

AMENDED IN SENATE SEPTEMBER 5, 2013

AMENDED IN SENATE AUGUST 20, 2013

AMENDED IN SENATE JUNE 20, 2013

AMENDED IN ASSEMBLY MAY 7, 2013

AMENDED IN ASSEMBLY APRIL 23, 2013

AMENDED IN ASSEMBLY MARCH 19, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

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**ASSEMBLY BILL**

**No. 498**

**Introduced by Assembly Member Chávez**  
*(Coauthors: Assembly Members Alejo, Bigelow, Chesbro, and Conway)*  
*(Coauthor: Senator Nielsen)*

February 20, 2013

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An act to amend ~~Section~~ *Sections 14105.27 and 14166.151* of, and to repeal Sections 14166.152, 14166.153, 14166.154, and 14166.155 of, the Welfare and Institutions Code, relating to Medi-Cal.

LEGISLATIVE COUNSEL'S DIGEST

AB 498, as amended, Chávez. Medi-Cal.

*(1) 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. Existing law provides that a health facility is eligible to receive supplemental reimbursement under the Medi-Cal program if the facility has specified characteristics, including that the facility is owned or operated by the state, a county, a city, a city and county, or health care district. Existing law prohibits claimed expenditures for specified*

*nursing facility services, when combined with the amount received from all other sources of reimbursement from the Medi-Cal program, from exceeding 100% of projected costs, as determined pursuant to the Medi-Cal State Plan, for skilled nursing services at each facility.*

*This bill would, instead, prohibit those claimed expenditures from exceeding 100% of allowable costs. The bill would require that supplemental reimbursement be subject to a reconciliation process established in the state plan to ensure that supplemental reimbursement is not made in excess of allowable costs, and to ensure that it is made up to allowable costs.*

~~(1) 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~~

(2) *The Medi-Cal program is, in part, governed and funded by federal Medicaid Program provisions. Existing law, subject to federal approval, modifies the inpatient fee-for-service reimbursement methodology for nondesignated public hospitals, as defined, under a specified demonstration project for services on or after July 1, 2012. Existing law provides that beginning with the 2012–13 fiscal year, and if specified conditions are met, nondesignated public hospitals, or governmental entities with which the hospitals are affiliated, shall be eligible to receive safety net care pool payments for uncompensated care from the Health Care Support Fund. Existing law provides that these provisions shall become operative on the date that all necessary federal approvals have been obtained to implement these and other related provisions. Existing law requires designated public hospitals to report and certify specified information for each successor demonstration year beginning with the 2012–13 fiscal year.*

*This bill would revise and recast those provisions. This bill would instead authorize the department to seek necessary federal approvals or waivers to separately implement the safety net care pool payments for uncompensated care provisions for the 2013–14 and 2014–15 fiscal years. The bill would require the state, if the state receives federal safety net care pool funds for uncompensated care under these provisions, to retain ½ of the funds for Medi-Cal related expenditures.*

~~(2)~~

(3) *Under existing law, nondesignated public hospitals may receive fee-for-service payments for inpatient services, as specified. Under existing law, beginning with the 2012–13 fiscal year, subject to federal*

approval and if specified conditions are met, nondesignated public hospitals may receive delivery system reform incentive pool funding, as specified.

This bill would eliminate those provisions.

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. Section 14105.27 of the Welfare and Institutions  
2     Code is amended to read:  
3     14105.27. (a) Each eligible facility, as described in subdivision  
4     (b) may, in addition to the rate of payment that the facility would  
5     otherwise receive for skilled nursing services, receive supplemental  
6     Medi-Cal reimbursement to the extent provided in this section.  
7     (b) A facility shall be eligible for supplemental reimbursement  
8     only if the facility has all of the following characteristics  
9     continuously during the department’s rate year:  
10    (1) Provides services to Medi-Cal beneficiaries.  
11    (2) Is either of the following:  
12    (A) For the department’s rate year beginning August 1, 2001,  
13    and for subsequent rate years, a distinct part of an acute care  
14    hospital providing skilled nursing services. For purposes of this  
15    section, “acute care hospital” means a facility described by  
16    subdivision (a) or (b), or both, of Section 1250 of the Health and  
17    Safety Code.  
18    (B) For the department’s rate year beginning August 1, 2006,  
19    and for subsequent rate years, a state home, as defined in Section  
20    101 (19) of Title 38 of the United States Code.  
21    (3) Is owned or operated by the state, or by a county, city, city  
22    and county, or health care district organized pursuant to Chapter  
23    1 (commencing with Section 32000) of Division 23 of the Health  
24    and Safety Code.  
25    (c) An eligible facility’s supplemental reimbursement pursuant  
26    to this section shall be calculated and paid as follows:  
27    (1) The supplemental reimbursement to an eligible facility, as  
28    described in paragraph (4), shall be equal to the amount of federal  
29    financial participation received as a result of the claims submitted  
30    pursuant to paragraph (2) of subdivision (g).

1 (2) In no instance shall the amount certified pursuant to  
 2 paragraph (1) of subdivision (e), when combined with the amount  
 3 received from all other sources of reimbursement from the  
 4 Medi-Cal program, exceed 100 percent of ~~projected~~ *allowable*  
 5 costs, as determined pursuant to the Medi-Cal State Plan, for  
 6 distinct part skilled nursing services at each facility.

7 (3) Costs associated with the provision of subacute services  
 8 pursuant to Section 14132.25 shall not be certified for supplemental  
 9 reimbursement pursuant to this section.

10 (4) The supplemental Medi-Cal reimbursement provided by this  
 11 section shall be distributed under a payment methodology based  
 12 on skilled nursing services provided to Medi-Cal patients at the  
 13 eligible facility, either on a per diem basis, a per discharge basis,  
 14 or any other federally permissible basis. The department shall seek  
 15 approval from the federal Centers for Medicare and Medicaid  
 16 Services for the payment methodology to be utilized, and shall not  
 17 make any payment pursuant to this section prior to obtaining that  
 18 approval.

19 (d) (1) It is the Legislature’s intent in enacting this section to  
 20 provide the supplemental reimbursement described in this section  
 21 without any expenditure from the General Fund. An eligible  
 22 facility, as a condition of receiving supplemental reimbursement  
 23 pursuant to this section, shall enter into, and maintain, an agreement  
 24 with the department for the purposes of implementing this section  
 25 and reimbursing the department for the costs of administering this  
 26 section.

27 (2) The state share of the supplemental reimbursement submitted  
 28 to the federal Centers for Medicare and Medicaid Services for  
 29 purposes of claiming federal financial participation shall be paid  
 30 only with funds from the governmental entities described in  
 31 paragraph (3) of subdivision (b) and certified to the state as  
 32 provided in subdivision (e).

33 (e) The particular governmental entity, described in paragraph  
 34 (3) of subdivision (b), on behalf of any eligible facility shall do  
 35 all of the following:

36 (1) Certify, in conformity with the requirements of Section  
 37 433.51 of Title 42 of the Code of Federal Regulations, that the  
 38 claimed expenditures for distinct part nursing facility services are  
 39 eligible for federal financial participation.

1 (2) Provide evidence supporting the certification as specified  
2 by the department.

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

6 (4) Keep, maintain, and have readily retrievable, any records  
7 specified by the department to fully disclose reimbursement  
8 amounts to which the eligible facility is entitled, and any other  
9 records required by the federal Centers for Medicare and Medicaid  
10 Services.

11 (f) The department may require that any governmental entity,  
12 described in paragraph (3) of subdivision (b), seeking supplemental  
13 reimbursement under this section enter into an interagency  
14 agreement with the department for the purpose of implementing  
15 this section.

16 (g) (1) The department shall promptly seek any necessary  
17 federal approvals, including a federal medicaid waiver, for the  
18 implementation of this section. If necessary to obtain federal  
19 approval, the department may limit the program to those costs that  
20 are allowable expenditures under Title XIX of the federal Social  
21 Security Act (Subchapter 19 (commencing with Section 1396) of  
22 Chapter 7 of Title 42 of the United States Code). If federal approval  
23 is not obtained for implementation of this section, this section shall  
24 become inoperative.

25 (2) The department shall submit claims for federal financial  
26 participation for the expenditures for the services described in  
27 subdivision (e) that are allowable expenditures under federal law.

28 (3) The department shall, on an annual basis, submit any  
29 necessary materials to the federal government to provide assurances  
30 that claims for federal financial participation will include only  
31 those expenditures that are allowable under federal law.

32 (h) In the event there is a final judicial determination by any  
33 court of appellate jurisdiction or a final determination by the  
34 administrator of the federal Centers for Medicare and Medicaid  
35 Services that the supplemental reimbursement provided in this  
36 section must be made to any facility not described in this section,  
37 this section shall become immediately inoperative.

38 (i) All funds expended pursuant to this section are subject to  
39 review and audit by the department.

1 (j) *Supplemental reimbursement made pursuant to this section*  
2 *shall be subject to a reconciliation process established in the*  
3 *Medi-Cal State Plan to ensure that it is not made in excess of*  
4 *allowable costs, and to ensure that it is made up to allowable costs.*

5 **SECTION 1.**

6 **SEC. 2.** Section 14166.151 of the Welfare and Institutions  
7 Code is amended to read:

8 14166.151. (a) It is the intent of the Legislature to allow for  
9 a voluntary process for nondesignated public hospitals to claim  
10 reimbursement from the safety net care pool in the successor  
11 demonstration project based on their public structure, to the extent  
12 that there is funding available for nondesignated public hospitals  
13 in that pool, as allowed by the federal government, which shall be  
14 allocated equally between the state and the nondesignated public  
15 hospital, so that for every dollar of certified public expenditure  
16 used by the nondesignated public hospital, the nondesignated public  
17 hospital shall voluntarily allow the state to use a corresponding  
18 certified public expenditure amount for claiming purposes.

19 (b) (1) Beginning with services provided on or after July 1,  
20 2013, nondesignated public hospitals shall be eligible to receive  
21 safety net care pool payments for uncompensated care costs to the  
22 extent that additional federal funding is made available pursuant  
23 to the Special Terms and Conditions for the safety net care pool  
24 uncompensated care limit of the successor demonstration project  
25 and if they comply with the requirements set forth in this section.

26 (2) The amount of funds that may be claimed pursuant to  
27 paragraph (1) shall not exceed the additional federal funding made  
28 available under the safety net care pool for nondesignated public  
29 hospital uncompensated care costs, and shall not reduce the  
30 amounts of federal funding for safety net care pool uncompensated  
31 care costs that would otherwise be made available to designated  
32 public hospitals in the absence of this paragraph, including the  
33 amounts available under the Special Terms and Conditions in effect  
34 as of ~~April 1, 2013~~, *July 1, 2013*, and amounts available pursuant  
35 to Section 15916.

36 (3) (A) Notwithstanding paragraph (2), if the designated public  
37 hospitals do not have sufficient certified public expenditures to  
38 claim the full amount of federal funding made available to the  
39 designated public hospitals as referenced in paragraph (2),  
40 including consideration of the potential for the designated public

1 hospitals to have sufficient certified public expenditures in a  
2 subsequent year, the department may authorize the funding to be  
3 claimed by the nondesignated public hospitals.

4 (B) The department may determine whether designated public  
5 hospitals do not have sufficient certified public expenditures to  
6 claim the full amount of federal funding pursuant to subparagraph  
7 (B) no sooner than after the submission of the cost reporting  
8 information required pursuant to Section 14166.8 for the applicable  
9 successor demonstration year.

10 (C) If the department makes the determination identified in  
11 subparagraph (B) based on as-filed cost reporting information  
12 submitted prior to a final audit, the department shall make the  
13 determination in consultation with the designated public hospitals  
14 and shall apply an audit cushion of at least 5 percent to the as-filed  
15 cost information. If the department makes the determination  
16 identified in subparagraph (B) based on audited cost reporting  
17 information, no audit cushion shall be applied.

18 (c) Beginning in the 2013–14 fiscal year, within five months  
19 after the end of a successor demonstration year, nondesignated  
20 public hospitals shall submit to the department all of the following  
21 reports:

22 (1) The hospital’s Medicare or Medicaid cost report for the  
23 successor demonstration year.

24 (2) Other cost reporting and statistical data necessary for the  
25 determination of amounts due to the hospital under the successor  
26 demonstration project, as requested by the department.

27 (d) For each successor demonstration year, the reports shall  
28 identify all of the costs incurred in providing hospital services to  
29 uninsured individuals.

30 (e) A nondesignated public hospital, or the governmental entity  
31 with which it is affiliated, that operates nonhospital clinics or  
32 provides physician, nonphysician practitioner, or other health care  
33 services that are not identified as hospital services under the Special  
34 Terms and Conditions for the successor demonstration project,  
35 shall report and certify all of the uncompensated uninsured costs  
36 of the services furnished.

37 (f) Reports submitted under this section shall include all  
38 allowable costs.

39 (g) The appropriate public official shall certify to all of the  
40 following:

- 1 (1) The accuracy of the reports required under this section.
- 2 (2) That the expenditures to meet the reported costs comply
- 3 with Section 433.51 of Title 42 of the Code of Federal Regulations.
- 4 (3) That the sources of funds used to make the expenditures
- 5 certified under this section do not include impermissible provider
- 6 taxes or donations, as defined under Section 1396b(w) of Title 42
- 7 of the United States Code, or other federal funds. For this purpose,
- 8 federal funds do not include delivery system reform incentive pool
- 9 payments or patient care revenue received as payment for services
- 10 rendered under programs such as nondesignated state health
- 11 programs, the Low Income Health Program, Medicare, or
- 12 Medicaid.
- 13 (h) The certification of public expenditures made pursuant to
- 14 this section shall be based on a schedule established by the
- 15 department in accordance with federal requirements.
- 16 (1) The director may require nondesignated public hospitals to
- 17 submit quarterly estimates of anticipated expenditures, if these
- 18 estimates are necessary to obtain interim payments of federal
- 19 Medicaid funds.
- 20 (2) All reported expenditures shall be subject to reconciliation
- 21 to allowable costs, as determined in accordance with applicable
- 22 implementing documents for the successor demonstration project.
- 23 (i) The timeframes for data submission and reporting periods
- 24 may be adjusted as necessary in accordance with federal
- 25 requirements.
- 26 (j) (1) Beginning in the 2013–14 fiscal year, safety net care
- 27 pool payments for uncompensated care shall be allocated to
- 28 nondesignated public hospitals as follows:
- 29 (A) The department shall determine the maximum amount of
- 30 safety net care pool payments for uncompensated care that is
- 31 available to nondesignated public hospitals for the successor
- 32 demonstration year pursuant to this section. This determination
- 33 shall be made solely with respect to allowable uncompensated care
- 34 costs incurred by nondesignated public hospitals and reported
- 35 pursuant to subdivisions (c) to (i), inclusive.
- 36 (B) The department shall establish, in consultation with the
- 37 nondesignated public hospitals, an allocation methodology to
- 38 determine the amount of safety net care pool payments to be made
- 39 to the nondesignated public hospitals. The allocation methodology
- 40 shall be implemented when the director issues a declaration stating

1 that the methodology complies with all applicable federal  
2 requirements for federal financial participation.

3 (2) A safety net care pool payment amount may be paid to a  
4 nondesignated public hospital, or governmental entity with which  
5 it is affiliated, pursuant to this section independent of the amount  
6 of uncompensated uninsured costs that is certified as public  
7 expenditures pursuant to subdivisions (c) to (i), inclusive, provided  
8 that, in accordance with the Special Terms and Conditions for the  
9 successor demonstration project, the recipient hospital shall not  
10 return any portion of the funds received to any unit of government,  
11 excluding amounts recovered by the state or federal government.

12 (3) Nondesignated public hospitals, or governmental entities  
13 with which they are affiliated, shall receive the amount established  
14 pursuant to this subdivision, less the 50 percent retained by the  
15 state pursuant to subdivision (l), in quarterly interim payments  
16 during the successor demonstration year. The determination of the  
17 interim payments shall be made on an interim basis prior to the  
18 start of each successor demonstration year. The department shall  
19 use the cost and statistical data that is in subdivisions (c) to (i),  
20 inclusive.

21 (k) (1) No later than April 1 following the end of the relevant  
22 reporting period for the successor demonstration year, the  
23 department shall undertake an interim reconciliation of the payment  
24 amount established pursuant to subdivision (j) for nondesignated  
25 public hospitals using Medicare and other cost, payment, and  
26 statistical data submitted by the hospitals for the successor  
27 demonstration year, and shall adjust payments to the hospitals  
28 accordingly.

29 (2) All payments to nondesignated public hospitals are subject  
30 to a final reconciliation that is subject to final audits of all  
31 applicable Medicare and other cost, payment, discharge, and  
32 statistical data for the successor demonstration year.

33 (l) The process for supplemental payments made in subdivisions  
34 (j) and (k) is a voluntary process the implementation of which is  
35 limited by this subdivision. The department may submit for federal  
36 approval a proposed amendment to the successor demonstration  
37 project to implement this section.

38 (1) If a nondesignated public hospital voluntarily agrees to  
39 participate in a process that, up to the amount of safety net care  
40 pool funds available, allows the certified public expenditures for

1 uncompensated care under this section to be allocated equally  
2 between the state and the nondesignated public hospital, so that  
3 for every dollar of certified public expenditure used by the  
4 nondesignated public hospital, the nondesignated public hospital  
5 shall voluntarily allow the state to use a corresponding certified  
6 public expenditure amount for claiming purposes. Participation in  
7 the safety net care pool under this section is voluntary on the part  
8 of the nondesignated public hospital for the purposes of all  
9 applicable federal laws. If a nondesignated public hospital does  
10 not voluntarily agree to participate in this process, it shall not be  
11 eligible to receive safety net care pool funds.

12 (2) If the budget neutrality requirements established under  
13 Section XI of the Special Terms and Conditions of the successor  
14 demonstration project are exceeded, payments made under this  
15 section shall be reduced *or refunded* to achieve budget neutrality  
16 *before any other payments under the successor demonstration*  
17 *project are made*. The state's share of the federal financial  
18 participation shall be reduced after the provider's share has been  
19 exhausted.

20 (3) Notwithstanding any other provision of law, upon the receipt  
21 of a notice of disallowance or deferral from the federal government  
22 related to any certified public expenditures for uncompensated  
23 care incurred by the nondesignated public hospital that are used  
24 for federal claiming under the safety net care pool pursuant to the  
25 successor demonstration project after this section is implemented,  
26 and subject to the processes set forth in this section, the department  
27 and the nondesignated public hospitals shall each be responsible  
28 for one-half of the repayment of the federal portion of any federal  
29 disallowance or deferral for the applicable successor demonstration  
30 year, up to the amount claimed and allocated pursuant to this  
31 section for that particular year beginning with the 2013–14 fiscal  
32 year.

33 (4) This section shall be implemented only to the extent other  
34 federal financial participation is not jeopardized.

35 (m) Eligible providers, as a condition of receiving supplemental  
36 reimbursement pursuant to this section, shall enter into, and  
37 maintain, an agreement with the department for the purposes of  
38 implementing this section and reimbursing the department for the  
39 costs of administering this section, including, but not limited to,

1 the state personnel costs. No General Fund moneys shall be  
2 expended for the implementation and administration of this section.

3 ~~SEC. 2.~~

4 *SEC. 3.* Section 14166.152 of the Welfare and Institutions  
5 Code is repealed.

6 ~~SEC. 3.~~

7 *SEC. 4.* Section 14166.153 of the Welfare and Institutions  
8 Code is repealed.

9 ~~SEC. 4.~~

10 *SEC. 5.* Section 14166.154 of the Welfare and Institutions  
11 Code is repealed.

12 ~~SEC. 5.~~

13 *SEC. 6.* Section 14166.155 of the Welfare and Institutions  
14 Code is repealed.

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