adult day health care services for the person.*

20 *(2) The person has two or more functional impairments*
21 *involving ambulation, bathing, dressing, self-feeding, toileting,*
22 *transferring, medication management, and hygiene.*

23 *(3) (A) Except as provided under subparagraph (B), the person*
24 *requires substantial human assistance in performing these*
25 *activities.*

26 *(B) The persons described in subdivisions (b) and (c) shall only*
27 *require assistance in performing these activities.*

28 *(4) The person requires ongoing or intermittent protective*
29 *supervision, assessment, or intervention by a skilled health or*
30 *mental health professional to improve, stabilize, maintain, or*
31 *minimize deterioration of the medical, cognitive, or mental health*
32 *condition.*

33 *(5) The person requires adult day health care services, as*
34 *defined in Section 14550, that are individualized and planned,*
35 *including, when necessary, the coordination of formal and informal*
36 *services outside of the adult day health care program to support*
37 *the individual and his or her family or caregiver in the living*
38 *arrangement of his or her choice and to avoid or delay the use of*
39 *institutional services, including, but not limited to, hospital*
40 *emergency department services, inpatient acute care hospital*

1 *services, inpatient mental health services, or placement in a*
2 *nursing facility or a nursing or intermediate care facility for the*
3 *developmentally disabled providing continuous nursing care.*

4 *(6) The person meets the skilled nursing facility level of care*
5 *set forth in Section 51124 of Title 22 of the California Code of*
6 *Regulations.*

7 *(b) A resident of an intermediate care facility for the*
8 *developmentally disabled-habilitative shall be eligible for adult*
9 *day health care services if that resident meets the criteria set forth*
10 *in paragraphs (1) to (5), inclusive, of subdivision (a) and has*
11 *disabilities and a level of functioning that are of such a nature*
12 *that, without supplemental intervention through adult day health*
13 *care, placement to a more costly institutional level of care would*
14 *be likely to occur.*

15 *(c) Persons having chronic mental illness or moderate to severe*
16 *Alzheimer's disease or other cognitive impairments shall be eligible*
17 *for adult day health care services if they meet the criteria*
18 *established in paragraphs (1) to (5), inclusive, of subdivision (a).*

19 *(d) This section shall only be implemented to the extent permitted*
20 *by federal law.*

21 *(e) Notwithstanding Chapter 3.5 (commencing with Section*
22 *11340) of Part 1 of Division 3 of Title 2 of the Government Code,*
23 *the department may implement the provisions of this section by*
24 *means of all-county letters, provider bulletins, or similar*
25 *instructions without taking further regulatory action.*

26 *(f) Prior to implementing this section, the department shall meet*
27 *and confer with provider representatives, including, but not limited*
28 *to, adult day health care, home- and community-based services,*
29 *and nursing facilities for the purpose of presenting and discussing*
30 *information and evidence to assist the department as it determines*
31 *the methods and procedures necessary to implement this section.*

32 *(g) Upon the determination of the director that all necessary*
33 *methods and procedures described in subdivision (f) have been*
34 *ascertained and are sufficient to implement the purposes of this*
35 *section, the director shall execute and retain a declaration*
36 *indicating that this determination has been made. Subdivisions*
37 *(a) to (e), inclusive, shall be inoperative, until the date of execution*
38 *of the declaration. Upon the date of execution of such a*
39 *declaration, subdivisions (a) to (e), inclusive of this section shall*
40 *become operative and Section 14525 shall become inoperative.*

1 *SEC. 53. Section 14526.1 of the Welfare and Institutions Code*
2 *is amended to read:*

3 14526.1. (a) Initial and subsequent treatment authorization
4 requests may be granted for up to six calendar months.

5 (b) Treatment authorization requests shall be initiated by the
6 adult day health care center, and shall include all of the following:

7 (1) The signature page of the history and physical form that
8 shall serve to document the request for adult day health care
9 services. A complete history and physical form, including a request
10 for adult day health care services signed by the participant's
11 personal health care provider, shall be maintained in the
12 participant's health record. This history and physical form shall
13 be developed by the department and published in the
14 inpatient/outpatient provider manual. The department shall develop
15 this form jointly with the statewide association representing adult
16 day health care providers.

17 (2) The participant's individual plan of care, pursuant to Section
18 54211 of Title 22 of the California Code of Regulations.

19 (c) Every six months, the adult day health care center shall
20 initiate a request for an updated history and physical form from
21 the participant's personal health care provider using a standard
22 update form that shall be maintained in the participant's health
23 record. This update form shall be developed by the department for
24 that use and shall be published in the inpatient/outpatient provider
25 manual. The department shall develop this form jointly with the
26 statewide association representing adult day health care providers.

27 (d) Except for participants residing in an intermediate care
28 facility/developmentally disabled-habilitative, authorization or
29 reauthorization of an adult day health care treatment authorization
30 request shall be granted only if the participant meets all of the
31 following medical necessity criteria:

32 (1) The participant has one or more chronic or post acute
33 medical, cognitive, or mental health conditions that are identified
34 by the participant's personal health care provider as requiring one
35 or more of the following, without which the participant's condition
36 will likely deteriorate and require emergency department visits,
37 hospitalization, or other institutionalization:

38 (A) Monitoring.

39 (B) Treatment.

40 (C) Intervention.

1 (2) The participant has a condition or conditions resulting in
2 both of the following:

3 (A) Limitations in the performance of two or more activities of
4 daily living or instrumental activities of daily living, as those terms
5 are defined in Section 14522.3, or one or more from each category.

6 (B) A need for assistance or supervision in performing the
7 activities identified in subparagraph (A) as related to the condition
8 or conditions specified in paragraph (1) of subdivision (d). That
9 assistance or supervision shall be in addition to any other nonadult
10 day health care support the participant is currently receiving in his
11 or her place of residence.

12 (3) The participant's network of non-adult day health care center
13 supports is insufficient to maintain the individual in the community,
14 demonstrated by at least one of the following:

15 (A) The participant lives alone and has no family or caregivers
16 available to provide sufficient and necessary care or supervision.

17 (B) The participant resides with one or more related or unrelated
18 individuals, but they are unwilling or unable to provide sufficient
19 and necessary care or supervision to the participant.

20 (C) The participant has family or caregivers available, but those
21 individuals require respite in order to continue providing sufficient
22 and necessary care or supervision to the participant.

23 (4) A high potential exists for the deterioration of the
24 participant's medical, cognitive, or mental health condition or
25 conditions in a manner likely to result in emergency department
26 visits, hospitalization, or other institutionalization if adult day
27 health care services are not provided.

28 (5) The participant's condition or conditions require adult day
29 health care services specified in subdivisions (a) to (d), inclusive,
30 of Section 14550.5, on each day of attendance, that are
31 individualized and designed to maintain the ability of the
32 participant to remain in the community and avoid emergency
33 department visits, hospitalizations, or other institutionalization.

34 *(e) When determining whether a provider has demonstrated*
35 *that a participant meets the medical necessity criteria, the*
36 *department may enter an adult day health care center and review*
37 *participants' medical records and observe participants receiving*
38 *care identified in the individual plan of care in addition to*
39 *reviewing the information provided on or with the TAR.*

40 (e)

1 (f) Reauthorization of an adult day health care treatment
 2 authorization request shall be granted when the criteria specified
 3 in subdivision (d) or (f), as appropriate, have been met and the
 4 participant's condition would likely deteriorate if the adult day
 5 health care services were denied.

6 ~~(f)~~

7 (g) For individuals residing in an intermediate care
 8 facility/developmentally disabled-habilitative, authorization or
 9 reauthorization of an adult day health care treatment authorization
 10 request shall be granted only if the resident has disabilities and a
 11 level of functioning that are of such a nature that, without
 12 supplemental intervention through adult day health care, placement
 13 to a more costly institutional level of care would be likely to occur.

14 (h) *Subdivision (e) shall become operative commencing on the*
 15 *first day of the month following 30 days after the effective date of*
 16 *the act adding this subdivision.*

17 SEC. 54. *Section 14526.2 is added to the Welfare and*
 18 *Institutions Code, to read:*

19 14526.2. (a) *Initial and subsequent treatment authorization*
 20 *requests may be granted for up to six calendar months, initial and*
 21 *subsequent treatment authorization requests may, at the discretion*
 22 *of the department, be granted for up to 12 calendar months.*

23 (b) *Treatment authorization requests shall be initiated by the*
 24 *adult day health care center; and shall include all of the following:*

25 (1) *A complete history and physical form, including a request*
 26 *for adult day health care services signed by the participant's*
 27 *personal health care provider shall be obtained annually. A copy*
 28 *of the history and physical form shall be submitted with an initial*
 29 *treatment authorization request and maintained in the participant's*
 30 *health record. This history and physical form shall be developed*
 31 *by the department and published in the inpatient/outpatient*
 32 *provider manual.*

33 (2) *The participant's individual plan of care, pursuant to Section*
 34 *54211 of Title 22 of the California Code of Regulations.*

35 (c) *Whenever a subsequent treatment authorization request is*
 36 *submitted, the adult day health care center shall obtain and submit*
 37 *an updated history and physical form from the participant's*
 38 *personal health care provider using a standard update form that*
 39 *shall be maintained in the participant's health record. This update*

1 *form shall be developed by the department for that use and shall*
2 *be published in the inpatient/outpatient provider manual.*

3 *(d) Authorization or reauthorization of an adult day health care*
4 *treatment authorization request shall be granted only if the*
5 *participant meets all of the following medical necessity criteria:*

6 *(1) The participant has one or more chronic or post acute*
7 *medical, cognitive, or mental health conditions that are identified*
8 *by the participant's personal health care provider as requiring*
9 *one or more of the following, without which the participant's*
10 *condition will likely deteriorate and require emergency department*
11 *visits, hospitalization, or other institutionalization:*

12 *(A) Assessment and monitoring.*

13 *(B) Treatment.*

14 *(C) Intervention.*

15 *(2) The participant has a condition or conditions resulting in*
16 *both of the following:*

17 *(A) Two or more functional impairments involving ambulation,*
18 *bathing, dressing, self-feeding, toileting, transferring, medication*
19 *management, and hygiene.*

20 *(B) As set forth in subparagraph (A) and (B) of paragraph (3)*
21 *of subdivision (a) of Section 14525.1, the need for assistance or*
22 *substantial human assistance in performing the activities identified*
23 *in subparagraph (A) as related to the condition or conditions*
24 *specified in paragraph (1). That assistance or substantial human*
25 *assistance shall be in addition to any other nonadult day health*
26 *care support the participant is currently receiving in his or her*
27 *place of residence.*

28 *(3) Except for participants residing in an intermediate care*
29 *facility/developmentally disabled-habilitative, the participant's*
30 *network of nonadult day health care center supports is insufficient*
31 *to maintain the individual in the community, demonstrated by at*
32 *least one of the following:*

33 *(A) The participant lives alone and has no family or caregivers*
34 *available to provide sufficient and necessary care or supervision.*

35 *(B) The participant resides with one or more related or*
36 *unrelated individuals, but they are unwilling or unable to provide*
37 *sufficient and necessary care or supervision to the participant.*

38 *(4) A high potential exists for the deterioration of the*
39 *participant's medical, cognitive, or mental health condition or*
40 *conditions in a manner likely to result in emergency department*

1 visits, hospitalization, or other institutionalization if adult day
2 health care services are not provided.

3 (5) The participant's condition or conditions require adult day
4 health care services specified in subdivisions (a) to (d), inclusive,
5 of Section 14550.6, on each day of attendance, that are
6 individualized and designed to maintain the ability of the
7 participant to remain in the community and avoid emergency
8 department visits, hospitalizations, or other institutionalization.

9 (e) When determining whether a provider has demonstrated
10 that a participant meets the medical necessity criteria, the
11 department may enter an adult day health care center and review
12 participants' medical records and observe participants receiving
13 care identified in the individual plan of care in addition to
14 reviewing the information provided on or with the TAR.

15 (f) Reauthorization of an adult day health care treatment
16 authorization request shall be granted when the criteria specified
17 in subdivision (d) or (g), as appropriate, have been met and the
18 participant's condition would likely deteriorate if the adult day
19 health care services were denied.

20 (g) For individuals residing in an intermediate care
21 facility/developmentally disabled-habilitative, authorization or
22 reauthorization of an adult day health care treatment authorization
23 request shall be granted only if the resident has disabilities and a
24 level of functioning that are of such a nature that, without
25 supplemental intervention through adult day health care, placement
26 to a more costly institutional level of care would be likely to occur.

27 (h) This section shall only be implemented to the extent permitted
28 by federal law.

29 (i) Notwithstanding Chapter 3.5 (commencing with Section
30 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
31 the department may implement the provisions of this section by
32 means of all-county letters, provider bulletins, or similar
33 instructions without taking further regulatory action.

34 (j) Upon the date of execution of the declaration described under
35 subdivision (g) of Section 14525.1, this section shall become
36 operative and Section 14526.1 shall become inoperative and on
37 that date is repealed.

38 SEC. 55. Section 14550.6 is added to the Welfare and
39 Institutions Code, to read:

1 14550.6. *Adult day health care centers shall offer, and provide*
2 *directly on the premises, in accordance with the participant's*
3 *individual plan of care, and subject to authorization pursuant to*
4 *Section 14526.2, the following core services to each participant*
5 *during each day of the participant's attendance at the center:*
6 (a) *One or more of the following professional nursing services:*
7 (1) *Assessment and monitoring of the participant's general*
8 *health status and changes in his or her condition, risk factors, and*
9 *the participant's specific medical, cognitive, or mental health*
10 *condition or conditions upon which admission to the adult day*
11 *health care center was based.*
12 (2) *Monitoring and assessment of the participant's medication*
13 *regimen, administration and recording of the participant's*
14 *prescribed medications, and intervention, as needed, based upon*
15 *professional assessment of the participant's reactions to his or*
16 *her medications.*
17 (3) *Oral or written communication with the participant's*
18 *personal health care provider, other qualified health care or social*
19 *service provider, or the participant's family or other caregiver,*
20 *regarding changes in the participant's condition, signs, or*
21 *symptoms.*
22 (4) *Provision of skilled nursing care and intervention, within*
23 *scope of practice, to participants, as needed, based upon an*
24 *assessment of the participant, his or her ability to provide self-care*
25 *while at the adult day health care center, and any health care*
26 *provider orders.*
27 (b) *Personal care services or social services, or both, needed*
28 *to address the person's individual needs for benefits as required*
29 *by Section 14525.1, as follows:*
30 (1) *Protective group supervision and interventions to ensure*
31 *participant safety and to minimize the risk of injury, accident,*
32 *inappropriate behavior, or wandering.*
33 (2) *Assessment, and monitoring of the participant's psychosocial*
34 *status provided by the adult day health care center social worker*
35 *or social worker assistant.*
36 (3) *Group work to address psychosocial issues.*
37 (c) *At least one of the following therapeutic activities provided*
38 *by the adult day health care center activity coordinator or other*
39 *trained adult day health care center personnel:*

1 (1) Group or individual activities to enhance the social, physical,
2 or cognitive functioning of the participant.

3 (2) Facilitated participation in group or individual activities
4 for those participants whose frailty or cognitive functioning level
5 precludes them from active participation in scheduled activities.

6 (d) One meal per day of attendance, in accordance with Section
7 54331 of Title 22 of the California Code of Regulations, unless
8 the participant declines the meal or medical contraindications
9 exist, as documented in the participant's health record, that
10 prohibit the ingestion of the meal.

11 (e) This section shall only be implemented to the extent permitted
12 by federal law.

13 (f) Notwithstanding Chapter 3.5 (commencing with Section
14 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
15 the department may implement the provisions of this section by
16 means of all-county letters, provider bulletins, or similar
17 instructions without taking further regulatory action.

18 (g) Upon the date of execution of the declaration described
19 under subdivision (g) of Section 14525.1, this section shall become
20 operative and Section 14550.5 shall become inoperative and on
21 that date is repealed.

22 SEC. 56. By no later than March 1, 2011, the State Department
23 of Mental Health shall provide the legislative budget and policy
24 committees with an analysis of selected county and subcontractor
25 costs for the 2009–10 fiscal year that are not wholly reimbursed
26 by the schedule of maximum allowances rates. The analysis shall
27 be based on cost data from a limited sampling of counties and
28 their subcontractors in no more than three large urban counties,
29 two mid-sized counties, and two rural counties.

30 By October 31, 2009, the department shall determine, in
31 consultation with the county mental health plans and their
32 subcontractors, the seven participating counties and participating
33 subcontractors. In making this selection, the department shall
34 determine that the counties' and subcontractors' data are sufficient
35 to ensure a concise cost comparison based on the limited sample
36 of county-delivered services and the limited sample of
37 subcontractor-delivered services in each of the seven counties.

38 The selected counties and the selected subcontractors shall
39 report their 2009–10 cost data to the department by October 31,
40 2010. The selected counties and selected subcontractors may use

1 available sources of financial information, such as the interim
2 2009–10 cost reports, to meet this requirement so long as the data
3 are submitted to the department by October 31, 2010.

4 SEC. 57. The State Department of Health Care Services shall
5 provide the Legislature with a quarterly update, including key
6 fiscal data provided to the federal Centers for Medicare and
7 Medicaid Services, regarding the implementation of the federal
8 American Recovery and Reinvestment Act of 2009 (ARRA) as it
9 pertains to California’s Medi-Cal program, including all waiver
10 programs. This quarterly update shall be provided to the fiscal
11 and policy committees of the Legislature within 14 working days
12 of the close of the quarter, that commences July 1, 2009. The first
13 quarterly update to be received by the Legislature in July 2009,
14 shall reflect key issues and fiscal data as it pertains to the federal
15 ARRA retroactive claiming from October 1, 2008, to June 30,
16 2009.

17 SEC. 58. Due to continued concerns regarding coordination
18 of core programmatic functions between the State Department of
19 Mental Health and the State Department of Health Care Services
20 as they pertain to: (a) the reimbursement of county mental health
21 plans and providers for services provided under Medi-Cal; (b)
22 activities for the development and maintenance of the state’s
23 Medicaid waiver for the operation of mental health care services;
24 (c) implementation of the state’s Short-Doyle II data system; and
25 (d) implementation of audit recommendations from the Office of
26 State Evaluation and Audits (OSEA), and the federal Centers for
27 Medicare and Medicaid Services (CMS), the California Health
28 and Human Services Agency or a successor entity, shall develop
29 an action plan.

30 The purpose of this action plan is to address the need to have a
31 coordinated approach between these two departments in order to
32 produce tangible outcomes for addressing core functions as
33 outlined. This action plan shall be provided to the Legislature no
34 later than February 1, 2010.

35 SEC. 59. The State Department of Health Care Services shall
36 provide the applicable fiscal and policy committees of the
37 Legislature with copies of all federal audits and their findings that
38 pertain to any component of the Medi-Cal Program, including
39 program components administered by other state departments.
40 This information shall be provided in a timely manner to the

1 *Legislature and preferably within seven working days of receipt*
2 *of a final determination by the federal Centers for Medicare and*
3 *Medicaid Services (CMS) or other applicable federal departments*
4 *or agencies.*

5 *SEC. 60. No reimbursement is required by this act pursuant*
6 *to Section 6 of Article XIII B of the California Constitution because*
7 *the only costs that may be incurred by a local agency or school*
8 *district will be incurred because this act creates a new crime or*
9 *infraction, eliminates a crime or infraction, or changes the penalty*
10 *for a crime or infraction, within the meaning of Section 17556 of*
11 *the Government Code, or changes the definition of a crime within*
12 *the meaning of Section 6 of Article XIII B of the California*
13 *Constitution.*

14 ~~SECTION 1. It is the intent of the Legislature to enact statutory~~
15 ~~changes relating to the Budget Act of 2009.~~

16 ~~SEC. 2. This act addresses the fiscal emergency declared by~~
17 ~~the Governor by proclamation on December 19, 2008, pursuant~~
18 ~~to subdivision (f) of Section 10 of Article IV of the California~~
19 ~~Constitution.~~

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