

AMENDED IN SENATE SEPTEMBER 6, 2013

AMENDED IN SENATE SEPTEMBER 3, 2013

AMENDED IN SENATE JUNE 19, 2013

AMENDED IN ASSEMBLY MAY 24, 2013

AMENDED IN ASSEMBLY APRIL 4, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 361

Introduced by Assembly Member Mitchell
(Principal coauthor: Assembly Member Atkins)
(Coauthors: Assembly Members Ammiano and Maienschein)
(Coauthors: Senators Beall and Monning)

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 through a “whole
 8 person” approach, while achieving the “Triple Aim” goals of
 9 improved patient care, improved health, and reduced per capita
 10 total costs. It is an opportunity to reverse determinants that lead
 11 to poor health outcomes and high costs among Medi-Cal
 12 beneficiaries.

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

1 hospital users who are not homeless survive on extremely low
2 incomes and live in communities with limited resources and
3 services.

4 (c) Increasingly, health providers are partnering with community
5 behavioral health and social services providers to offer a
6 person-centered interdisciplinary system of care that effectively
7 addresses the needs of enrollees with multiple chronic or complex
8 conditions, including frequent hospital users and people
9 experiencing chronic homelessness, in settings where enrollees
10 live. These health homes help people with chronic and complex
11 conditions to access better care and better health, while decreasing
12 costs.

13 (d) Federal guidelines allow the state to access enhanced federal
14 financial participation for health home services under the Health
15 Homes option for multiple target populations to achieve more than
16 one policy goal.

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

20

21 Article 3.9. Health Homes for Medi-Cal Enrollees and Section
22 1115 Waiver Demonstration Populations with Chronic and
23 Complex Conditions
24

25 14127. For purposes of this article, the following definitions
26 shall apply:

27 (a) “Department” means the State Department of Health Care
28 Services.

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

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

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

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

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

6 (2) A lead provider may contract with Medi-Cal providers,
7 including, but not limited to, a managed care health plan, a
8 community clinic, a mental health plan, a hospital, physicians, a
9 clinical practice or clinical group practice, a rural health clinic, a
10 community health center, a community mental health center,
11 substance use disorder treatment professionals, school-based health
12 centers, community health workers, community-based service
13 organizations, a home health agency, nurse practitioners,
14 physician’s assistants, social workers, and other paraprofessionals,
15 to the extent that contracting with these providers is allowed under
16 federal Medicaid law. Health home providers shall also establish
17 noncontractual relationships with, and provide linkages to, housing
18 providers.

19 (3) For purposes of serving the population identified in
20 subdivision (c) of Section 14127.3, the department may require a
21 lead provider to be a physician, a community clinic, a mental health
22 plan, a community-based organization, a county health system, or
23 a hospital.

24 (4) The department may determine the model of health home
25 it intends to create, including any entity, provider, or group of
26 providers operating as a health team, as a team of health care
27 professionals, or as a designated provider, as those terms are
28 defined in Sections 256a-1 and 1396w-4(h)(5) and (h)(6) of Title
29 42 of the United States Code, respectively.

30 (d) “Health Home Program” means all of the state plan
31 amendments and relevant waivers the department seeks and the
32 federal Centers for ~~Medicine~~ *Medicare* and Medicaid Services
33 approves.

34 (e) “Homeless” has the same meaning as that term is defined
35 in Section 91.5 of Title 24 of the Code of Federal Regulations. A
36 “chronically homeless individual” means a homeless individual
37 with a condition limiting his or her activities of daily living who
38 has been continuously homeless for a year or more, or had at least
39 four episodes of homelessness in the past three years. For purposes
40 of this article, an individual who is currently residing in transitional

1 housing, as defined in Section 50675.2 of the Health and Safety
2 Code, or who has been residing in permanent supportive housing,
3 as defined in Section 50675.14 of the Health and Safety Code, for
4 less than two years shall be considered a chronically homeless
5 individual if the individual was chronically homeless prior to his
6 or her residence.

7 14127.1. Subject to federal approval, the department may do
8 all of the following to create a California Health Home Program
9 (Health Home Program), as authorized under Section 2703 of the
10 Affordable Care Act:

11 (a) Design, with opportunity for public comment, a program to
12 provide health home services to Medi-Cal beneficiaries and Section
13 1115 waiver demonstration populations with chronic conditions.

14 (b) Contract with new providers, existing Medi-Cal providers,
15 Medi-Cal managed care plans, or counties, or one or more of these
16 entities, to provide health home services, as provided in Section
17 14128.

18 (c) Submit any necessary applications to the federal Centers for
19 Medicare and Medicaid Services for one or more state plan
20 amendments and any necessary Section 1115 waiver amendments
21 to provide health home services to Medi-Cal beneficiaries, to newly
22 eligible Medi-Cal beneficiaries upon Medicaid expansion under
23 the Affordable Care Act, and, if applicable, to Low Income Health
24 Program (LIHP) enrollees in counties with LIHPs willing to match
25 federal funds.

26 (d) Define the populations of eligible individuals.

27 (e) Develop a payment methodology, including, but not limited
28 to, fee-for-service or per member, per month payment structures
29 that may include tiered payment rates that take into account the
30 intensity of services necessary to outreach to, engage, and serve
31 the populations the department identifies.

32 (f) Identify the specific health home services needed for each
33 population targeted in the Health Home Program, consistent with
34 subdivision (b) of Section 14127.2.

35 (g) Submit applications and operate, to the extent permitted by
36 federal law and to the extent federal approval is obtained, more
37 than one health home state plan amendment and any necessary
38 Section 1115 waiver amendments for distinct populations, different
39 providers or contractors, or specific geographic areas.

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

1 14127.2. (a) The department may design one or more state
2 plan amendments and any necessary Section 1115 waiver
3 amendments to provide health home services to children or adults,
4 or both, pursuant to Section 14127.1, and, considering consultation
5 with stakeholders, shall develop the geographic criteria, beneficiary
6 eligibility criteria, and provider eligibility criteria for each state
7 plan amendment.

8 (b) Subject to federal approval for receipt of the enhanced
9 federal reimbursement, services provided under the Health Home
10 Program established pursuant to this article shall include all of the
11 following:

- 12 (1) Comprehensive and individualized care management.
- 13 (2) Care coordination and health promotion, including
14 connection to medical, mental health, and substance use disorder
15 care.
- 16 (3) Comprehensive transitional care from inpatient to other
17 settings, including appropriate followup.
- 18 (4) Individual and family support, including authorized
19 representatives.
- 20 (5) Referral to relevant community and social services supports,
21 including, but not limited to, connection to housing for participants
22 who are homeless or unstably housed, transportation to
23 appointments needed to manage health needs, healthy lifestyle
24 supports, child care when appropriate, and peer recovery support.
- 25 (6) Health information technology to identify eligible individuals
26 and link services, if feasible and appropriate.

27 14127.3. (a) If the department creates a Health Home Program
28 pursuant to this article, the department shall determine whether a
29 health home state plan amendment that targets adults is
30 operationally viable.

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

1 the department intends to target, including the populations
2 described in subdivision (c).

3 (2) If the department determines that a health home state plan
4 amendment that targets adults is operationally viable pursuant to
5 paragraph (1), then the department shall design a state plan
6 amendment and any necessary Section 1115 waiver amendments
7 to target and provide health home services to beneficiaries who
8 meet the criteria specified in subdivision (c).

9 (3) (A) If the department determines a health home state plan
10 amendment that targets adults is not operationally viable, then the
11 department shall inform the appropriate policy and fiscal
12 committees of the Legislature, within 120 days of that
13 determination, *of the reasons the program is not operationally*
14 *viable as described in paragraph (1), and* about current efforts
15 underway by the department that help to address health care issues
16 experienced by homeless Medi-Cal beneficiaries.

17 (B) The requirement for informing the appropriate policy and
18 fiscal committees of the Legislature under subparagraph (A) is
19 inoperative four years after the date the report is due, pursuant to
20 Section 10231.5 of the Government Code.

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

24 (1) Have current diagnoses of chronic, physical health, mental
25 health, or substance use disorders prevalent among frequent
26 hospital users.

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

29 (A) Frequent inpatient hospital admissions, including
30 hospitalization for medical, psychiatric, or substance use related
31 conditions.

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

33 (C) Chronic homelessness.

34 (d) (1) For the purposes of providing health home services to
35 the population identified in subdivision (c), the department shall
36 select health home providers or providers who plan to subcontract
37 with health home team members with all of the following:

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

1 (B) Demonstrated experience working with people who are
2 chronically homeless.

3 (C) The capacity and administrative infrastructure to participate
4 in the Health Home Program, including the ability to meet
5 requirements of federal guidelines.

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

8 (i) Reach out to and engage frequent hospital or emergency
9 department users and chronically homeless eligible individuals.

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

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

17 (2) The department may design additional provider criteria to
18 those identified in paragraph (1) after consultation with stakeholder
19 groups who have expertise in engagement and services for the
20 population identified in subdivision (c).

21 (3) The department may authorize health home providers eligible
22 under this subdivision to serve Medi-Cal enrollees through a
23 fee-for-service or managed care delivery system that may include
24 supplemental payments, and may allow for county-operated and
25 other public and private providers to participate in this program.

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

33 (5) If the department creates a health home program that targets
34 adults described in subdivision (c), the department may also submit
35 state plan amendments and any necessary waiver amendments
36 targeting other adult populations.

37 14127.4. (a) The department shall administer this article in a
38 manner that attempts to maximize federal financial participation,
39 consistent with federal law.

1 (b) Except as provided in Section 14127.6, the nonfederal share
2 shall be provided by funds from local governments, private
3 foundations, or any other source permitted under state and federal
4 law, including Section 1903(a) of the federal Social Security Act
5 (42 U.S.C. Sec. 1396b(a)) and Section 433.51 of Title 42 of the
6 Code of Federal Regulations, and may be used for administration,
7 service delivery, evaluation, and design of the Health Home
8 Program. The department, or counties contracting with the
9 department, may also enter into risk-sharing and social impact
10 bond program agreements to fund services under this article.

11 14127.5. (a) If the department creates a Health Home Program,
12 the department shall ensure that an evaluation of the program is
13 completed and shall, within two years after implementation, submit
14 a report to the appropriate policy and fiscal committees of the
15 Legislature. Stakeholders, including philanthropy, nonprofit
16 organizations, and patient advocates, may participate in the
17 department's evaluation design.

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

21 14127.6. (a) The Health Home Program shall be implemented
22 only if and to the extent federal financial participation is available
23 and the federal Centers for Medicare and Medicaid Services
24 approves any state plan amendments and any necessary waivers
25 sought pursuant to this article.

26 (b) Except as provided in subdivision (c), this article shall be
27 implemented only if no additional General Fund moneys are used
28 to fund the administration and costs of services.

29 (c) Notwithstanding subdivision (b), if the department projects,
30 based on analysis of current and projected expenditures for health
31 home services prior to, during, or after the first eight quarters of
32 implementation, that this article can be implemented in a manner
33 that does not or will not result in a net increase in ongoing General
34 Fund costs for the Medi-Cal program, the department may use
35 state funds to fund any Health Home Program costs.

36 (d) The department may use new funding in the form of
37 enhanced federal financial participation for health home services
38 that are currently provided to fund additional costs for new Health
39 Home Program services.

1 (e) The department shall seek to fund the creation,
2 implementation, and administration of the program with funding
3 other than state general funds.

4 (f) The department may revise or terminate the Health Home
5 Program any time after the first eight quarters of implementation
6 if the department finds that the program fails to result in reduced
7 inpatient stays, hospital admission rates, and emergency department
8 visits, or results in substantial General Fund expense without
9 commensurate decreases in Medi-Cal costs among program
10 participants.

11 14128. (a) In the event of a judicial challenge of the provisions
12 of this article, this article shall not be construed to create an
13 obligation on the part of the state to fund any payment from state
14 funds due to the absence or shortfall of federal funding.

15 (b) For the purposes of implementing this article, the department
16 may enter into exclusive or nonexclusive contracts on a bid or
17 negotiated basis, and may amend existing managed care contracts
18 to provide or arrange for services under this article. Contracts may
19 be statewide or on a more limited geographic basis. Contracts
20 entered into or amended under this section shall be exempt from
21 the provisions of Chapter 2 (commencing with Section 10290) of
22 Part 2 of Division 2 of the Public Contract Code and Chapter 6
23 (commencing with Section 14825) of Part 5.5 of Division 3 of the
24 Government Code, and shall be exempt from the review or
25 approval of any division of the Department of General Services.

26 (c) (1) Notwithstanding Chapter 3.5 (commencing with Section
27 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
28 the department may implement, interpret, or make specific the
29 process set forth in this article by means of all-county letters, plan
30 letters, plan or provider bulletins, or similar instructions, without
31 taking regulatory action, until such time as regulations are adopted.
32 It is the intent of the Legislature that the department be provided
33 temporary authority as necessary to implement program changes
34 until completion of the regulatory process.

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

1 (3) The initial adoption of emergency regulations implementing
2 this article and the readoptions of emergency regulations authorized
3 by this section shall be deemed an emergency and necessary for
4 the immediate preservation of the public peace, health, safety, or
5 general welfare. Initial emergency regulations and readoptions
6 authorized by this section shall be exempt from review by the
7 Office of Administrative Law. The initial emergency regulations
8 and readoptions authorized by this section shall be submitted to
9 the Office of Administrative Law for filing with the Secretary of
10 State and shall remain in effect for no more than 180 days, by
11 which time final regulations may be adopted.

O