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AMENDED IN ASSEMBLY MAY 24, 2013

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CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 361

Introduced by Assembly Member Mitchell
(Principal coauthor: Assembly Member Atkins)
(Coauthor: Assembly Member Ammiano)
(Coauthor: Senator Beall)

February 14, 2013

An act to add Article 3.9 (commencing with Section 14127) to Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, relating to Medi-Cal.

LEGISLATIVE COUNSEL'S DIGEST

AB 361, as amended, Mitchell. Medi-Cal: Health Homes for Medi-Cal Enrollees and Section 1115 Waiver Demonstration Populations with Chronic and Complex Conditions.

Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services, under which qualified low-income individuals receive health care services. The Medi-Cal program is, in part, governed and funded by federal Medicaid Program provisions. Existing federal law authorizes a state, subject to federal approval of a state plan amendment, to offer health home services, as defined, to eligible individuals with chronic conditions.

This bill would authorize the department, subject to federal approval, to create a health home program for enrollees with chronic conditions,

as prescribed, as authorized under federal law. This bill would provide that those provisions shall not be implemented unless federal financial participation is available and additional General Fund moneys are not used to fund the administration and service costs, except as specified. This bill would require the department to ensure that an evaluation of the program is completed, if created by the department, and would require that the department submit a report to the appropriate policy and fiscal committees of the Legislature within 2 years after implementation of the program.

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

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

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

3 (a) The Health Homes for Enrollees with Chronic Conditions
4 option (Health Homes option) under Section 2703 of the federal
5 Patient Protection and Affordable Care Act (Affordable Care Act)
6 (42 U.S.C. Sec. 1396w-4) offers an opportunity for California to
7 address chronic and complex health conditions, including social
8 determinants that lead to poor health outcomes and high costs
9 among Medi-Cal beneficiaries.

10 (b) For example, people who frequently use hospitals for reasons
11 that could have been avoided with more appropriate care incur
12 high Medi-Cal costs and suffer high rates of early mortality due
13 to the complexity of their conditions and, often, their negative
14 social determinants of health. Frequent users have difficulties
15 accessing regular or preventive care and complying with treatment
16 protocols, and the significant number who are homeless have no
17 place to store medications, cannot adhere to a healthy diet or
18 maintain appropriate hygiene, face frequent victimization, and
19 lack rest when recovering from illness.

20 (c) Increasingly, health providers are partnering with community
21 behavioral health and social services providers to offer a
22 person-centered interdisciplinary system of care that effectively
23 addresses the needs of enrollees with multiple chronic or complex
24 conditions, including frequent hospital users and people
25 experiencing chronic homelessness. These health homes help

1 people with chronic and complex conditions to access better care
2 and better health, while decreasing costs.

3 (d) Federal guidelines allow the state to access enhanced federal
4 matching rates for health home services under the Health Homes
5 option for multiple target populations to achieve more than one
6 policy goal.

7 SEC. 2. Article 3.9 (commencing with Section 14127) is added
8 to Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions
9 Code, to read:

10

11 Article 3.9. Health Homes for Medi-Cal Enrollees and Section
12 1115 Waiver Demonstration Populations with Chronic and
13 Complex Conditions

14

15 14127. For the purposes of this article, the following definitions
16 shall apply:

17 (a) “Department” means the State Department of Health Care
18 Services.

19 (b) “Federal guidelines” means all federal statutes, and all
20 regulatory and policy guidelines issued by the federal Centers for
21 Medicare and Medicaid Services regarding the Health Homes for
22 Enrollees with Chronic Conditions option under Section 2703 of
23 the federal Patient Protection and Affordable Care Act (Affordable
24 Care Act) (42 U.S.C. Sec. 1396w-4), including the State Medicaid
25 Director Letter issued on November 16, 2010.

26 (c) (1) “Health home” means a provider or team of providers
27 designated by the department that satisfies all of the following:

28 (A) Meets the criteria described in federal guidelines.

29 (B) Offers a whole person approach, including, but not limited
30 to, coordinating other available services that address needs affecting
31 a participating individual’s health.

32 (C) Offers services in a range of settings, as appropriate, to meet
33 the needs of an individual eligible for health home services.

34 (2) Health home ~~partners may include, but are not limited to,~~
35 *team members may include* a health plan, community clinic, a
36 mental health plan, a hospital, physicians, a clinical practice or
37 clinical group practice, rural health clinic, community health center,
38 community mental health center, *substance use disorder treatment*
39 *professionals, school-based health centers, community health*
40 *workers, community-based service organizations, promotores,*

1 home health agency, nurse practitioners, *physician’s assistants*,
2 social workers, *and other* paraprofessionals; *Health home teams*
3 *shall also partner with and provide linkages to* housing navigators;
4 and housing providers.

5 (3) For purposes of serving ~~targeted beneficiaries~~ *the population*
6 identified in subdivision (c) of Section 14127.3, the department
7 ~~shall~~ *may* require a lead provider to be a physician, a community
8 clinic, a mental health plan, a community-based nonprofit
9 organization, a county health system, *a substance use disorder*
10 *treatment professional or facility*, or a hospital.

11 (4) The department may determine the model of health home
12 it intends to create, including any entity, provider, or group of
13 providers operating as a health team, as a team of health care
14 professionals, or as a designated provider, as those terms are
15 defined in Sections ~~3502(e)(2) and 1945(h)(5) and (h)(6) of the~~
16 ~~Affordable Care Act, 256a-1 and 1396w-4(h)(5) and (h)(6) of Title~~
17 ~~42 of the United States Code~~, respectively.

18 (d) “Homeless” has the same meaning as that term is defined
19 in Section 91.5 of Title 24 of the Code of Federal Regulations. A
20 “chronically homeless individual” means ~~an individual whose~~
21 ~~conditions limit his or her activities of daily living and who has~~
22 ~~experienced homelessness for longer than a year or for four or~~
23 ~~more episodes over three years. An~~ *unaccompanied homeless*
24 *individual with a condition limiting his or her activities of daily*
25 *living who has been continuously homeless for a year or more, or*
26 *has had at least four episodes of homelessness in the past three*
27 *years. For purposes of this article, an individual who is currently*
28 *residing in transitional housing or who has been residing in*
29 *permanent supportive housing for less than two years shall be*
30 *considered a chronically homeless individual if the individual was*
31 *chronically homeless prior to his or her residence.*

32 (e) ~~“Targeted beneficiary” means an individual who meets the~~
33 ~~criteria specified in subdivision (c) of Section 14127.3.~~

34 14127.1. Subject to federal approval, the department may do
35 all of the following to create a California Health Home Program
36 (*Health Home Program*), as authorized under Section 2703 of the
37 Affordable Care Act:

38 (a) Design, with opportunity for public comment, a program to
39 provide health home services to Medi-Cal beneficiaries and Section
40 1115 waiver demonstration populations with chronic conditions.

1 *In designing the Health Home Program, the department shall give*
2 *consideration to ensuring continuity of care and avoiding*
3 *disruption of care among a beneficiary's existing providers.*

4 (b) Contract with new providers, ~~new managed care plans,~~
5 existing Medi-Cal providers, existing managed care plans, or
6 counties, *or one or more of these entities*, to provide health home
7 services, as provided in Section 14128.

8 (c) Submit any necessary applications to the federal Centers for
9 Medicare and Medicaid Services for one or more state plan
10 amendments to provide health home services to Medi-Cal
11 beneficiaries, to newly eligible Medi-Cal beneficiaries upon
12 Medicaid expansion under the Affordable Care Act, and, if
13 applicable, to Low Income Health Program (LIHP) enrollees in
14 counties with LIHPs willing to match federal funds.

15 (d) Define the populations of eligible individuals.

16 (e) Develop a payment methodology, including, but not limited
17 to, fee-for-service or per member, per month payment structures
18 that *may* include tiered payment rates that take into account the
19 intensity of services necessary to outreach to, engage, and serve
20 the populations the department identifies.

21 ~~(f) Identify health home services, consistent with federal~~
22 ~~guidelines.~~

23 *(f) Identify the specific health home services needed for each*
24 *population targeted in the Health Home Program, consistent with*
25 *subdivision (b) of Section 14127.2.*

26 ~~(g) The department may submit.~~ Submit applications and operate,
27 to the extent permitted by federal law and to the extent federal
28 approval is obtained, more than one health home ~~program~~ *state*
29 *plan amendment and any necessary Section 1115 waiver*
30 *amendments* for distinct populations, different providers or
31 contractors, or specific geographic areas.

32 *(h) Limit the availability of health home services geographically.*

33 14127.2. (a) The department may design one or more state
34 plan amendments *and any necessary Section 1115 waiver*
35 *amendments* to provide health home services to children ~~and~~ *or*
36 adults, *or both*, pursuant to Section 14127.1, and, ~~in~~ *based on*
37 consultation with stakeholders, shall develop the geographic
38 criteria, beneficiary eligibility criteria, and provider eligibility
39 criteria for each state plan amendment.

1 (b) ~~(1)~~—Subject to federal approval for receipt of the enhanced
2 federal match, services provided under the ~~program~~ *Health Home*
3 *Program* established pursuant to this article shall include all of the
4 following:

5 (A) Comprehensive and individualized care management.
6 (B) Care coordination and health promotion, including
7 connection to medical, mental health, and substance use *disorder*
8 care.

9 (C) Comprehensive transitional care from inpatient to other
10 settings, including appropriate followup.

11 (D) Individual and family support, including authorized
12 representatives.

13 (E) Referral to relevant community and social services supports,
14 including, but not limited to, connection to housing for participants
15 who are homeless or unstably housed, transportation to
16 appointments needed to ~~managed~~ *manage* health needs, *healthy*
17 *lifestyle supports, quality child care when appropriate,* and peer
18 recovery support.

19 (F) Health information technology to identify eligible individuals
20 and link services, if feasible and appropriate.

21 ~~(2) According to beneficiary needs, the health home provider~~
22 ~~may provide less intensive services or graduate the beneficiary~~
23 ~~completely from the program upon stabilization.~~

24 14127.3. (a) If the department creates a ~~health home program~~
25 *Health Home Program* pursuant to this article, the department
26 shall determine whether a health home ~~program~~ *state plan*
27 *amendment* that targets adults is operationally viable.

28 (b) (1) In determining whether a health home ~~program~~ *state*
29 *plan amendment* that targets adults is operationally viable, the
30 department shall consider whether a state plan amendment *and*
31 *any necessary Section 1115 waiver amendments* could be designed
32 in a manner that minimizes the impact on the General Fund,
33 whether the department has the capacity to administer the ~~program~~
34 *home health state plan amendment through the state, a contracting*
35 *entity, a county, or regional approach,* and whether a sufficient
36 provider network exists for providing health home services to
37 ~~targeted beneficiaries~~ *populations the department intends to target,*
38 *including the populations described in subdivision (c).*

39 (2) If the department determines that a health home ~~program~~
40 *state plan amendment* that targets adults is operationally viable

1 pursuant to paragraph (1), then the department shall design a state
2 plan amendment *and any necessary Section 1115 waiver*
3 *amendments* to target *and provide health home services to*
4 beneficiaries who meet the criteria specified in subdivision (c).

5 (3) (A) If the department determines a health home ~~program~~
6 *state plan amendment* that targets adults is not operationally viable,
7 then the department shall report *to the appropriate policy and*
8 *fiscal committees of the Legislature* the basis for this determination,
9 as well as ~~a plan to address the health needs of the service delivery~~
10 *changes needed to improve care among* chronically homeless
11 beneficiaries and frequent hospital users ~~to the appropriate policy~~
12 ~~and fiscal committees of the Legislature.~~

13 (B) The requirement for submitting the report ~~and plan~~ under
14 subparagraph (A) is inoperative four years after the date the report
15 is due, pursuant to Section 10231.5 of the Government Code.

16 (c) A state plan amendment *and any necessary Section 1115*
17 *waiver amendments* submitted pursuant to this section shall target
18 adult beneficiaries who meet both of the following criteria:

19 (1) Have current diagnoses of chronic, ~~co-occurring~~ physical
20 health, mental health, or substance use disorders prevalent among
21 frequent hospital users.

22 (2) Have a level of severity in conditions established by the
23 department, based on one or more of the following factors:

24 (A) Frequent inpatient hospital admissions, including
25 hospitalization for medical, psychiatric, or substance use related
26 conditions.

27 (B) Excessive use of crisis or emergency services.

28 (C) Chronic homelessness.

29 (d) (1) For the purposes of providing health home services to
30 ~~targeted beneficiaries who meet the criteria~~ *the population*
31 *identified* in subdivision (c), the department shall select ~~designated~~
32 health home providers, ~~managed care organizations subcontracting~~
33 ~~with providers, or counties acting as or subcontracting with~~
34 ~~providers operating as a health home team that have or providers~~
35 *who plan to subcontract with health home team members with all*
36 of the following:

37 (A) Demonstrated experience working with frequent hospital
38 *or emergency department* users.

39 (B) Demonstrated experience working with people who are
40 chronically homeless.

1 (C) The capacity and administrative infrastructure to participate
 2 in the ~~program~~ *Health Home Program*, including the ability to
 3 meet requirements of federal guidelines.

4 (D) A viable plan, with roles identified among providers of the
 5 health home, to do all of the following:

6 (i) Reach out to and engage frequent hospital *or emergency*
 7 *department* users and chronically homeless eligible individuals.

8 (ii) Link eligible individuals who are homeless or experiencing
 9 housing instability to permanent housing, such as supportive
 10 housing.

11 (iii) Ensure coordination and linkages to services needed to
 12 access and maintain health stability, including medical, mental
 13 health, *and* substance use care, ~~and as well as~~ social services *and*
 14 *supports* to address social determinants of health.

15 (2) The department may design additional provider criteria to
 16 those identified in paragraph (1) after consultation with stakeholder
 17 groups who have expertise in engagement and services for ~~targeted~~
 18 ~~beneficiaries described in this section~~ *the population identified in*
 19 *subdivision (c)*.

20 (3) The department may authorize health home providers eligible
 21 under this subdivision to serve Medi-Cal enrollees through a
 22 fee-for-service or managed care delivery system, and ~~shall may~~
 23 allow for ~~both~~ county-operated and *other public and* private
 24 providers to participate in ~~the California Health Home program~~
 25 *this program*.

26 (4) ~~The~~ *If the department designs a state plan amendment*
 27 *designed to serve the population identified in subdivision (c), the*
 28 department shall design strategies to outreach to, engage, and
 29 provide health home services to ~~the targeted beneficiaries the~~
 30 *population* identified in subdivision (c), based on consultation
 31 with ~~stakeholder groups~~ *stakeholders* who have expertise in
 32 engaging ~~and~~, providing services to ~~these targeted beneficiaries,~~
 33 *and designing programs addressing the needs of, the population*.

34 (5) ~~The department shall design other health home elements,~~
 35 ~~including provider rates specific to targeted beneficiaries described~~
 36 ~~in subdivision (c), after consultation with stakeholder groups who~~
 37 ~~have expertise in engaging and providing services to these targeted~~
 38 ~~beneficiaries.~~

39 (6)

1 (5) If the department creates a health home program that targets
2 adults described in subdivision (c), the department may also submit
3 state plan amendments *and any necessary waiver amendments*
4 targeting other adult populations.

5 14127.4. (a) The department shall administer this article in a
6 manner that attempts to maximize federal financial participation,
7 consistent with federal law.

8 (b) Except as provided in Section 14127.6, the nonfederal share
9 shall be provided by funds from local governments, private
10 foundations, or any other source permitted under federal law. The
11 department, or counties contracting with the department, may also
12 enter into risk-sharing and social impact bond program agreements
13 to fund services under this article.

14 ~~(c) In accordance with federal guidelines, the state may limit~~
15 ~~availability of health home or enhanced health home services~~
16 ~~geographically.~~

17 14127.5. (a) If the department creates a ~~health home program~~
18 *Health Home Program*, the department shall ensure that an
19 evaluation of the program is completed and shall, within two years
20 after implementation, submit a report to the appropriate policy and
21 fiscal committees of the Legislature.

22 (b) The requirement for submitting the report under subdivision
23 (a) is inoperative four years after the date the report is due, pursuant
24 to Section 10231.5 of the Government Code.

25 14127.6. (a) ~~This article shall be implemented~~ *The department*
26 *shall fund health home services* only if and to the extent federal
27 financial participation is available and the federal Centers for
28 Medicare and Medicaid Services approves any state plan
29 amendments sought pursuant to this article.

30 (b) Except as provided in ~~subdivisions (c) and (d)~~ *subdivision*
31 *(c)*, this article shall be implemented only if no additional General
32 Fund moneys are used to fund the administration and costs of
33 services.

34 (c) Notwithstanding subdivision (b), ~~prior to and during the first~~
35 ~~eight quarters of implementation~~, if the department projects, based
36 on analysis of current and projected expenditures for health home
37 services; *prior to, during, or after the first eight quarters of*
38 *implementation*, that this article can be implemented in a manner
39 that does not *or will not* result in a net increase in ongoing General

1 Fund costs for the Medi-Cal program, the department may use
 2 state funds to fund any ~~program~~ *Health Home Program* costs.

3 ~~(d) Notwithstanding subdivision (b), if the department projects,~~
 4 ~~after the first eight quarters of implementation, that implementation~~
 5 ~~of this article has not resulted in a net increase in ongoing General~~
 6 ~~Fund costs for the Medi-Cal program, the department may use~~
 7 ~~state funds to fund any program costs.~~

8 (e)
 9 (d) The department may use new funding in the form of
 10 enhanced federal financial participation for health home services
 11 that are currently funded to fund any additional costs for new health
 12 ~~home program~~ *Health Home Program* services.

13 (f)
 14 (e) The department shall seek to fund the creation,
 15 implementation, and administration of the program with funding
 16 other than state general funds.

17 (g)
 18 (f) The department may revise or terminate the ~~health home~~
 19 ~~program~~ *Health Home Program* any time after the first eight
 20 quarters of implementation if the department finds that the program
 21 fails to result in ~~improved health outcomes~~ *reduced inpatient stays,*
 22 *hospital admission rates, and emergency department visits,* or
 23 results in substantial General Fund expense without commensurate
 24 decreases in Medi-Cal costs among program participants.

25 14128. (a) In the event of a judicial challenge of the provisions
 26 of this article, this article shall not be construed to create an
 27 obligation on the part of the state to fund any payment from state
 28 funds due to the absence or shortfall of federal funding.

29 (b) For the purposes of implementing this article, the department
 30 may enter into exclusive or nonexclusive contracts on a bid or
 31 negotiated basis, and may amend existing managed care contracts
 32 to provide or arrange for services under this article. Contracts may
 33 be statewide or on a more limited geographic basis. Contracts
 34 entered into or amended under this section shall be exempt from
 35 the provisions of Chapter 2 (commencing with Section 10290) of
 36 Part 2 of Division 2 of the Public Contract Code and Chapter 6
 37 (commencing with Section 14825) of Part 5.5 of Division 3 of the
 38 Government Code, and shall be exempt from the review or
 39 approval of any division of the Department of General Services.

1 (c) (1) Notwithstanding Chapter 3.5 (commencing with Section
2 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
3 the department may implement, interpret, or make specific the
4 process set forth in this article by means of all-county letters, plan
5 letters, plan or provider bulletins, or similar instructions, without
6 taking regulatory action, until such time as regulations are adopted.
7 It is the intent of the Legislature that the department be provided
8 temporary authority as necessary to implement program changes
9 until completion of the regulatory process.

10 (2) The department shall adopt emergency regulations no later
11 than two years after implementation of this article. The department
12 may readopt, up to two times, any emergency regulation authorized
13 by this section that is the same as or substantially equivalent to an
14 emergency regulation previously adopted pursuant to this section.

15 (3) The initial adoption of emergency regulations implementing
16 this article and the readoptions of emergency regulations authorized
17 by this section shall be deemed an emergency and necessary for
18 the immediate preservation of the public peace, health, safety, or
19 general welfare. Initial emergency regulations and readoptions
20 authorized by this section shall be exempt from review by the
21 Office of Administrative Law. The initial emergency regulations
22 and readoptions authorized by this section shall be submitted to
23 the Office of Administrative Law for filing with the Secretary of
24 State and shall remain in effect for no more than 180 days, by
25 which time final regulations may be adopted.