

## Senate Bill No. 335

### CHAPTER 286

An act to amend Sections 14166.115 and 14166.12 of, to amend and repeal Section 14167.35 of, to add Section 15910.4 to, to add and repeal Article 5.228 (commencing with Section 14169.1) and Article 5.229 (commencing with Section 14169.31) of Chapter 7 of Part 3 of Division 9 of, and to repeal Article 5.225 (commencing with Section 14167.41) of Chapter 7 of Part 3 of Division 9 of, the Welfare and Institutions Code, relating to Medi-Cal, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 16, 2011. Filed with  
Secretary of State September 16, 2011.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 335, Hernandez. Medi-Cal: hospitals: quality assurance fee.

Existing law establishes the Medi-Cal program, administered by the State Department of Health Care Services, under which basic health care services are provided to qualified low-income individuals. The Medi-Cal program is, in part, governed and funded by federal Medicaid Program provisions. Existing law, subject to federal approval, imposes a quality assurance fee, as specified, on certain general acute care hospitals through and including June 30, 2011. Existing law creates the Hospital Quality Assurance Revenue Fund in the State Treasury and requires that the money collected from the quality assurance fee be deposited into the fund. Existing law, subject to federal approval, requires the department to make supplemental payments for certain services, as specified, to private hospitals, increased capitation payments to Medi-Cal managed health care plans, and increased payments to mental health plans. Existing law provides that the moneys in the Hospital Quality Assurance Revenue Fund shall, upon appropriation by the Legislature, be available only for certain purposes, including paying for health care coverage for children, as specified, and making the supplemental payments to hospitals, increased capitation payments to Medi-Cal managed health care plans, and increased payments to mental health plans. Existing law also establishes the continuously appropriated Distressed Hospital Fund, which consists of moneys transferred to the fund or appropriated by the Legislature and used as the nonfederal share of payments to distressed hospitals, as defined.

This bill would, subject to federal approval, impose a quality assurance fee, as specified, on certain general acute care hospitals, for the period of July 1, 2011, through December 31, 2013. This bill would require that the money collected from the quality assurance fee be deposited into the Hospital Quality Assurance Revenue Fund. The bill would, subject to federal

approval, provide that the moneys in the Hospital Quality Assurance Revenue Fund shall, upon appropriation by the Legislature, be available only for certain purposes, including paying for health care coverage for children, as specified, and making supplemental payments for certain services to private hospitals, increased capitation payments to Medi-Cal managed care plans, increased payments to mental health plans, and supplemental payments for out-of-network emergency and poststabilization services provided by private hospitals and nondesignated public hospitals to Medi-Cal expansion enrollees in the Low Income Health Program. This bill would also authorize designated and nondesignated public hospitals to be paid direct grants in support of health care expenditures funded by the quality assurance fee. The bill would provide that if quality assurance fee payments are remitted to the department after the date determined by the department to be the final date for calculating the final supplemental payments, the fee payments shall be retained in the fund for purposes of funding supplemental payments supported by a hospital quality assurance fee program under subsequent legislation, but provides that if supplemental payments are not implemented under subsequent legislation, then those quality assurance fee payments shall be deposited into the Distressed Hospital Fund. The bill would also provide that if amounts of the quality assurance fees are collected in excess of the funds required to make the payments above and federal rules prohibit the department from refunding the fee payments to the general acute care hospitals, the excess funds shall be deposited into the Distressed Hospital Fund. By increasing the amount of money that may be deposited into the Distressed Hospital Fund, this bill would make an appropriation.

This bill would also create the Low Income Health Program MCE Out-of-Network Emergency Care Services Fund, which would consist of moneys transferred from governmental entities on a voluntary basis and from the Hospital Quality Assurance Revenue Fund in specified amounts. This bill would provide that the moneys in the fund be used by the department, upon appropriation by the Legislature, to fund the nonfederal share of supplemental payments made to private hospitals and nondesignated public hospitals providing emergency and poststabilization services to Medi-Cal expansion enrollees in the Low Income Health Program.

Existing law requires the department to seek a demonstration project or federal waiver of Medicaid law to implement specified objectives, which may include better care coordination for seniors, persons with disabilities, and children with special health care needs. Existing law provides that to the extent the provisions under the Medi-Cal Hospital/Uninsured Care Demonstration Project Act do not conflict with the provisions of, or the Special Terms and Conditions of, this demonstration project, the provisions of the Medi-Cal Hospital/Uninsured Care Demonstration Project Act shall apply. Under existing law, the department is required to reduce disproportionate share hospital replacement payments to private hospitals by 10% for the 2009–10 fiscal year, as specified. Existing law also provides that, in addition to the 10% reduction, disproportionate share hospital replacement payments to private hospitals shall be reduced in the 2010–11

fiscal year by an additional \$30 million in General Fund moneys and by the corresponding federal financial participation, and in the 2011–12 fiscal year by an additional \$75 million in General Fund moneys and by the corresponding federal financial participation. Existing law provides that the additional room under the federal upper payment limit created by these reductions shall be used for specified purposes.

This bill would, in relation to the 2010–11 and 2011–12 fiscal year reductions, delete the requirement that the reductions be in addition to the 10% reduction for the 2009–10 fiscal year. This bill would also require the department to reduce disproportionate share hospital replacement payments to private hospital payments by specified amounts in the 2012–13 and 2013–14 fiscal years.

Existing law establishes the continuously appropriated Private Hospital Supplemental Fund, which consists of moneys from various sources that are used as the source of the nonfederal share of supplemental payments to private hospitals.

This bill would require that the money annually transferred to this fund from the General Fund be reduced by specified amounts for the 2012–13 and 2013–14 fiscal years, and that the reductions in the payments to private hospitals that result from the reductions in the amounts transferred from the General Fund be allocated equally as specified.

This bill would appropriate specified amounts from the Hospital Quality Assurance Revenue Fund, the Federal Trust Fund, and the Low Income Health Program MCE Out-of-Network Emergency Care Services Fund to the department to be available for expenditure until January 1, 2015, for specified purposes.

This bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

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

SECTION 1. The Legislature finds and declares both of the following:

(a) The Legislature continues to recognize the essential role that hospitals play in serving the state’s Medi-Cal beneficiaries. To that end, it has been, and remains, the intent of the Legislature to preserve funding for hospitals and to obtain all available federal funds to make supplemental Medi-Cal payments to hospitals.

(b) It is the intent of the Legislature that funding provided to hospitals through a hospital quality assurance fee be explored with the goal of increasing access to care and stabilizing hospital rates through supplemental Medi-Cal payments to hospitals.

SEC. 2. (a) It is the intent of the Legislature to impose a quality assurance fee to be paid by hospitals, which would be used to increase federal financial participation in order to do all of the following:

(1) Make supplemental Medi-Cal payments to hospitals for the period of July 1, 2011, through December 31, 2013.

(2) Pay for health care coverage for children in the amount of eighty-five million dollars (\$85,000,000) for each subject fiscal quarter during the 2011–12 subject fiscal year, and in the amount of ninety-six million seven hundred fifty thousand dollars (\$96,750,000) for each subject fiscal quarter during the 2012–13 and 2013–14 subject fiscal years.

(3) Provide supplemental payments to private hospitals and nondesignated hospitals providing out-of-network emergency services and poststabilization services to Medicaid coverage expansion enrollees of Low Income Health Programs.

(4) Make direct grants to designated and nondesignated public hospitals.

(b) The State Department of Health Care Services shall make every effort to obtain the necessary federal approvals to implement the quality assurance fee described in subdivision (a) in order to make supplemental Medi-Cal payments to hospitals for the period of July 1, 2011, through December 31, 2013.

(c) It is the intent of the Legislature that the quality assurance fee be implemented only if all of the following conditions are met:

(1) The quality assurance fee is established in consultation with the hospital community.

(2) The quality assurance fee, including any interest earned after collection by the department, is deposited into segregated funds apart from the General Fund and used exclusively for supplemental Medi-Cal payments to hospitals and supplemental payments to private hospitals and nondesignated public hospitals that provide out-of-network emergency services and poststabilization services to Medicaid coverage expansion enrollees of Low Income Health Programs, for children's health coverage, for direct grants to designated and nondesignated public hospitals, and for the direct costs of administering the program by the State Department of Health Care Services.

(3) No hospital shall be required to pay the quality assurance fee to the department unless and until the state receives and maintains federal approval of the quality assurance fee and related supplemental payments to hospitals.

(4) The full amount of the quality assurance fee assessed and collected remains available only for the purposes specified by the Legislature in this act.

SEC. 3. Section 14166.115 of the Welfare and Institutions Code is amended to read:

14166.115. (a) Due to the state budget deficit and in order to implement changes in the level of funding for health care services, the department shall reduce disproportionate share hospital replacement payments to private hospitals made pursuant to Section 14166.11 as specified in this section.

(b) (1) Disproportionate share hospital replacement payments to private hospitals pursuant to Section 14166.11 shall be reduced by 10 percent. The reductions shall be applied to all disproportionate share hospital replacement payments to private hospitals made for the 2009–10 fiscal year, including,

but not limited to, interim payments, tentative adjusted monthly payments, data corrected payments, and the final adjusted payment.

(2) Disproportionate share hospital replacement payments to private hospitals pursuant to Section 14166.11 shall be reduced in the 2010–11 fiscal year by thirty million dollars (\$30,000,000) in General Fund moneys and by the corresponding federal financial participation. To the extent permitted by federal law, the additional room created by this paragraph under the federal upper payment limit shall be used to increase supplemental payments under Article 5.226 (commencing with Section 14168.1) and Article 5.227 (commencing with Section 14168.31).

(3) Disproportionate share hospital replacement payments to private hospitals pursuant to Section 14166.11 shall be reduced in the 2011–12 fiscal year by seventy-five million dollars (\$75,000,000) in General Fund moneys and by the corresponding federal financial participation. To the extent permitted by federal law, the additional room created by this paragraph under the federal upper payment limit shall be used to increase supplemental payments under legislation extending or creating a new supplemental hospital payment program supported by a fee.

(4) Disproportionate share hospital replacement payments to private hospitals pursuant to Section 14166.11 shall be reduced in the 2012–13 fiscal year by ten million five hundred thousand dollars (\$10,500,000) in General Fund moneys and by the corresponding federal financial participation.

(5) Disproportionate share hospital replacement payments to private hospitals pursuant to Section 14166.11 shall be reduced in the 2013–14 fiscal year by five million two hundred fifty thousand dollars (\$5,250,000) in General Fund moneys and by the corresponding federal financial participation.

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

(d) The reductions described in this section shall apply only to payments for services when the General Fund share of the payment is paid with funds appropriated to the department in the annual Budget Act.

(e) The department shall promptly seek any necessary federal approvals for the implementation of this section.

SEC. 4. Section 14166.12 of the Welfare and Institutions Code is amended to read:

14166.12. (a) The California Medical Assistance Commission shall negotiate payment amounts, in accordance with the selective provider contracting program established pursuant to Article 2.6 (commencing with Section 14081), from the Private Hospital Supplemental Fund established pursuant to subdivision (b) for distribution to private hospitals that satisfy the criteria of Section 14085.6, 14085.7, 14085.8, or 14085.9.

(b) The Private Hospital Supplemental Fund is hereby established in the State Treasury. For purposes of this section, “fund” means the Private Hospital Supplemental Fund.

(c) Notwithstanding Section 13340 of the Government Code, the fund shall be continuously appropriated to the department for the purposes specified in this section.

(d) Except as otherwise limited by this section, the fund shall consist of all of the following:

(1) One hundred eighteen million four hundred thousand dollars (\$118,400,000), which shall be transferred annually from General Fund amounts appropriated in the annual Budget Act for the Medi-Cal program, except as follows:

(A) For the 2008–09 fiscal year, this amount shall be reduced by thirteen million six hundred thousand dollars (\$13,600,000) and by an amount equal to one-half of the difference between eighteen million three hundred thousand dollars (\$18,300,000) and the amount of any reduction in the additional payments for distressed hospitals calculated pursuant to subparagraph (B) of paragraph (3) of subdivision (b) of Section 14166.20.

(B) For the 2012–13 fiscal year, this amount shall be reduced by seventeen million five hundred thousand dollars (\$17,500,000).

(C) For the 2013–14 fiscal year, this amount shall be reduced by eight million seven hundred fifty thousand dollars (\$8,750,000).

(2) Any additional moneys appropriated to the fund.

(3) All stabilization funding transferred to the fund pursuant to paragraph (2) of subdivision (a) of Section 14166.14.

(4) Any moneys that any county, other political subdivision of the state, or other governmental entity in the state may elect to transfer to the department for deposit into the fund, as permitted under Section 433.51 of Title 42 of the Code of Federal Regulations or any other applicable federal Medicaid laws.

(5) All private moneys donated by private individuals or entities to the department for deposit in the fund as permitted under applicable federal Medicaid laws.

(6) Any interest that accrues on amounts in the fund.

(e) Any public agency transferring moneys to the fund may, for that purpose, utilize any revenues, grants, or allocations received from the state for health care programs or purposes, unless otherwise prohibited by law. A public agency may also utilize its general funds or any other public moneys or revenues for purposes of transfers to the fund, unless otherwise prohibited by law.

(f) The department may accept or not accept moneys offered to the department for deposit in the fund. If the department accepts moneys pursuant to this section, the department shall obtain federal financial participation to the full extent permitted by law. With respect to funds transferred or donated from private individuals or entities, the department shall accept only those funds that are certified by the transferring or donating entity that qualify for federal financial participation under the terms of the

Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991 (Public Law 102-234) or Section 433.51 of Title 42 of the Code of Federal Regulations, as applicable. The department may return any funds transferred or donated in error.

(g) Moneys in the fund shall be used as the source for the nonfederal share of payments to hospitals under this section.

(h) Any funds remaining in the fund at the end of a fiscal year shall be carried forward for use in the following fiscal year.

(i) Moneys shall be allocated from the fund by the department and shall be applied to obtain federal financial participation in accordance with customary Medi-Cal accounting procedures for purposes of payments under this section. Distributions from the fund shall be supplemental to any other Medi-Cal reimbursement received by the hospitals, including amounts that hospitals receive under the selective provider contracting program (Article 2.6 (commencing with Section 14081)), and shall not affect provider rates paid under the selective provider contracting program.

(j) Each private hospital that was a private hospital during the 2002–03 fiscal year, received payments for the 2002–03 fiscal year from any of the prior supplemental funds, and, during the project year, satisfies the criteria in Section 14085.6, 14085.7, 14085.8, or 14085.9 to be eligible to negotiate for distributions under any of those sections, shall receive no less from the Private Hospital Supplemental Fund for the project year than 100 percent of the amount the hospital received from the prior supplemental funds for the 2002–03 fiscal year. Each private hospital described in this subdivision shall be eligible for additional payments from the fund pursuant to subdivision (k).

(k) All amounts that are in the fund for a project year in excess of the amount necessary to make the payments under subdivision (j) shall be available for negotiation by the California Medical Assistance Commission, along with corresponding federal financial participation, for supplemental payments to private hospitals, which for the project year satisfy the criteria under Section 14085.6, 14085.7, 14085.8, or 14085.9 to be eligible to negotiate for distributions under any of those sections, and paid for services rendered during the project year pursuant to the selective provider contracting program established under Article 2.6 (commencing with Section 14081).

(l) The amount of any stabilization funding transferred to the fund, or the amount of intergovernmental transfers deposited to the fund pursuant to subdivision (o), together with the associated federal reimbursement, with respect to a particular project year, may, in the discretion of the California Medical Assistance Commission, be paid for services furnished in the same project year regardless of when the stabilization funds or intergovernmental transfer funds, and the associated federal reimbursement, become available, provided the payment is consistent with other applicable federal or state law requirements and does not result in a hospital exceeding any applicable reimbursement limitations.

(m) The department shall pay amounts due to a private hospital from the fund for a project year, with the exception of stabilization funding, in up to

four installment payments, unless otherwise provided in the hospital's contract negotiated with the California Medical Assistance Commission, except that hospitals that are not described in subdivision (j) shall not receive the first installment payment. The first payment shall be made as soon as practicable after the issuance of the tentative disproportionate share hospital list for the project year, and in no event later than January 1 of the project year. The second and subsequent payments shall be made after the issuance of the final disproportionate hospital list for the project year, and shall be made only to hospitals that are on the final disproportionate share hospital list for the project year. The second payment shall be made by February 1 of the project year or as soon as practicable after the issuance of the final disproportionate share hospital list for the project year. The third payment, if scheduled, shall be made by April 1 of the project year. The fourth payment, if scheduled, shall be made by June 30 of the project year. This subdivision does not apply to hospitals that are scheduled to receive payments from the fund because they meet the criteria under Section 14085.7 and do not meet the criteria under Section 14085.6, 14085.8, or 14085.9, which shall be paid in accordance with the applicable contract or contract amendment negotiated by the California Medical Assistance Commission.

(n) The department shall pay stabilization funding transferred to the fund in amounts negotiated by the California Medical Assistance Commission and shall pay the scheduled payments in accordance with the applicable contract or contract amendment.

(o) Payments to private hospitals that are eligible to receive payments pursuant to Section 14085.6, 14085.7, 14085.8, or 14085.9 may be made using funds transferred from governmental entities to the state, at the option of the governmental entity. Any payments funded by intergovernmental transfers shall remain with the private hospital and shall not be transferred back to any unit of government. An amount equal to 25 percent of the amount of any intergovernmental transfer made in the project year that results in a supplemental payment made for the same project year to a project year private DSH hospital designated by the governmental entity that made the intergovernmental transfer shall be deposited in the fund for distribution as determined by the California Medical Assistance Commission. An amount equal to 75 percent shall be deposited in the fund and distributed to the private hospitals designated by the governmental entity.

(p) A private hospital that receives payment pursuant to this section for a particular project year shall not submit a notice for the termination of its participation in the selective provider contracting program established pursuant to Article 2.6 (commencing with Section 14081) until the later of the following dates:

- (1) On or after December 31 of the next project year.
- (2) The date specified in the hospital's contract, if applicable.

(q) (1) For the 2007–08, 2008–09, and 2009–10 project years, the County of Los Angeles shall make intergovernmental transfers to the state to fund the nonfederal share of increased Medi-Cal payments to those private hospitals that serve the South Los Angeles population formerly served by

Los Angeles County Martin Luther King, Jr.-Harbor Hospital. The intergovernmental transfers required under this subdivision shall be funded by county tax revenues and shall total five million dollars (\$5,000,000) per project year, except that, in the event that the director determines that any amount is due to the County of Los Angeles under the demonstration project for services rendered during the portion of a project year during which Los Angeles County Martin Luther King, Jr.-Harbor Hospital was operational, the amount of intergovernmental transfers required under this subdivision shall be reduced by a percentage determined by reducing 100 percent by the percentage reduction in Los Angeles County Martin Luther King, Jr.-Harbor Hospital's baseline, as determined under subdivision (c) of Section 14166.5 for that project year.

(2) Notwithstanding subdivision (o), an amount equal to 100 percent of the county's intergovernmental transfers under this subdivision shall be deposited in the fund and, within 30 days after receipt of the intergovernmental transfer, shall be distributed, together with related federal financial participation, to the private hospitals designated by the county in the amounts designated by the county. The director shall disregard amounts received pursuant to this subdivision in calculating the OBRA 1993 payment limitation, as defined in paragraph (24) of subdivision (a) of Section 14105.98, for purposes of determining the amount of disproportionate share hospital replacement payments due a private hospital under Section 14166.11.

(r) (1) The reductions in supplemental payments under this section that result from the reductions in the amounts transferred from the General Fund to the Private Hospital Supplemental Fund for the 2012–13 and 2013–14 fiscal years under subparagraphs (B) and (C) of paragraph (1) of subdivision (d) shall be allocated equally in the aggregate between children's hospitals eligible for supplemental payments under this section and other hospitals eligible for supplemental payments under this section. When negotiating payment amounts to a hospital under this section for the 2012–13 and 2013–14 fiscal years, the California Medical Assistance Commission, or its successor agency, shall identify both a payment amount that would have been made absent the funding reductions in subparagraphs (B) and (C) of paragraph (1) of subdivision (d) and the payment amount that will be made taking into account the funding reductions under subparagraphs (B) and (C) of paragraph (1) of subdivision (d). For purposes of this subdivision, "children's hospital" shall have the meaning set forth in paragraph (13) of subdivision (a) of Section 14105.98.

(2) This subdivision shall not preclude the department from including some or all of the reductions under this section within the payments made under a new diagnosis-related group payment methodology for the 2012–13 fiscal year or the 2013–14 fiscal year. In the event the department includes some or all of the amounts, including reductions, within the payments made under a new diagnosis-related group payment methodology for the 2012–12 fiscal year or the 2013–14 fiscal year, the department, in implementing the

reductions in paragraph (1) of subdivision (d), shall, to the extent feasible, utilize the allocation specified in paragraph (1).

SEC. 5. Section 14167.35 of the Welfare and Institutions Code is amended to read:

14167.35. (a) The Hospital Quality Assurance Revenue Fund is hereby created in the State Treasury.

(b) (1) All fees required to be paid to the state pursuant to this article shall be paid in the form of remittances payable to the department.

(2) The department shall directly transmit the fee payments to the Treasurer to be deposited in the Hospital Quality Assurance Revenue Fund. Notwithstanding Section 16305.7 of the Government Code, any interest and dividends earned on deposits in the fund shall be retained in the fund for purposes specified in subdivision (c).

(c) All funds in the Hospital Quality Assurance Revenue Fund, together with any interest and dividends earned on money in the fund, shall, upon appropriation by the Legislature, be used exclusively to enhance federal financial participation for hospital services under the Medi-Cal program, to provide additional reimbursement to, and to support quality improvement efforts of, hospitals, and to minimize uncompensated care provided by hospitals to uninsured patients, in the following order of priority:

(1) To pay for the department's staffing and administrative costs directly attributable to implementing Article 5.21 (commencing with Section 14167.1) and this article, including any administrative fees that the director determines shall be paid to mental health plans pursuant to subdivision (d) of Section 14167.11 and repayment of the loan made to the department from the Private Hospital Supplemental Fund pursuant to the act that added this section.

(2) To pay for the health care coverage for children in the amount of eighty million dollars (\$80,000,000) for each subject fiscal quarter for which payments are made under Article 5.21 (commencing with Section 14167.1).

(3) To make increased capitation payments to managed health care plans pursuant to Article 5.21 (commencing with Section 14167.1).

(4) To pay funds from the Hospital Quality Assurance Revenue Fund pursuant to Section 14167.5 that would have been used for grant payments and that are retained by the state, and to make increased payments to hospitals, including grants, pursuant to Article 5.21 (commencing with Section 14167.1), both of which shall be of equal priority.

(5) To make increased payments to mental health plans pursuant to Article 5.21 (commencing with Section 14167.1).

(d) Any amounts of the quality assurance fee collected in excess of the funds required to implement subdivision (c), including any funds recovered under subdivision (d) of Section 14167.14 or subdivision (e) of Section 14167.36, shall be refunded to general acute care hospitals, pro rata with the amount of quality assurance fee paid by the hospital, subject to the limitations of federal law. If federal rules prohibit the refund described in this subdivision, the excess funds shall be deposited in the Distressed

Hospital Fund to be used for the purposes described in Section 14166.23, and shall be supplemental to and not supplant existing funds.

(e) Any methodology or other provision specified in Article 5.21 (commencing with Section 14167.1) and this article may be modified by the department, in consultation with the hospital community, to the extent necessary to meet the requirements of federal law or regulations to obtain federal approval or to enhance the probability that federal approval can be obtained, provided the modifications do not violate the spirit and intent of Article 5.21 (commencing with Section 14167.1) or this article and are not inconsistent with the conditions of implementation set forth in Section 14167.36.

(f) The department, in consultation with the hospital community, shall make adjustments, as necessary, to the amounts calculated pursuant to Section 14167.32 in order to ensure compliance with the federal requirements set forth in Section 433.68 of Title 42 of the Code of Federal Regulations or elsewhere in federal law.

(g) The department shall request approval from the federal Centers for Medicare and Medicaid Services for the implementation of this article. In making this request, the department shall seek specific approval from the federal Centers for Medicare and Medicaid Services to exempt providers identified in this article as exempt from the fees specified, including the submission, as may be necessary, of a request for waiver of the broad based requirement, waiver of the uniform fee requirement, or both, pursuant to paragraphs (e)(1) and (e)(2) of Section 433.68 of Title 42 of the Code of Federal Regulations.

(h) (1) For purposes of this section, a modification pursuant to this section shall be implemented only if the modification, change, or adjustment does not do either of the following:

(A) Reduces or increases the supplemental payments or grants made under Article 5.21 (commencing with Section 14167.1) in the aggregate for the 2008–09, 2009–10, and 2010–11 federal fiscal years to a hospital by more than 2 percent of the amount that would be determined under this article without any change or adjustment.

(B) Reduces or increases the amount of the fee payable by a hospital in total under this article for the 2008–09, 2009–10, and 2010–11 federal fiscal years by more than 2 percent of the amount that would be determined under this article without any change or adjustment.

(2) The department shall provide the Joint Legislative Budget Committee and the fiscal and appropriate policy committees of the Legislature a status update of the implementation of Article 5.21 (commencing with Section 14167.1) and this article on January 1, 2010, and quarterly thereafter. Information on any adjustments or modifications to the provisions of this article or Article 5.21 (commencing with Section 14167.1) that may be required for federal approval shall be provided coincident with the consultation required under subdivisions (f) and (g).

(i) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department may

implement this article or Article 5.21 (commencing with Section 14167.1) by means of provider bulletins, all plan letters, or other similar instruction, without taking regulatory action. The department shall also provide notification to the Joint Legislative Budget Committee and to the appropriate policy and fiscal committees of the Legislature within five working days when the above-described action is taken in order to inform the Legislature that the action is being implemented.

(j) Notwithstanding any law, the Controller may use the funds in the Hospital Quality Assurance Revenue Fund for cashflow loans to the General Fund as provided in Sections 16310 and 16381 of the Government Code.

(k) Notwithstanding Sections 14167.17 and 14167.40, subdivisions (b) to (h), inclusive, shall become inoperative on January 1, 2013, subdivisions (a), (i), and (j) shall remain operative until January 1, 2015, and as of January 1, 2015, this section is repealed.

SEC. 6. Article 5.225 (commencing with Section 14167.41) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code is repealed.

SEC. 7. Article 5.228 (commencing with Section 14169.1) is added to Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:

Article 5.228. Medi-Cal Hospital Provider Rate Improvement Act of  
2011

14169.1. For the purposes of this article, the following definitions shall apply:

(a) “Acute psychiatric days” means the total number of Short-Doyle administrative days, Short-Doyle acute care days, acute psychiatric administrative days, and acute psychiatric acute days identified in the Tentative Medi-Cal Utilization Statistics for the 2011–12 state fiscal year as calculated by the department as of July 21, 2011.

(b) “Converted hospital” means a private hospital that becomes a designated public hospital or a nondesignated public hospital on or after July 1, 2011.

(c) “Days data source” means the hospital’s Annual Financial Disclosure Report filed with the Office of Statewide Health Planning and Development as of May 5, 2011, for its fiscal year ending during 2009.

(d) “Designated public hospital” shall have the meaning given in subdivision (d) of Section 14166.1 as of July 1, 2011.

(e) “General acute care days” means the total number of Medi-Cal general acute care days paid by the department to a hospital for services in the 2009 calendar year, as reflected in the state paid claims file on July 15, 2011.

(f) “High acuity days” means Medi-Cal coronary care unit days, pediatric intensive care unit days, intensive care unit days, neonatal intensive care unit days, and burn unit days paid by the department during the 2009 calendar year, as reflected in the state paid claims file prepared by the department on July 15, 2011.

(g) “Hospital inpatient services” means all services covered under Medi-Cal and furnished by hospitals to patients who are admitted as hospital inpatients and reimbursed on a fee-for-service basis by the department directly or through its fiscal intermediary. Hospital inpatient services include outpatient services furnished by a hospital to a patient who is admitted to that hospital within 24 hours of the provision of the outpatient services that are related to the condition for which the patient is admitted. Hospital inpatient services do not include services for which a managed health care plan is financially responsible.

(h) “Hospital outpatient services” means all services covered under Medi-Cal furnished by hospitals to patients who are registered as hospital outpatients and reimbursed by the department on a fee-for-service basis directly or through its fiscal intermediary. Hospital outpatient services do not include services for which a managed health care plan is financially responsible, or services rendered by a hospital-based federally qualified health center for which reimbursement is received pursuant to Section 14132.100.

(i) “Individual hospital acute psychiatric supplemental payment” means the total amount of acute psychiatric hospital supplemental payments to a subject hospital for a quarter for which the supplemental payments are made. The “individual hospital acute psychiatric supplemental payment” shall be calculated for subject hospitals by multiplying the number of acute psychiatric days for the individual hospital for which a mental health plan was financially responsible by the amount calculated in accordance with paragraph (2) of subdivision (b) of Section 14169.3 and dividing the result by four.

(j) (1) “Managed health care plan” means a health care delivery system that manages the provision of health care and receives prepaid capitated payments from the state in return for providing services to Medi-Cal beneficiaries.

(2) (A) Managed health care plans include county organized health systems and entities contracting with the department to provide services pursuant to two-plan models and geographic managed care. Entities providing these services contract with the department pursuant to any of the following:

- (i) Article 2.7 (commencing with Section 14087.3).
- (ii) Article 2.8 (commencing with Section 14087.5).
- (iii) Article 2.81 (commencing with Section 14087.96).
- (iv) Article 2.91 (commencing with Section 14089).

(B) Managed health care plans do not include any of the following:

(i) Mental health plans contracting to provide mental health care for Medi-Cal beneficiaries pursuant to Part 2.5 (commencing with Section 5775) of Division 5.

(ii) Health plans not covering inpatient services such as primary care case management plans operating pursuant to Section 14088.85.

(iii) Long-Term Care Demonstration Projects for All-Inclusive Care for the Elderly operating pursuant to Chapter 8.75 (commencing with Section 14590).

(k) “Medi-Cal managed care days” means the total number of general acute care days, including well baby days, listed for the county organized health system and prepaid health plans identified in the Tentative Medi-Cal Utilization Statistics for the 2011–12 fiscal year, as calculated by the department as of July 21, 2011.

(l) “Medicaid inpatient utilization rate” means Medicaid inpatient utilization rate as defined in Section 1396r-4 of Title 42 of the United States Code and as set forth in the final disproportionate share hospital eligibility list for the 2010–11 fiscal year released by the department as of May 1, 2011.

(m) “Mental health plan” means a mental health plan that contracts with the state to furnish or arrange for the provision of mental health services to Medi-Cal beneficiaries pursuant to Part 2.5 (commencing with Section 5775) of Division 5.

(n) “New hospital” means a hospital operation, business, or facility functioning under current or prior ownership as a private hospital that does not have a days data source or a hospital that has a days data source in whole, or in part, from a previous operator where there is an outstanding monetary liability owed to the state in connection with the Medi-Cal program and the new operator did not assume liability for the outstanding monetary obligation.

(o) “New noncontract hospital” means a private hospital that was a contract hospital on March 1, 2011, and elects to become a noncontract hospital at any time between March 1, 2011, and the end of the program period.

(p) “Nondesignated public hospital” means either of the following:

(1) A public hospital that is licensed under subdivision (a) of Section 1250 of the Health and Safety Code, is not designated as a specialty hospital in the hospital’s Annual Financial Disclosure Report for the hospital’s latest fiscal year ending in 2009, and satisfies the definition in paragraph (25) of subdivision (a) of Section 14105.98, excluding designated public hospitals.

(2) A tax-exempt nonprofit hospital that is licensed under subdivision (a) of Section 1250 of the Health and Safety Code, is not designated as a specialty hospital in the hospital’s Annual Financial Disclosure Report for the hospital’s latest fiscal year ending in 2009, is operating a hospital owned by a local health care district, and is affiliated with the health care district hospital owner by means of the district’s status as the nonprofit corporation’s sole corporate member.

(q) “Outpatient base amount” means the total amount of payments for hospital outpatient services made to a hospital in the 2009 calendar year, as reflected in the state paid claims files prepared by the department on June 2, 2011.

(r) “Private hospital” means a hospital that meets all of the following conditions:

(1) Is licensed pursuant to subdivision (a) of Section 1250 of the Health and Safety Code.

(2) Is in the Charitable Research Hospital peer group, as set forth in the 1991 Hospital Peer Grouping Report published by the department, or is not designated as a specialty hospital in the hospital's Office of Statewide Health Planning and Development Annual Financial Disclosure Report for the hospital's latest fiscal year ending in 2009.

(3) Does not satisfy the Medicare criteria to be classified as a long-term care hospital.

(4) Is a nonpublic hospital, nonpublic converted hospital, or converted hospital as those terms are defined in paragraphs (26) to (28), inclusive, respectively, of subdivision (a) of Section 14105.98.

(s) "Program period" means the period from July 1, 2011, to December 31, 2013, inclusive.

(t) "Subject fiscal quarter" means a state fiscal quarter beginning on or after July 1, 2011, and ending before January 1, 2014.

(u) "Subject fiscal year" means a state fiscal year that ends after July 1, 2011, and begins before January 1, 2014.

(v) "Subject hospital" means a hospital that meets all of the following conditions:

(1) Is licensed pursuant to subdivision (a) of Section 1250 of the Health and Safety Code.

(2) Is in the Charitable Research Hospital peer group, as set forth in the 1991 Hospital Peer Grouping Report published by the department, or is not designated as a specialty hospital in the hospital's Office of Statewide Health Planning and Development Annual Financial Disclosure Report for the hospital's latest fiscal year ending in 2009.

(3) Does not satisfy the Medicare criteria to be classified as a long-term care hospital.

(w) "Subject month" means a calendar month beginning on or after July 1, 2011, and ending before January 1, 2014.

(x) "Upper payment limit" means a federal upper payment limit on the amount of the Medicaid payment for which federal financial participation is available for a class of service and a class of health care providers, as specified in Part 447 of Title 42 of the Code of Federal Regulations. The applicable upper payment limit shall be separately calculated for inpatient and outpatient hospital services.

14169.2. (a) Private hospitals shall be paid supplemental amounts for the provision of hospital outpatient services as set forth in this section. The supplemental amounts shall be in addition to any other amounts payable to hospitals with respect to those services and shall not affect any other payments to hospitals. The supplemental amounts shall result in payments equal to the statewide aggregate upper payment limit for private hospitals as it may be modified by Section 14169.19.

(b) Except as set forth in subdivisions (e) and (f), each private hospital shall be paid an amount for each subject fiscal year equal to a percentage of the hospital's outpatient base amount. The percentage shall be the same

for each hospital for a subject fiscal year. The percentage shall result in payments to hospitals that equal the applicable federal upper payment limit as provided in Section 14169.19 for a subject fiscal year, except for the 2011–12 state fiscal year during which the percentage shall result in payments to hospitals that equal the applicable federal upper payment limit for the 2011–12 state fiscal year, less any amounts paid pursuant to Section 14168.2 and accounted toward the federal upper payment limits for the entire 2011–12 state fiscal year. For purposes of this subdivision the applicable federal upper payment limit shall be the federal upper payment limit for hospital outpatient services furnished by private hospitals for each subject fiscal year.

(c) In the event federal financial participation for a subject fiscal year is not available for all of the supplemental amounts payable to private hospitals under subdivision (b) due to the application of a federal upper payment limit or for any other reason, both of the following shall apply:

(1) The total amount payable to private hospitals under subdivision (b) for the subject fiscal year shall be reduced to the amount for which federal financial participation is available.

(2) The amount payable under subdivision (b) to each private hospital for the subject fiscal year shall be equal to the amount computed under subdivision (b) multiplied by the ratio of the total amount for which federal financial participation is available to the total amount computed under subdivision (b).

(d) The supplemental amounts set forth in this section are inclusive of federal financial participation.

(e) Payments shall not be made under this section to a new hospital.

(f) No payments shall be made under this section to a converted hospital.

14169.3. (a) Except as provided in Section 14169.19, private hospitals shall be paid supplemental amounts for the provision of hospital inpatient services for the program period as set forth in this section. The supplemental amounts shall be in addition to any other amounts payable to hospitals with respect to those services and shall not affect any other payments to hospitals. The supplemental amounts shall result in payments equal to the statewide aggregate upper payment limit for private hospitals for each subject fiscal year as it may be modified pursuant to Section 14169.19.

(b) Except as set forth in subdivisions (g) and (h), each private hospital shall be paid the following amounts as applicable for the provision of hospital inpatient services for each subject fiscal year:

(1) Nine hundred seventeen dollars and sixty-six cents (\$917.66) multiplied by the hospital's general acute care days for supplemental payments for the 2011–12 subject fiscal year, one thousand eighty-six dollars and seventy-two cents (\$1,086.72) multiplied by the hospital's general acute care days for supplemental payments for the 2012–13 subject fiscal year, and one thousand three hundred five dollars and fifty-three cents (\$1,305.53) multiplied by the hospital's general acute care days for supplemental payments for the 2013–14 subject fiscal year.

(2) For the hospital's acute psychiatric days that were paid directly by the department and were not the financial responsibility of a mental health plan, six hundred ninety-five dollars (\$695) multiplied by the hospital's acute psychiatric days for supplemental payments for the 2011–12 subject fiscal year, seven hundred ninety dollars (\$790) multiplied by the hospital's acute psychiatric days for supplemental payments for the 2012–13 subject fiscal year, and nine hundred ninety-five dollars (\$995) multiplied by the hospital's acute psychiatric days for supplemental payments for the 2013–14 subject fiscal year.

(3) One thousand three hundred fifty dollars (\$1,350) multiplied by the number of the hospital's high acuity days if the hospital's Medicaid inpatient utilization rate is less than 41.1 percent and greater than 5 percent and at least 5 percent of the hospital's general acute care days are high acuity days. This amount shall be in addition to the amounts specified in paragraphs (1) and (2).

(4) One thousand three hundred fifty dollars (\$1,350) multiplied by the number of the hospital's high acuity days if the hospital qualifies to receive the amount set forth in paragraph (3) and has been designated as a Level I, Level II, Adult/Ped Level I, or Adult/Ped Level II trauma center by the Emergency Medical Services Authority established pursuant to Section 1797.1 of the Health and Safety Code. This amount shall be in addition to the amounts specified in paragraphs (1), (2), and (3).

(c) A private hospital that provided Medi-Cal subacute services during the 2009 calendar year and has a Medicaid inpatient utilization rate that is greater than 5 percent and less than 41.6 percent shall be paid a supplemental amount during each subject fiscal year equal to 40 percent of the Medi-Cal subacute payments paid by the department to the hospital during the 2009 calendar year, as reflected in the state paid claims file prepared by the department on July 14, 2011, except for the 2013–14 subject fiscal year during which the supplemental amount shall be equal to 20 percent of the Medi-Cal subacute payments paid by the department to the hospital during the 2009 calendar year, as reflected in the state paid claims file prepared by the department on July 14, 2011.

(d) (1) In the event federal financial participation for a subject fiscal year is not available for all of the supplemental amounts payable to private hospitals under subdivision (b) due to the application of a federal upper payment limit or for any other reason, both of the following shall apply:

(A) The total amount payable to private hospitals under subdivision (b) for the subject fiscal year shall be reduced to reflect the amount for which federal financial participation is available.

(B) The amount payable under subdivision (b) to each private hospital for the subject fiscal year shall be equal to the amount computed under subdivision (b) multiplied by the ratio of the total amount for which federal financial participation is available to the total amount computed under subdivision (b).

(2) In the event federal financial participation for a subject fiscal year is not available for all of the supplemental amounts payable to private hospitals

under subdivision (c) due to the application of a federal upper payment limit or for any other reason, both of the following shall apply:

(A) The total amount payable to private hospitals under subdivision (c) for the subject fiscal year shall be reduced to reflect the amount for which federal financial participation is available.

(B) The amount payable under subdivision (c) to each private hospital for the subject fiscal year shall be equal to the amount computed under subdivision (c) multiplied by the ratio of the total amount for which federal financial participation is available to the total amount computed under subdivision (c).

(e) If the amount otherwise payable to a hospital under this section for a subject fiscal year exceeds the amount for which federal financial participation is available for that hospital, the amount due to the hospital for that subject fiscal year shall be reduced to the amount for which federal financial participation is available.

(f) The amounts set forth in this section are inclusive of federal financial participation.

(g) Payments shall not be made under this section to a new hospital.

(h) Payments shall not be made under this section to a converted hospital.

(i) (1) The department shall increase payments to mental health plans for the program period exclusively for the purpose of making payments to private hospitals. The aggregate amount of the increased payments for a subject fiscal quarter shall be the total of the individual hospital acute psychiatric supplemental payment amounts for all hospitals for which federal financial participation is available.

(2) The payments described in paragraph (1) may be made directly by the department to hospitals when federal law does not require that the payments be transmitted to hospitals via mental health plans.

14169.5. (a) The department shall increase capitation payments to Medi-Cal managed health care plans for each subject fiscal year as set forth in this section.

(b) The increased capitation payments shall be made as part of the monthly capitated payments made by the department to managed health care plans.

(c) The aggregate amount of increased capitation payments to all Medi-Cal managed health care plans for each subject fiscal year shall be the maximum amount for which federal financial participation is available on an aggregate statewide basis for the applicable subject fiscal year as it may be adjusted pursuant to Section 14169.19.

(d) The department shall determine the amount of the increased capitation payments for each managed health care plan. The department shall consider the composition of Medi-Cal enrollees in the plan, the anticipated utilization of hospital services by the plan's Medi-Cal enrollees, and other factors that the department determines are reasonable and appropriate to ensuring access to high-quality hospital services by the plan's enrollees.

(e) The amount of increased capitation payments to each Medi-Cal managed care health plan shall not exceed an amount that results in capitation

payments that are certified by the state's actuary as meeting federal requirements, taking into account the requirement that all of the increased capitation payments under this section shall be paid by the Medi-Cal managed health care plans to hospitals for hospital services to Medi-Cal enrollees of the plan.

(f) (1) The increased capitation payments to managed health care plans under this section shall be made to support the availability of hospital services and ensure access to hospital services for Medi-Cal beneficiaries. The increased capitation payments to managed health care plans shall commence no later than the later of December 31, 2011, or within 90 days of the date on which all necessary federal approvals have been received, and shall include, but not be limited to, the sum of the increased payments for all prior months for which payments are due.

(2) (A) To secure the necessary funding for the payment or payments made pursuant to paragraph (1), the department may accumulate funds in the Hospital Quality Assurance Revenue Fund for the purpose of funding managed care capitation payments under this article regardless of the date on which capitation payments are scheduled to be paid in order to secure the necessary total funding for managed care payments by December 31, 2013.

(B) To the extent feasible, the department shall accumulate funds under subparagraph (A) by retaining 10 percent of the total necessary funding from each of the 10 installments of the quality assurance fee received from hospitals under Article 5.229 (commencing with Section 14169.31), provided that the department may adjust the applicable dates and amounts as necessary to accumulate sufficient funding by December 31, 2013.

(g) Payments to managed health care plans that would be paid consistent with actuarial certification and enrollment in the absence of the payments made pursuant to this section, including, but not limited to, payments described in Section 14182.15, shall not be reduced as a consequence of payment under this section.

(h) (1) Each managed health care plan shall expend 100 percent of any increased capitation payments it receives under this section on hospital services.

(2) The department may issue change orders to amend contracts with managed health care plans as needed to adjust monthly capitation payments in order to implement this section.

(3) For entities contracting with the department pursuant to Article 2.91 (commencing with Section 14089), any incremental increase in capitation rates pursuant to this section shall not be subject to negotiation and approval by the California Medical Assistance Commission.

(i) (1) In the event federal financial participation is not available for all of the increased capitation payments determined for a month pursuant to this section for any reason, the increased capitation payments mandated by this section for that month shall be reduced proportionately to the amount for which federal financial participation is available.

(2) The determination under this subdivision for any month in the program period shall be made after accounting for all federal financial participation necessary for full implementation of Section 14182.15 for that month.

(j) It is the intent of the Legislature that payments made available to designated public hospitals under this section shall replace, to the extent feasible, increased revenues that could be available to the hospitals under Section 14168.7 in the absence of this section and assuming other federal funds to the hospitals would not be reduced as a result of the payments. If this intent cannot be effectuated under this act, it is the intent of the Legislature to enact subsequent legislation to accomplish this purpose through other means.

(k) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department shall implement this section by means of policy letters or similar instructions, without taking further regulatory action.

14169.6. (a) Each managed health care plan receiving increased capitation payments under Section 14169.5 shall expend the capitation rate increases in a manner consistent with actuarial certification, enrollment, and utilization on hospital services. Each managed health care plan shall expend increased capitation payments on hospital services within 30 days of receiving the increased capitation payments to the extent they are made for a subject month that is prior to the date on which the payments are received by the managed health care plan.

(b) The sum of all expenditures made by a managed health care plan for hospital services pursuant to this section shall equal, or approximately equal, all increased capitation payments received by the managed health care plan, consistent with actuarial certification, enrollment, and utilization, from the department pursuant to Section 14169.5.

(c) Any delegation or attempted delegation by a managed health care plan of its obligation to expend the capitation rate increases under this section shall not relieve the plan from its obligation to expend those capitation rate increases. Managed health care plans shall submit the documentation the department may require to demonstrate compliance with this subdivision. The documentation shall demonstrate actual expenditure of the capitation rate increases for hospital services, and not assignment to subcontractors of the managed health care plan's obligation of the duty to expend the capitation rate increases.

(d) The supplemental hospital payments made by managed health care plans pursuant to this section shall reflect the overall purpose of the act.

(e) This article is not intended to create a private right of action by a hospital against a managed care plan provided that the managed health care plan expends all increased capitation payments for hospital services.

14169.7. (a) Designated public hospitals shall be paid direct grants in support of health care expenditures, which shall not constitute Medi-Cal payments, and which shall be funded by the quality assurance fee set forth in Article 5.229 (commencing with Section 14169.31). The aggregate amount of the grants to designated public hospitals shall be fifty million dollars

(\$50,000,000) for the 2011–12 fiscal year, forty-three million dollars (\$43,000,000) for the 2012–13 fiscal year, and twenty-one million five hundred thousand dollars (\$21,500,000) for the 2013–14 fiscal year. The director shall allocate the amounts specified in this subdivision among the designated public hospitals pursuant to a methodology developed in consultation with the designated public hospitals.

(b) Nondesignated public hospitals shall be paid direct grants in support of health care expenditures, and shall be funded by the quality assurance fee set forth in Article 5.229 (commencing with Section 14169.31). The aggregate amount of the grants to nondesignated public hospitals for each subject fiscal year shall be ten million dollars (\$10,000,000), except that for the 2013–14 subject fiscal year, the aggregate amount of the grants shall be five million dollars (\$5,000,000). The director shall allocate the amounts specified in this subdivision among the nondesignated public hospitals pursuant to a methodology developed in consultation with the nondesignated public hospitals.

14169.7.5. (a) The Low Income Health Program MCE Out-of-Network Emergency Care Services Fund is hereby established in the State Treasury. The moneys in the fund shall, upon appropriation by the Legislature to the department, be used solely for the purposes specified in this section. Notwithstanding Section 16305.7 of the Government Code, any and all interest and dividends earned on money in the fund shall be used exclusively for the purposes of this section.

(b) The fund shall consist of the following:

(1) Funds transferred from governmental entities, at the option of the governmental entity, to the state for deposit into the fund in an aggregate amount of twenty million dollars (\$20,000,000) per subject fiscal year, except that for the 2013–14 subject fiscal year, the aggregate amount of the transfer shall be ten million dollars (\$10,000,000).

(2) Proceeds of the quality assurance fee set forth in Article 5.229 (commencing with Section 14169.31) that, subject to paragraph (1) of subdivision (a) of Section 14169.36, are transferred from the Hospital Quality Assurance Revenue Fund and deposited into the fund in an aggregate amount of seventy-five million dollars (\$75,000,000) per subject fiscal year, except that for the 2013–14 subject fiscal year, the aggregate amount of the proceeds of the quality assurance fee deposited into the fund shall be thirty-seven million five hundred thousand dollars (\$37,500,000).

(c) Any amounts of the quality assurance fee deposited to the fund in excess of the funds required to implement this section shall be returned to the Hospital Quality Assurance Revenue Fund.

(d) Any amounts deposited to the fund as described in paragraph (1) of subdivision (b) that are in excess of the funds required to implement this section shall be returned to the transferring entity.

(e) Consistent with the Special Terms and Conditions for the California's Bridge to Reform Section 1115(a) Medicaid Demonstration (11-W-00193/9), moneys in the fund shall be used with respect to Low Income Health Programs (LIHPs) operating pursuant to Part 3.6 (commencing with Section

15909) as the source for the nonfederal share of expenditures for coverage for the Medi-Cal coverage expansion (MCE) population of medically necessary hospital emergency services for emergency medical conditions and required poststabilization care furnished by private hospitals and nondesignated public hospitals that are outside the LIHP coverage network, subject to the following:

(1) Moneys in the fund shall only be used to fund the nonfederal share of supplemental payments made to private hospital and nondesignated public hospital out-of-network emergency care services providers by the LIHP for the MCE population in accordance with this section.

(2) Supplemental payments under this section shall supplement but shall not supplant amounts that would have been paid absent the provisions of this section.

(f) Moneys in the fund shall be allocated with respect to each subject fiscal year as follows:

(1) Within 60 days after the last day of each subject fiscal year, each LIHP shall report utilization data to the department on approved hospital emergency services for emergency medical conditions and required poststabilization care, in accordance with Paragraph 63.f.ii of the Special Terms and Conditions of California's Bridge to Reform Section 1115(a) Demonstration (11-W-00193/9), provided to MCE enrollees by out-of-network private hospitals and nondesignated public hospitals during that year. The reported data shall be as specified by the department, and shall include the number of emergency room encounters and the number of inpatient hospital days.

(2) The department shall, in consultation with the hospital community, determine the amount of funding for the nonfederal share of supplemental payments available for each reported emergency room encounter or inpatient day by dividing the total funds available by the total number of inpatient days or emergency visits in accordance with subparagraphs (A) and (B).

(A) Seventy percent of the moneys in the fund shall be allocated for the nonfederal share of supplemental payments to private hospitals and nondesignated public hospitals for approved out-of-network inpatient hospital emergency and poststabilization care, in accordance with Paragraph 63.f.ii of the Special Terms and Conditions of California's Bridge to Reform Section 1115(a) Demonstration (11-W-00193/9).

(B) Thirty percent of the available funds shall be allocated for the nonfederal share of supplemental payments to private hospitals and nondesignated public hospitals for approved out-of-network hospital emergency room services (excluding emergency room visits, in accordance with Paragraph 63.f.ii of the Special Terms and Conditions of California's Bridge to Reform Section 1115(a) Demonstration (11-W-00193/9), that resulted in an approved out-of-network inpatient hospital stay), provided that for any emergency room visit that results in a hospital stay for which a supplemental payment is available under subparagraph (A), no supplemental payment shall be available under this subparagraph.

(C) The allocations and total available fund amount shall be adjusted as necessary so as to be consistent with the requirement in paragraph (1) of subdivision (g).

(g) (1) The department shall obtain federal financial participation for moneys in the fund to the full extent permitted by federal law. Moneys shall be allocated from the fund by the department to be matched by federal funds in accordance with the Special Terms and Conditions for the Medicaid Demonstration, or pursuant to other federal approvals or waivers as necessary.

(2) The department shall disburse moneys from the fund to the LIHPs in accordance with the calculations in subdivision (f) within 60 days after completing the calculations. The moneys shall be distributed to the LIHPs solely for purposes of funding the nonfederal portion of the supplemental out-of-network amounts determined for each service in subdivision (f) to out-of-network hospital emergency care services providers.

(3) The LIHPs shall make the supplemental payments described in paragraph (2) within 30 days of receiving the nonfederal share from the department.

(h) It is the intent of the Legislature that for each subject fiscal year, the first twenty million dollars (\$20,000,000), or, for subject fiscal year 2013–14, the first ten million dollars (\$10,000,000), of the nonfederal share for the emergency hospital services payments are funded with intergovernmental transfers described in paragraph (1) of subdivision (b).

(i) This section shall be implemented only if, and to the extent that, both of the following conditions exist:

(1) All necessary federal approvals have been obtained and federal financial participation is available.

(2) The ability of the department to maximize federal funding is not jeopardized.

(j) In designing and implementing the program for supplemental payments created under this section, the director shall have discretion, after consultation with the hospital community and the LIHPs, to modify timelines and to make modifications to the operational requirements of this section, but only to the extent necessary to secure federal approval or to ensure successful operation of the program and to effectuate the intent of this section.

(k) Notwithstanding any other provision of this article or Article 5.229 (commencing with Section 14169.31), federal disapproval of the program developed pursuant to the requirements of this section shall not affect the implementation of the remainder of this article or Article 5.229 (commencing with Section 14169.31).

14169.8. (a) The amount of any payments made under this article to private hospitals, including the amount of payments made under Sections 14169.2, 14169.3, and 14169.7.5 and additional payments to private hospitals by managed health care plans pursuant to Section 14169.5, shall not be included in the calculation of the low-income percent or the OBRA 1993

payment limitation, as defined in paragraph (24) of subdivision (a) of Section 14105.98, for purposes of determining payments to private hospitals.

(b) The amount of any payments made to a hospital under this article shall not be included in the calculation of stabilization funding under Article 5.2 (commencing with Section 14166) or any successor legislation, including legislation implementing California's Bridge to Reform Section 1115(a) Medicaid Demonstration (11-W-00193/9).

14169.9. The payments to a hospital under this article shall not be made for any portion of a subject fiscal year during which the hospital is closed. A hospital shall be deemed to be closed on the first day of any period during which the hospital has no acute inpatients for at least 30 consecutive days. Payments under this article to a hospital that is closed during any portion of a subject fiscal year shall be reduced by applying a fraction, expressed as a percentage, the numerator of which shall be the number of days during the applicable subject fiscal year that the hospital is closed and the denominator of which shall be 365.

14169.10. (a) For only as long as the selective provider contracting program pursuant to Article 2.6 (commencing with Section 14081) is in effect, the amount of any supplemental payment under this article for a new noncontract hospital shall be reduced by the amount by which that hospital's overall payment for services for Medi-Cal patients during the program period was increased by reason of its becoming a noncontract hospital.

(b) The amount of the nonfederal share of any supplemental payment reduction under subdivision (a) shall be transferred from the Hospital Quality Assurance Revenue Fund to the General Fund at the time the reduced supplemental payment under subdivision (a) is made.

(c) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department shall implement this section by means of policy letters or similar instructions, without taking further regulatory action.

14169.11. The department shall make disbursements from the Hospital Quality Assurance Revenue Fund consistent with the following:

(a) Fund disbursements shall be made periodically within 15 days of each date on which quality assurance fees are due from hospitals.

(b) The funds shall be disbursed in accordance with the order of priority set forth in subdivision (b) of Section 14169.33, except that funds may be set aside for increased capitation payments to managed care health plans pursuant to subdivision (f) of Section 14169.5.

(c) The funds shall be disbursed in each payment cycle in accordance with the order of priority set forth in subdivision (b) of Section 14169.33 as modified by subdivision (b), and so that the supplemental payments and grants to hospitals, increased capitation payments to managed health care plans, increased payments to mental health plans, direct payments to hospitals of acute psychiatric supplemental payments, and supplemental payments for out-of-network emergency and poststabilization services for the Low Income Health Program are made to the maximum extent for which funds are available.

(d) To the maximum extent possible, consistent with the availability of funds in the quality assurance fund and the timing of federal approvals, the supplemental payments and grants to hospitals, increased capitation payments to managed health care plans, and increased payments to mental health plans under this article shall be made before December 31, 2013, except that supplemental payments for out-of-network emergency and poststabilization services for the Low Income Health Program shall be made before April 1, 2014.

(e) The aggregate amount of funds to be disbursed to private hospitals shall be determined under Sections 14169.2 and 14169.3. The aggregate amount of funds to be disbursed to managed health care plans shall be determined under Section 14169.5. The aggregate amount of direct grants to designated and nondesignated public hospitals shall be determined under Section 14169.7. The aggregate amount of supplemental payments to be disbursed to private hospitals and nondesignated public hospitals for out-of-network and poststabilization services for the Low Income Health Program shall be determined under Section 14169.7.5.

14169.12. (a) Exclusive of payments made under Article 5.21 (commencing with Section 14167.1) and Article 5.226 (commencing with Section 14168.1), payment rates for hospital outpatient services, furnished by private hospitals, nondesignated public hospitals, and designated public hospitals before December 31, 2013, exclusive of amounts payable under this article, shall not be reduced below the rates in effect on July 1, 2011.

(b) Rates payable to hospitals for hospital inpatient services furnished before December 31, 2013, under contracts negotiated pursuant to the selective provider contracting program under Article 2.6 (commencing with Section 14081), shall not be reduced below the contract rates in effect on July 1, 2011. This subdivision shall not prohibit changes to the supplemental payments paid to individual hospitals under Sections 14166.12, 14166.17, and 14166.23, provided that the aggregate amount of the payments for each subject fiscal year is not less than the minimum amount permitted under Section 14167.13.

(c) Notwithstanding Section 14105.281, exclusive of payments made under Article 5.21 (commencing with Section 14167.1) and Article 5.226 (commencing with Section 14168.1), payments to private hospitals for hospital inpatient services furnished before January 1, 2014, that are not reimbursed under a contract negotiated pursuant to the selective provider contracting program under Article 2.6 (commencing with Section 14081), exclusive of amounts payable under this article, shall not be less than the amount of payments that would have been made under the payment methodology in effect on the effective date of this article.

(d) Upon the implementation of the new Medi-Cal inpatient hospital reimbursement methodology based on diagnosis-related groups pursuant to Section 14105.28, the requirements in subdivisions (b) and (c) shall be met if the rates paid under the new Medi-Cal inpatient hospital reimbursement methodology based on diagnosis-related groups result in an average payment per discharge to all hospitals subject to the new reimbursement methodology,

calculated on an aggregate basis per subject fiscal year, exclusive of amounts payable under this article, amounts payable under Sections 14166.11 and 14166.23, and if amounts payable under Sections 14166.12 and 14166.17 are not included in the payments under the diagnosis-related group methodology and continue to be paid separately to hospitals, exclusive of those amounts, that is not less than the average payment per discharge to the hospitals, exclusive of amounts payable under this article, amounts payable under Sections 14166.11 and 14166.23, and if amounts payable under Sections 14166.12 and 14166.17 are not included in the payments under the diagnosis-related group methodology and continue to be paid separately to hospitals, exclusive of those amounts, calculated on an aggregate basis for the fiscal year ending June 30, 2012, adjusted, in consultation with the hospital community, to reflect the movement of populations into managed care under Article 5.4 (commencing with Section 14180).

(e) Solely for purposes of this article, a rate reduction or a change in a rate methodology that is enjoined by a court shall be included in the determination of a rate or a rate methodology until all appeals or judicial reviews have been exhausted and the rate reduction or change in rate methodology has been permanently enjoined, denied by the federal government, or otherwise permanently prevented from being implemented.

(f) Disproportionate share replacement payments to private hospitals for the 2011–12 fiscal year shall be not less than the amount determined pursuant to Section 14166.11 as reduced pursuant to paragraph (3) of subdivision (b) of Section 14166.115. Disproportionate share replacement payments to private hospitals for the 2012–13 fiscal year shall not be less than the amount determined pursuant to Section 14166.11, as reduced pursuant to paragraph (4) of subdivision (b) of Section 14166.115. Disproportionate share replacement payments to private hospitals for the period of July 1, 2013, through December 31, 2013, shall be not less than the amount determined pursuant to Section 14166.11, as reduced by paragraph (5) of subdivision (b) of Section 14166.115. For purposes of this subdivision, references to Section 14166.11 are to the version of Section 14166.11 in effect on the effective date of the act that added this subdivision.

14169.13. (a) The director shall do all of the following:

(1) Promptly submit any state plan amendment or waiver request that may be necessary to implement this article.

(2) Promptly seek federal approvals or waivers as may be necessary to implement this article and to obtain federal financial participation to the maximum extent possible for the payments under this article.

(3) Amend the contracts between the managed health care plans and the department as necessary to incorporate the provisions of Sections 14169.5 and 14169.6 and promptly seek all necessary federal approvals of those amendments. The department shall pursue amendments to the contracts as soon as possible after the effective date of this article and Article 5.229 (commencing with Section 14169.31), and shall not wait for federal approval of this article or Article 5.229 (commencing with Section 14169.31) prior

to pursuing amendments to the contracts. The amendments to the contracts shall, among other provisions, set forth an agreement to increase capitation payments to managed health care plans under Section 14169.5 and increase payments to hospitals under Section 14169.6 in a manner that relates back to July 1, 2011, or as soon thereafter as possible, conditioned on obtaining all federal approvals necessary for federal financial participation for the increased capitation payments to the managed health care plans.

(b) In implementing this article, the department may utilize the services of the Medi-Cal fiscal intermediary through a change order to the fiscal intermediary contract to administer this program, consistent with the requirements of Sections 14104.6, 14104.7, 14104.8, and 14104.9. Contracts entered into for purposes of implementing this article or Article 5.229 (commencing with Section 14169.31) shall not be subject to Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code.

(c) This article shall become inoperative if either of the following occurs:

(1) In the event, and on the effective date, of a final judicial determination made by any court of appellate jurisdiction or a final determination by the federal Department of Health and Human Services or the federal Centers for Medicare and Medicaid Services that any element of this article or any provision of Section 14166.115 cannot be implemented.

(2) In the event both of the following conditions exist:

(A) The federal Centers for Medicare and Medicaid Services denies approval for, or does not approve before January 1, 2013, the implementation of Article 5.229 (commencing with Section 14169.31) or this article.

(B) Either or both articles cannot be modified by the department pursuant to subdivision (e) of Section 14169.33 in order to meet the requirements of federal law or to obtain federal approval.

(d) If this article becomes inoperative pursuant to paragraph (1) of subdivision (c) and the determination applies to any period or periods of time prior to the effective date of the determination, the department shall have authority to recoup all payments made pursuant to this article during that period or those periods of time.

(e) In the event any hospital, or any party on behalf of a hospital, shall initiate a case or proceeding in any state or federal court in which the hospital seeks any relief of any sort whatsoever, including, but not limited to, monetary relief, injunctive relief, declaratory relief, or a writ, based in whole or in part on a contention that any or all of this article or Article 5.229 (commencing with Section 14169.31) is unlawful and may not be lawfully implemented, both of the following shall apply:

(1) Payments shall not be made to the hospital pursuant to this article until the case or proceeding is finally resolved, including the final disposition of all appeals.

(2) Any amount computed to be payable to the hospital pursuant to this section for a project year shall be withheld by the department and shall be paid to the hospital only after the case or proceeding is finally resolved, including the final disposition of all appeals.

(f) Subject to Section 14169.34, no payment shall be made under this article until all necessary federal approvals for the payment and for the fee provisions in Article 5.229 (commencing with Section 14169.31) have been obtained and the fee has been imposed and collected. Notwithstanding any other provision of law, payments under this article shall be made only to the extent that the fee established in Article 5.229 (commencing with Section 14169.31) is collected and available to cover the nonfederal share of the payments.

(g) A hospital's receipt of payments under this article for services rendered prior to the effective date of this article is conditioned on the hospital's continued participation in Medi-Cal for at least 30 days after the effective date of this article.

(h) All payments made by the department to hospitals, managed health care plans, and mental health plans under this article shall be made only from the following:

(1) The quality assurance fee set forth in Article 5.229 (commencing with Section 14169.31) and due and payable on or before December 31, 2013, along with any interest or other investment income thereon.

(2) Federal reimbursement and any other related federal funds.

14169.14. Notwithstanding any other provision of this article or Article 5.229 (commencing with Section 14169.31), the director may proportionately reduce the amount of any supplemental payments or increased capitation payments under this article to the extent that the payment would result in the reduction of other amounts payable to a hospital or managed health care plan or mental health plan due to the application of federal law.

14169.15. The director may, pursuant to Section 14169.40, decide not to implement or to discontinue implementation of this article and Article 5.229 (commencing with Section 14169.31), and to retroactively invalidate the requirements for supplemental payments or other payments under this article.

14169.16. This article shall remain in effect only until July 1, 2014, the date the last payment of quality assurance fee payments pursuant to Article 5.229 (commencing with Section 14169.31), or the date of the last payment from the department pursuant to this article, whichever is later, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2015, deletes or extends that date.

14169.17. Notwithstanding any other provision of law, if federal approval or a letter that indicates likely federal approval in accordance with Section 14169.34 has not been received on or before September 1, 2013, then this article shall become inoperative, and as of September 1, 2013, is repealed, unless a later enacted statute, that is enacted before September 1, 2013, deletes or extends that date.

14169.17.5. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department shall implement this article by means of policy letters or similar instructions, without taking further regulatory action.

14169.18. (a) If the director determines that this article has become inoperative pursuant to Section 14169.13, 14169.17, or 14169.40, the director shall execute a declaration stating that this determination has been made. The director shall retain the declaration and provide a copy, within five working days of the execution of the declaration, to the fiscal and appropriate policy committees of the Legislature.

(b) In addition to the requirements specified in subdivision (a), the director shall post the declaration on the department's Internet Web site and the director shall send the declaration to the Secretary of State, the Secretary of the Senate, the Chief Clerk of the Assembly, and the Legislative Counsel.

14169.19. (a) It is the intent of the Legislature to consider legislation requiring the director to seek approval to increase payments to hospitals in accordance with subdivision (b) of Section 14169.2, subdivision (a) of Section 14169.3, and subdivision (c) of Section 14169.5, and to adopt a corresponding increase in the fee imposed pursuant to Article 5.229 (commencing with Section 14169.31), consistent with federal law and regulations, if the director determines that the maximum available upper payment limits in subdivision (b) of Section 14169.2 or subdivision (a) of Section 14169.3, or the amount of federal financial participation for increased capitation payments to managed care health plans in subdivision (c) of Section 14169.5, have increased during the program period.

(b) It is the intent of the Legislature that the legislation described in subdivision (a) shall do both of the following:

(1) Require the director to work in consultation with the hospital community in seeking any necessary approvals from the federal Centers for Medicare and Medicaid Services to increase payments to hospitals and to impose corresponding fee increases.

(2) Require that, in the event that the director determines that the maximum available upper payment limits in subdivision (b) of Section 14169.2 or subdivision (a) of Section 14169.3, or the amount of federal financial participation for increased capitation payments to managed care health plans in subdivision (c) of Section 14169.5, have increased during the program period, the increases shall first be made available for the purposes of this section prior to being used for other purposes.

(c) Notwithstanding any other provision of this article or Article 5.229 (commencing with Section 14169.31), failure to secure, or denial of, any necessary federal approvals required by the legislation described in subdivision (a) shall not affect implementation of this article or Article 5.229 (commencing with Section 14169.31).

SEC. 8. Article 5.229 (commencing with Section 14169.31) is added to Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:

## Article 5.229. Private Hospital Quality Assurance Fee Act of 2011

14169.31. For the purposes of this article, the following definitions shall apply:

(a) (1) “Aggregate quality assurance fee” means, with respect to a hospital that is not a prepaid health plan hospital, the sum of all of the following:

(A) The annual fee-for-service days for an individual hospital multiplied by the fee-for-service per diem quality assurance fee rate.

(B) The annual managed care days for an individual hospital multiplied by the managed care per diem quality assurance fee rate.

(C) The annual Medi-Cal days for an individual hospital multiplied by the Medi-Cal per diem quality assurance fee rate.

(2) “Aggregate quality assurance fee” means, with respect to a hospital that is a prepaid health plan hospital, the sum of all of the following:

(A) The annual fee-for-service days for an individual hospital multiplied by the fee-for-service per diem quality assurance fee rate.

(B) The annual managed care days for an individual hospital multiplied by the prepaid health plan hospital managed care per diem quality assurance fee rate.

(C) The annual Medi-Cal managed care days for an individual hospital multiplied by the prepaid health plan hospital Medi-Cal managed care per diem quality assurance fee rate.

(D) The annual Medi-Cal fee-for-service days for an individual hospital multiplied by the Medi-Cal per diem quality assurance fee rate.

(3) “Aggregate quality assurance fee after the application of the fee percentage” means the aggregate quality assurance fee multiplied by the fee percentage for each subject fiscal year.

(b) “Annual fee-for-service days” means the number of fee-for-service days of each hospital subject to the quality assurance fee, as reported on the days data source.

(c) “Annual managed care days” means the number of managed care days of each hospital subject to the quality assurance fee, as reported on the days data source.

(d) “Annual Medi-Cal days” means the number of Medi-Cal days of each hospital subject to the quality assurance fee, as reported on the days data source.

(e) “Converted hospital” shall mean a hospital described in subdivision (b) of Section 14169.1.

(f) “Days data source” means the hospital’s Annual Financial Disclosure Report filed with the Office of Statewide Health Planning and Development as of May 5, 2011, for its fiscal year ending during 2009.

(g) “Designated public hospital” shall have the meaning given in subdivision (d) of Section 14166.1 as of January 1, 2011.

(h) “Exempt facility” means any of the following:

(1) A public hospital, which shall include either of the following:

(A) A hospital, as defined in paragraph (25) of subdivision (a) of Section 14105.98.

(B) A tax-exempt nonprofit hospital that is licensed under subdivision (a) of Section 1250 of the Health and Safety Code and operating a hospital owned by a local health care district, and is affiliated with the health care district hospital owner by means of the district's status as the nonprofit corporation's sole corporate member.

(2) With the exception of a hospital that is in the Charitable Research Hospital peer group, as set forth in the 1991 Hospital Peer Grouping Report published by the department, a hospital that is a hospital designated as a specialty hospital in the hospital's Office of Statewide Health Planning and Development Hospital Annual Financial Disclosure Report for the hospital's fiscal year ending in the 2009 calendar year.

(3) A hospital that satisfies the Medicare criteria to be a long-term care hospital.

(4) A small and rural hospital as specified in Section 124840 of the Health and Safety Code designated as that in the hospital's Office of Statewide Health Planning and Development Hospital Annual Financial Disclosure Report for the hospital's fiscal year ending in the 2009 calendar year.

(i) "Federal approval" means the last approval by the federal government required for the implementation of this article and Article 5.228 (commencing with Section 14169.1).

(j) (1) "Fee-for-service per diem quality assurance fee rate" means a fixed daily fee on fee-for-service days.

(2) The fee-for-service per diem quality assurance fee rate shall be three hundred nine dollars and eighty-six cents (\$309.86) per day.

(3) Upon federal approval or conditional federal approval described in Section 14169.34, the director shall determine the fee-for-service per diem quality assurance fee rate based on the funds required to make the payments specified in Article 5.228 (commencing with Section 14169.1), in consultation with the hospital community.

(k) "Fee-for-service days" means inpatient hospital days where the service type is reported as "acute care," "psychiatric care," and "rehabilitation care," and the payer category is reported as "Medicare traditional," "county indigent programs-traditional," "other third parties-traditional," "other indigent," and "other payers," for purposes of the Annual Financial Disclosure Report submitted by hospitals to the Office of Statewide Health Planning and Development.

(l) "Fee percentage" means a fraction, expressed as a percentage, the numerator of which is the amount of payments for each subject fiscal year under Sections 14169.2, 14169.3, 14169.5, and 14169.7.5, for which federal financial participation is available and the denominator of which is four billion eight hundred ninety-seven million eight hundred sixty-six thousand nine hundred thirty-seven dollars (\$4,897,866,937).

(m) "General acute care hospital" means any hospital licensed pursuant to subdivision (a) of Section 1250 of the Health and Safety Code.

(n) “Hospital community” means any hospital industry organization or system that represents hospitals.

(o) “Managed care days” means inpatient hospital days where the service type is reported as “acute care,” “psychiatric care,” and “rehabilitation care,” and the payer category is reported as “Medicare managed care,” “county indigent programs-managed care,” and “other third parties-managed care,” for purposes of the Annual Financial Disclosure Report submitted by hospitals to the Office of Statewide Health Planning and Development.

(p) “Managed care per diem quality assurance fee rate” means a fixed fee on managed care days of eighty-six dollars and forty cents (\$86.40) per day.

(q) “Medi-Cal days” means inpatient hospital days where the service type is reported as “acute care,” “psychiatric care,” and “rehabilitation care,” and the payer category is reported as “Medi-Cal traditional” and “Medi-Cal managed care,” for purposes of the Annual Financial Disclosure Report submitted by hospitals to the Office of Statewide Health Planning and Development.

(r) “Medi-Cal fee-for-service days” means inpatient hospital days where the service type is reported as “acute care,” “psychiatric care,” and “rehabilitation care,” and the payer category is reported as “Medi-Cal traditional” for purposes of the Annual Financial Disclosure Report submitted by hospitals to the Office of Statewide Health Planning and Development.

(s) “Medi-Cal managed care days” means inpatient hospital days as reported on the days data source where the service type is reported as “acute care,” “psychiatric care,” and “rehabilitation care,” and the payer category is reported as “Medi-Cal managed care” for purposes of the Annual Financial Disclosure Report submitted by hospitals to the Office of Statewide Health Planning and Development.

(t) “Medi-Cal per diem quality assurance fee rate” means a fixed fee on Medi-Cal days of three hundred eighty-three dollars and twenty cents (\$383.20) per day.

(u) “New hospital” means a hospital operation, business, or facility functioning under current or prior ownership as a private hospital that does not have a days data source or a hospital that has a days data source in whole, or in part, from a previous operator where there is an outstanding monetary liability owed to the state in connection with the Medi-Cal program and the new operator did not assume liability for the outstanding monetary obligation.

(v) “Nondesignated public hospital” means either of the following:

(1) A public hospital that is licensed under subdivision (a) of Section 1250 of the Health and Safety Code, is not designated as a specialty hospital in the hospital’s Annual Financial Disclosure Report for the hospital’s latest fiscal year ending in 2009, and satisfies the definition in paragraph (25) of subdivision (a) of Section 14105.98, excluding designated public hospitals.

(2) A tax-exempt nonprofit hospital that is licensed under subdivision (a) of Section 1250 of the Health and Safety Code, is not designated as a specialty hospital in the hospital’s Annual Financial Disclosure Report for

the hospital's latest fiscal year ending in 2009, is operating a hospital owned by a local health care district, and is affiliated with the health care district hospital owner by means of the district's status as the nonprofit corporation's sole corporate member.

(w) "Prepaid health plan hospital" means a hospital owned by a nonprofit public benefit corporation that shares a common board of directors with a nonprofit health care service plan.

(x) "Prepaid health plan hospital managed care per diem quality assurance fee rate" means a fixed fee on non-Medi-Cal managed care days for prepaid health plan hospitals of forty-eight dollars and thirty-eight cents (\$48.38) per day.

(y) "Prepaid health plan hospital Medi-Cal managed care per diem quality assurance fee rate" means a fixed fee on Medi-Cal managed care days for prepaid health plan hospitals of two hundred fourteen dollars and fifty-nine cents (\$214.59) per day.

(z) "Prior fiscal year data" means any data taken from sources that the department determines are the most accurate and reliable at the time the determination is made, or may be calculated from the most recent audited data using appropriate update factors. The data may be from prior fiscal years, current fiscal years, or projections of future fiscal years.

(aa) "Private hospital" means a hospital that meets all of the following conditions:

(1) Is licensed pursuant to subdivision (a) of Section 1250 of the Health and Safety Code.

(2) Is in the Charitable Research Hospital peer group, as set forth in the 1991 Hospital Peer Grouping Report published by the department, or is not designated as a specialty hospital in the hospital's Office of Statewide Health Planning and Development Annual Financial Disclosure Report for the hospital's latest fiscal year ending in 2009.

(3) Does not satisfy the Medicare criteria to be classified as a long-term care hospital.

(4) Is a nonpublic hospital, nonpublic converted hospital, or converted hospital as those terms are defined in paragraphs (26) to (28), inclusive, respectively, of subdivision (a) of Section 14105.98.

(ab) "Program period" means the period from July 1, 2011, to December 31, 2013, inclusive.

(ac) "Subject fiscal quarter" means a state fiscal quarter during the program period.

(ad) "Subject fiscal year" means a state fiscal year that ends after July 1, 2011, and begins before January 1, 2014.

(ae) "Upper payment limit" means a federal upper payment limit on the amount of the Medicaid payment for which federal financial participation is available for a class of service and a class of health care providers, as specified in Part 447 of Title 42 of the Code of Federal Regulations. The applicable upper payment limit shall be separately calculated for inpatient and outpatient hospital services.

14169.32. (a) There shall be imposed on each general acute care hospital that is not an exempt facility a quality assurance fee, provided that a quality assurance fee under this article shall not be imposed on a converted hospital.

(b) The quality assurance fee shall be computed starting on July 1, 2011, and continue through and including December 31, 2013.

(c) Subject to Section 14169.34, upon receipt of federal approval, the following shall become operative:

(1) Within 10 business days following receipt of the notice of federal approval from the federal government, the department shall send notice to each hospital subject to the quality assurance fee, and publish on its Internet Web site, the following information:

(A) The date that the state received notice of federal approval.

(B) The fee percentage for each subject fiscal year.

(2) The notice to each hospital subject to the quality assurance fee shall also state the following:

(A) The aggregate quality assurance fee after the application of the fee percentage for each subject fiscal year.

(B) The aggregate quality assurance fee.

(C) The amount of each payment due from the hospital with respect to the aggregate quality assurance fee.

(D) The date on which each payment is due.

(3) The hospitals shall pay the aggregate quality assurance fee in 10 equal installments. The department shall establish the date that each installment is due, provided that the first installment shall be due no earlier than 20 days following the department sending the notice pursuant to paragraph (1), and the installments shall be paid at least one month apart, but if possible, the installments shall be paid on a quarterly basis.

(4) Notwithstanding paragraph (3), the amount of each hospital's aggregate quality assurance fee after the application of the fee percentage that has not been paid by the hospital before December 15, 2013, pursuant to paragraph (3), shall be paid by the hospital no later than December 15, 2013.

(d) The quality assurance fee, as paid pursuant to this section, shall be paid by each hospital subject to the fee to the department for deposit in the Hospital Quality Assurance Revenue Fund. Deposits may be accepted at any time and will be credited toward the program period.

(e) This section shall become inoperative if the federal Centers for Medicare and Medicaid Services denies approval for, or does not approve before July 1, 2014, the implementation of this article or Article 5.228 (commencing with Section 14169.1), and either or both articles cannot be modified by the department pursuant to subdivision (d) of Section 14169.33 in order to meet the requirements of federal law or to obtain federal approval.

(f) In no case shall the aggregate fees collected in a federal fiscal year pursuant to this section, Section 14167.32, and Section 14168.32 exceed the maximum percentage of the annual aggregate net patient revenue for hospitals subject to the fee that is prescribed pursuant to federal law and

regulations as necessary to preclude a finding that an indirect guarantee has been created.

(g) (1) Interest shall be assessed on quality assurance fees not paid on the date due at the greater of 10 percent per annum or the rate at which the department assesses interest on Medi-Cal program overpayments to hospitals that are not repaid when due. Interest shall begin to accrue the day after the date the payment was due and shall be deposited in the Hospital Quality Assurance Revenue Fund.

(2) In the event that any fee payment is more than 60 days overdue, a penalty equal to the interest charge described in paragraph (1) shall be assessed and due for each month for which the payment is not received after 60 days.

(h) When a hospital fails to pay all or part of the quality assurance fee on or before the date that payment is due, the department may immediately begin to deduct the unpaid assessment and interest from any Medi-Cal payments owed to the hospital, or, in accordance with Section 12419.5 of the Government Code, from any other state payments owed to the hospital until the full amount is recovered. All amounts, except penalties, deducted by the department under this subdivision shall be deposited in the Hospital Quality Assurance Revenue Fund. The remedy provided to the department by this section is in addition to other remedies available under law.

(i) The payment of the quality assurance fee shall not be considered as an allowable cost for Medi-Cal cost reporting and reimbursement purposes.

(j) The department shall work in consultation with the hospital community to implement this article and Article 5.228 (commencing with Section 14169.1).

(k) This subdivision creates a contractually enforceable promise on behalf of the state to use the proceeds of the quality assurance fee, including any federal matching funds, solely and exclusively for the purposes set forth in this article as they existed on the effective date of this article, to limit the amount of the proceeds of the quality assurance fee to be used to pay for the health care coverage of children to the amounts specified in this article, to limit any payments for the department's costs of administration to the amounts set forth in this article on the effective date of this article, to maintain and continue prior reimbursement levels as set forth in Section 14169.12 on the effective date of that article, and to otherwise comply with all its obligations set forth in Article 5.228 (commencing with Section 14169.1) and this article provided that amendments that arise from, or have as a basis, a decision, advice, or determination by the federal Centers for Medicare and Medicaid Services relating to federal approval of the quality assurance fee or the payments set forth in this article or Article 5.228 (commencing with Section 14169.1) shall control for the purposes of this subdivision.

(l) For the purpose of this article, references to the receipt of notice by the state of federal approval of the implementation of this article shall refer to the last date that the state receives notice of all federal approval or waivers

required for implementation of this article and Article 5.228 (commencing with Section 14169.1).

(m) (1) Effective January 1, 2014, the rates payable to hospitals and managed health care plans under Medi-Cal shall be the rates then payable without the supplemental and increased capitation payments set forth in Article 5.228 (commencing with Section 14169.1).

(2) The supplemental payments and other payments under Article 5.228 (commencing with Section 14169.1) shall be regarded as quality assurance payments, the implementation or suspension of which does not affect a determination of the adequacy of any rates under federal law.

(n) (1) Subject to paragraph (2), the director may waive any or all interest and penalties assessed under this article in the event that the director determines, in his or her sole discretion, that the hospital has demonstrated that imposition of the full quality assurance fee on the timelines applicable under this article has a high likelihood of creating a financial hardship for the hospital or a significant danger of reducing the provision of needed health care services.

(2) Waiver of some or all of the interest or penalties under this subdivision shall be conditioned on the hospital's agreement to make fee payments, or to have the payments withheld from payments otherwise due from the Medi-Cal program to the hospital, on a schedule developed by the department that takes into account the financial situation of the hospital and the potential impact on services.

(3) A decision by the director under this subdivision shall not be subject to judicial review.

(4) If fee payments are remitted to the department after the date determined by the department to be the final date for calculating the final supplemental payments under this article and Article 5.228 (commencing with Section 14169.1), the fee payments shall be retained in the fund for purposes of funding supplemental payments supported by a hospital quality assurance fee program implemented under subsequent legislation, provided, however, that if supplemental payments are not implemented under subsequent legislation, then those fee payments shall be deposited in the Distressed Hospital Fund.

(5) If during the implementation of this article, fee payments that were due under Article 5.21 (commencing with Section 14167.1) and Article 5.22 (commencing with Section 14167.31), or Article 5.226 (commencing with Section 14168.1) and Article 5.227 (commencing with Section 14168.31), are remitted to the department under a payment plan or for any other reason, and the final date for calculating the final supplemental payments under those articles has passed, then those fee payments shall be deposited in the fund to support the uses established by this article.

14169.33. (a) (1) All fees required to be paid to the state pursuant to this article shall be paid in the form of remittances payable to the department.

(2) The department shall directly transmit the fee payments to the Treasurer to be deposited in the Hospital Quality Assurance Revenue Fund, created pursuant to Section 14167.35. Notwithstanding Section 16305.7 of

the Government Code, any interest and dividends earned on deposits in the fund from the proceeds of the fee assessed pursuant to this article shall be retained in the fund for purposes specified in subdivision (b).

(b) Notwithstanding subdivision (c) of Section 14167.35 and subdivision (b) of Section 14168.33, all funds from the proceeds of the fee assessed pursuant to this article in the Hospital Quality Assurance Revenue Fund, together with any interest and dividends earned on money in the fund, shall, upon appropriation by the Legislature, continue to be used exclusively to enhance federal financial participation for hospital services under the Medi-Cal program, to provide additional reimbursement to, and to support quality improvement efforts of, hospitals, and to minimize uncompensated care provided by hospitals to uninsured patients, as well as to pay for the state's administrative costs and to provide funding for children's health coverage, in the following order of priority:

(1) To pay for the department's staffing and administrative costs directly attributable to implementing Article 5.228 (commencing with Section 14169.1) and this article, not to exceed two million five hundred thousand dollars (\$2,500,000) for the program period.

(2) To pay for the health care coverage for children in the amount of eighty-five million dollars (\$85,000,000) for each subject fiscal quarter during the 2011–12 subject fiscal year, and in the amount of ninety-six million seven hundred fifty thousand dollars (\$96,750,000) for each subject fiscal quarter during the 2012–13 and 2013–14 subject fiscal years.

(3) To make increased capitation payments to managed health care plans pursuant to Article 5.228 (commencing with Section 14169.1).

(4) To reimburse the General Fund for the increase in the overall compensation to a private hospital that is attributable to its change in status from contract hospital to noncontract hospital, pursuant to subdivision (a) of Section 14169.10.

(5) To make increased payments or grants to hospitals pursuant to Article 5.228 (commencing with Section 14169.1).

(6) To make increased payments to mental health plans pursuant to Article 5.228 (commencing with Section 14169.1).

(7) To make supplemental payments for out-of-network emergency and poststabilization services provided by private hospitals and nondesignated public hospitals to Medi-Cal expansion enrollees in the Low Income Health Program in the amount of thirty-seven million five hundred thousand dollars (\$37,500,000) for each fiscal quarter pursuant to Section 14169.7.5.

(c) Any amounts of the quality assurance fee collected in excess of the funds required to implement subdivision (b), including any funds recovered under subdivision (d) of Section 14169.13 or subdivision (e) of Section 14169.38, shall be refunded to general acute care hospitals, pro rata with the amount of quality assurance fee paid by the hospital, subject to the limitations of federal law. If federal rules prohibit the refund described in this subdivision, the excess funds shall be deposited in the Distressed Hospital Fund to be used for the purposes described in Section 14166.23, and shall be supplemental to and not supplant existing funds.

(d) Any methodology or other provision specified in Article 5.228 (commencing with Section 14169.1) or this article may be modified by the department, in consultation with the hospital community, to the extent necessary to meet the requirements of federal law or regulations to obtain federal approval or to enhance the probability that federal approval can be obtained, provided the modifications do not violate the spirit and intent of Article 5.228 (commencing with Section 14169.1) or this article and are not inconsistent with the conditions of implementation set forth in Section 14169.40.

(e) The department, in consultation with the hospital community, shall make adjustments, as necessary, to the amounts calculated pursuant to Section 14169.32 in order to ensure compliance with the federal requirements set forth in Section 433.68 of Title 42 of the Code of Federal Regulations or elsewhere in federal law.

(f) The department shall request approval from the federal Centers for Medicare and Medicaid Services for the implementation of this article. In making this request, the department shall seek specific approval from the federal Centers for Medicare and Medicaid Services to exempt providers identified in this article as exempt from the fees specified, including the submission, as may be necessary, of a request for waiver of the broad-based requirement, waiver of the uniform fee requirement, or both, pursuant to paragraphs (1) and (2) of subdivision (e) of Section 433.68 of Title 42 of the Code of Federal Regulations.

(g) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department may implement this article or Article 5.228 (commencing with Section 14169.1) by means of provider bulletins, all plan letters, or other similar instruction, without taking regulatory action. The department shall also provide notification to the Joint Legislative Budget Committee and to the appropriate policy and fiscal committees of the Legislature within five working days when the above-described action is taken in order to inform the Legislature that the action is being implemented.

14169.34. (a) Notwithstanding any other provision of this article or Article 5.228 (commencing with Section 14169.1) requiring federal approvals, the department may impose and collect the quality assurance fee and may make payments under this article and Article 5.228 (commencing with Section 14169.1), including increased capitation payments, based upon receiving a letter from the federal Centers for Medicare and Medicaid Services or the United States Department of Health and Human Services that indicates likely federal approval, but only if and to the extent that the letter is sufficient as set forth in subdivision (b).

(b) In order for the letter to be sufficient under this section, the director shall find that the letter meets both of the following requirements:

(1) The letter is in writing and signed by an official of the federal Centers for Medicare and Medicaid Services or an official of the United States Department of Health and Human Services.

(2) The director, after consultation with the hospital community, has determined, in the exercise of his or her sole discretion, that the letter provides a sufficient level of assurance to justify advanced implementation of the fee and payment provisions.

(c) Nothing in this section shall be construed as modifying the requirement under Section 14169.13 that payments shall be made only to the extent a sufficient amount of funds collected as the quality assurance fee are available to cover the nonfederal share of those payments.

(d) Upon notice from the federal government that final federal approval for the fee model under this article or for any payment method under Article 5.228 (commencing with Section 14169.1) has been denied, any fees collected pursuant to this section shall be refunded and any payments made pursuant to this article or Article 5.228 (commencing with Section 14169.1) shall be recouped, including, but not limited to, supplemental payments, increased capitation payments, payments to hospitals by health care plans resulting from the increased capitation payments, increased payments to mental health plans, and payments for the health care coverage of children. To the extent fees were paid by a hospital that also received payments under this section, the payments may first be recouped from fees that would otherwise be refunded to the hospital prior to the use of any other recoupment method allowed under law.

(e) Any payment made pursuant to this section shall be a conditional payment until all final federal approvals necessary to fully implement this article and Article 5.228 (commencing with Section 14169.1) have been received.

(f) The director shall have broad authority under this section to collect the quality assurance fee for an interim period after receipt of the letter described in subdivision (a) pending receipt of all necessary federal approvals. This authority shall include discretion to determine both of the following:

(1) Whether the quality assurance fee should be collected on a full or pro rata basis during the interim period.

(2) The dates on which payments of the quality assurance fee are due.

(g) The department may draw against the Hospital Quality Assurance Revenue Fund for all administrative costs associated with implementation under this article or Article 5.228 (commencing with Section 14169.1).

(h) This section shall be implemented only to the extent federal financial participation is not jeopardized by implementation prior to the receipt of all necessary final federal approvals.

14169.35. (a) Notwithstanding any other provision of law, the director shall have discretion to modify any timeline or timelines in this article or Article 5.228 (commencing with Section 14169.1) if the letter that indicates likely federal approval, as described in Section 14169.34, is not secured by December 15, 2013, and the director determines that it is impossible from an operational perspective to implement a timeline or timelines without the modification.

(b) The department shall notify the fiscal and policy committees of the Legislature prior to implementing a modified timeline or timelines under subdivision (a).

(c) The department shall consult with representatives of the hospital community in developing a modified timeline or timelines pursuant to this section.

(d) The discretion to modify timelines under this section shall include, but not be limited to, discretion to accelerate payments to plans or hospitals.

14169.36. (a) Upon receipt of a letter that indicates likely federal approval that the director determines is sufficient for implementation under Section 14169.34, or upon the receipt of all final federal approvals necessary for the implementation of this article and Article 5.228 (commencing with Section 14169.1), the following shall occur:

(1) To the maximum extent possible, and consistent with the availability of funds in the Hospital Quality Assurance Revenue Fund, the department shall make all of the payments under Sections 14169.2, 14169.3, 14169.5, 14169.7, and 14169.7.5, including, but not limited to, supplemental payments and increased capitation payments, prior to January 1, 2014.

(2) The department shall make supplemental payments to hospitals under Article 5.228 (commencing with Section 14169.1) consistent with the timeframe described in Section 14169.11 or a modified timeline developed pursuant to Section 14169.35.

(b) Notwithstanding any other provision of this article or Article 5.228 (commencing with Section 14169.1), if the director determines, on or after December 15, 2013, that there are insufficient funds available in the Hospital Quality Assurance Revenue Fund to make all scheduled payments under Article 5.228 (commencing with Section 14169.1) before January 1, 2014, he or she shall consult with representatives of the hospital community to develop an acceptable plan for making additional payments to hospitals and managed health care plans to maximize the use of delinquent fee payments or other deposits or interest projected to become available in the fund after December 15, 2013, but before June 15, 2014.

(c) Nothing in this section shall require the department to continue to make payments under Article 5.228 (commencing with Section 14169.1) if, after the consultation required under subdivision (b), the director determines in the exercise of his or her sole discretion that a workable plan for the continued payments cannot be developed.

(d) Subdivisions (b) and (c) shall be implemented only if and to the extent federal financial participation is available for continued supplemental payments and to providers and continued increased capitation payments to managed health care plans.

(e) If any payment or payments made pursuant to this section are found to be inconsistent with federal law, the department shall recoup the payments by means of withholding or any other available remedy.

(f) Nothing in this section shall be read as affecting the department's ongoing authority to continue, after December 31, 2013, to collect quality assurance fees imposed on or before December 31, 2013.

14169.37. Notwithstanding any other provision of law, if actual federal approval or a letter that indicates likely federal approval in accordance with Section 14169.34 has not been received on or before December 1, 2013, then this article shall become inoperative, and as of December 1, 2013, is repealed, unless a later enacted statute, that is enacted before December 1, 2013, deletes or extends that date.

14169.38. (a) This article shall be implemented only as long as all of the following conditions are met:

(1) Subject to Section 14169.33, the quality assurance fee is established in a manner that is fundamentally consistent with this article.

(2) The quality assurance fee, including any interest on the fee after collection by the department, is deposited in a segregated fund apart from the General Fund.

(3) The proceeds of the quality assurance fee, including any interest and related federal reimbursement, may only be used for the purposes set forth in this article.

(b) No hospital shall be required to pay the quality assurance fee to the department unless and until the state receives and maintains federal approval of the quality assurance fee as set forth in this article and Article 5.228 (commencing with Section 14169.1) from the federal Centers for Medicare and Medicaid Services.

(c) Hospitals shall be required to pay the quality assurance fee to the department as set forth in this article only as long as all of the following conditions are met:

(1) The federal Centers for Medicare and Medicaid Services allows the use of the quality assurance fee as set forth in this article.

(2) Article 5.228 (commencing with Section 14169.1) is enacted and remains in effect and hospitals are reimbursed the increased rates for services during the program period, as defined in Section 14169.1.

(3) The full amount of the quality assurance fee assessed and collected pursuant to this article remains available only for the purposes specified in this article.

(d) This article shall become inoperative if either of the following occurs:

(1) In the event, and on the effective date, of a final judicial determination made by any court of appellate jurisdiction or a final determination by the United States Department of Health and Human Services or the federal Centers for Medicare and Medicaid Services that any element of this article or any provision of Section 14166.115 cannot be implemented.

(2) In the event both of the following conditions exist:

(A) The federal Centers for Medicare and Medicaid Services denies approval for, or does not approve before January 1, 2014, the implementation of Article 5.228 (commencing with Section 14169.1) or this article.

(B) Either or both articles cannot be modified by the department pursuant to subdivision (d) of Section 14169.33 in order to meet the requirements of federal law or to obtain federal approval.

(e) If this article becomes inoperative pursuant to paragraph (1) of subdivision (d) and the determination applies to any period or periods of

time prior to the effective date of the determination, the department may recoup all payments made pursuant to Article 5.228 (commencing with Section 14169.1) during that period or those periods of time.

(f) (1) In the event that all necessary final federal approvals are not received as described and anticipated under this article or Article 5.228 (commencing with Section 14169.1), the director shall have the discretion and authority to develop procedures for recoupment from managed health care plans, and from hospitals under contract with managed health care plans, of any amounts received pursuant to this article or Article 5.228 (commencing with Section 14169.1).

(2) Any procedure instituted pursuant to this subdivision shall be developed in consultation with representatives from managed health care plans and representatives of the hospital community.

(3) Any procedure instituted pursuant to this subdivision shall be in addition to all other remedies made available under the law, pursuant to contracts between the department and the managed health care plans, or pursuant to contracts between the managed health care plans and the hospitals.

14169.39. Notwithstanding any other provision of this article or Article 5.228 (commencing with Section 14169.1), supplemental payments or other payments under Article 5.228 (commencing with Section 14169.1) shall only be required and payable in any quarter for which a fee payment obligation exists.

14169.40. (a) This article and Article 5.228 (commencing with Section 14169.1) shall become inoperative and the requirements for supplemental payments or other payments under Article 5.228 (commencing with Section 14169.1) shall be retroactively invalidated, on the first day of the first month of the calendar quarter following notification to the Joint Legislative Budget Committee by the Department of Finance, that any of the following have occurred:

(1) A final judicial determination by the California Supreme Court or any California Court of Appeal that the revenues collected pursuant to this article that are deposited in the Hospital Quality Assurance Revenue Fund are either of the following:

(A) “General Fund proceeds of taxes appropriated pursuant to Article XIII B of the California Constitution,” as used in subdivision (b) of Section 8 of Article XVI of the California Constitution.

(B) “Allocated local proceeds of taxes,” as used in subdivision (b) of Section 8 of Article XVI of the California Constitution.

(2) The department has sought but has not received federal financial participation for the supplemental payments and other costs required by this article for which federal financial participation has been sought.

(3) A lawsuit related to this article, Article 5.228 (commencing with Section 14169.1), or Section 14166.115 is filed against the state and a preliminary injunction or other order has been issued that results in a financial disadvantage to the state.

(4) The director, in consultation with the Department of Finance, determines that the implementation of this article or Article 5.228 (commencing with Section 14169.1) has resulted in a financial disadvantage to the state.

(b) For purposes of this section, “financial disadvantage to the state” means either of the following:

(1) A loss of federal financial participation.

(2) A cost to the General Fund, that is equal to or greater than one-quarter of 1 percent of the General Fund expenditures authorized in the most recent annual Budget Act.

(c) (1) The director shall have the authority to recoup any payments made under Article 5.228 (commencing with Section 14169.1) if any of the following apply:

(A) Recoupment of payments made under Article 5.228 (commencing with Section 14169.1) is ordered by a court.

(B) Federal financial participation is not available for payments made under Article 5.228 (commencing with Section 14169.1) for which federal financial participation has been sought.

(C) Recoupment of payments made under Article 5.228 (commencing with Section 14169.1) is necessary to prevent a General Fund cost that is estimated to be equal to or greater than one-quarter of 1 percent of the General Fund expenditures authorized in the most recent annual Budget Act and that results from implementation of a court order or the unavailability of federal financial participation.

(2) In the event payments are recouped for a particular quarter, fees paid by a hospital for that quarter pursuant to this article shall be refunded to the extent that the hospital meets both of the following conditions:

(A) The hospital has actually paid the fee for the subject quarter and for all prior quarters.

(B) The hospital has returned the payment received pursuant to Article 5.228 (commencing with Section 14169.1) for that quarter, or has had that payment recouped through a withholding of funds owed by Medi-Cal or other state payments, or recouped through other means.

(d) In the event the department determines that recoupment of supplemental payments is necessary to implement any provision of this section, the department may recoup payments made pursuant to Article 5.228 (commencing with Section 14169.1) from fees paid by the hospital pursuant to this article.

(e) Concurrent with invoking any provision of this section, the director shall notify the fiscal and appropriate policy committees of the Legislature of the intended action and the specific reason or reasons for the proposed action.

14169.40.5. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department shall implement this article by means of policy letters or similar instructions, without taking further regulatory action.

14169.41. This article shall remain in effect only until January 1, 2015, the date of the last payment of quality assurance fee payments pursuant to this article, or the date of the last payment from the department pursuant to Article 5.228 (commencing with Section 14169.1), whichever is later, and as of that date is repealed, unless a later enacted statute, that is enacted before that date, deletes or extends that date.

14169.42. (a) If the director determines that this article has become inoperative pursuant to Section 14169.37, 14169.38, or 14169.40, the director shall execute a declaration stating that this determination has been made. The director shall retain the declaration and provide a copy, within five working days of the execution of the declaration, to the fiscal and appropriate policy committees of the Legislature.

(b) In addition to the requirements specified in subdivision (a), the director shall post the declaration on the department's Internet Web site and the director shall send the declaration to the Secretary of State, the Secretary of the Senate, the Chief Clerk of the Assembly, and the Legislative Counsel.

SEC. 9. Section 15910.4 is added to the Welfare and Institutions Code, to read:

15910.4. As a condition of participation in the voluntary program provided under this part, a LIHP shall comply with Section 14169.7.5.

SEC. 10. There is hereby appropriated to the State Department of Health Care Services the following sums for the purposes specified in Article 5.228 (commencing with Section 14169.1) and Article 5.229 (commencing with Section 14169.31) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code:

(a) The sum of seven billion two hundred million dollars (\$7,200,000,000) from the Hospital Quality Assurance Revenue Fund, to be available for expenditure until January 1, 2015.

(b) The sum of six billion two hundred million dollars (\$6,200,000,000) from the Federal Trust Fund, to be available for expenditure until January 1, 2015.

(c) The sum of two hundred thirty-seven million five hundred thousand dollars (\$237,500,000) from the Low Income Health Program MCE Out-of-Network Emergency Care Services Fund to be available for expenditure until January 1, 2015.

SEC. 11. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make the necessary statutory changes to increase Medi-Cal payments to hospitals and improve access at the earliest possible time, so as to allow this act to be operative as soon as approval from the federal Centers for Medicare and Medicaid Services is obtained by the State Department of Health Care Services, it is necessary that this act take effect immediately.