

ASSEMBLY BILL

No. 776

Introduced by Assembly Member Yamada

February 21, 2013

An act to amend Sections 14186.1, 14186.36, and 14186.4 of the Welfare and Institutions Code, relating to Medi-Cal.

LEGISLATIVE COUNSEL'S DIGEST

AB 776, as introduced, Yamada. Medi-Cal.

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 law requires, to the extent that federal financial participation is available, and pursuant to a demonstration project or waiver of federal law, the department to establish specified pilot projects in up to 8 counties, and requires long-term services and supports, as defined, to be available to beneficiaries residing in counties participating in those pilot projects.

In implementing the requirements that beneficiaries residing in counties participating in those pilot projects be provided long-term services and supports, existing law requires the department to consult stakeholders. For the purposes of existing law, specified terms are defined.

This bill would additionally define the term “stakeholder” to include area agencies on aging and independent living centers. The bill would also make related conforming changes.

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 14186.1 of the Welfare and Institutions
2 Code is amended to read:
3 14186.1. For purposes of this article, the following definitions
4 shall apply unless otherwise specified:
5 (a) “Home- and community-based services” means services
6 provided pursuant to paragraphs (1), (2), and (3) of subdivision
7 (b).
8 (b) “Long-term services and supports” or “LTSS” means all of
9 the following:
10 (1) In-home supportive services (IHSS) provided pursuant to
11 Article 7 (commencing with Section 12300) of Chapter 3, and
12 Sections 14132.95, 14132.952, and 14132.956.
13 (2) Community-Based Adult Services (CBAS).
14 (3) Multipurpose Senior Services Program (MSSP) services
15 include those services approved under a federal home- and
16 community-based services waiver or, beginning January 1, 2015,
17 equivalent services.
18 (4) Skilled nursing facility services and subacute care services
19 established under subdivision (c) of Section 14132, including those
20 services described in Sections 51511 and 51511.5 of Title 22 of
21 the California Code of Regulations, regardless of whether the
22 service is included in the basic daily rate or billed separately, and
23 any leave of absence or bed hold provided consistent with Section
24 72520 of Title 22 of the California Code of Regulations or the
25 state plan.
26 However, services provided by any category of intermediate
27 care facility for the developmentally disabled shall not be
28 considered long-term services and supports.
29 (c) “Home- and community-based services (HCBS) plan
30 benefits” may include in-home and out-of-home respite, nutritional
31 assessment, counseling, and supplements, minor home or
32 environmental adaptations, habilitation, and other services that
33 may be deemed necessary by the managed care health plan,
34 including its care coordination team. The department, in
35 consultation with stakeholders, may determine whether health

1 plans shall be required to include these benefits in their scope of
2 service, and may establish guidelines for the scope, duration, and
3 intensity of these benefits. The grievance process for these benefits
4 shall be the same process as used for other benefits authorized by
5 managed care health plans, and shall comply with Section 14450,
6 and Sections 1368 and 1368.1 of the Health and Safety Code.

7 (d) “Managed care health plan” means an individual,
8 organization, or entity that enters into a contract with the
9 department pursuant to Article 2.7 (commencing with Section
10 14087.3), Article 2.8 (commencing with Section 14087.5), Article
11 2.81 (commencing with Section 14087.96), or Article 2.91
12 (commencing with Section 14089), of this chapter, or Chapter 8
13 (commencing with Section 14200). For the purposes of this article,
14 “managed care health plan” shall not include an individual,
15 organization, or entity that enters into a contract with the
16 department to provide services pursuant to Chapter 8.75
17 (commencing with Section 14591) or the Senior Care Action
18 Network.

19 (e) “Other health coverage” means health coverage providing
20 the same full or partial benefits as the Medi-Cal program, health
21 coverage under another state or federal medical care program
22 except for the Medicare Program (Title XVIII of the federal Social
23 Security Act (42 U.S.C. Sec. 1395 et seq.)), or health coverage
24 under a contractual or legal entitlement, including, but not limited
25 to, a private group or indemnification insurance program.

26 (f) “Recipient” means a Medi-Cal beneficiary eligible for IHSS
27 provided pursuant to Article 7 (commencing with Section 12300)
28 of Chapter 3, and Sections 14132.95, 14132.952, and 14132.956.

29 (g) “Stakeholder” shall include, but shall not be limited to, area
30 agencies on aging and independent living centers.

31 SEC. 2. Section 14186.36 of the Welfare and Institutions Code
32 is amended to read:

33 14186.36. (a) It is the intent of the Legislature that a universal
34 assessment process for LTSS be developed and tested. The initial
35 uses of this tool may inform future decisions about whether to
36 amend existing law regarding the assessment processes that
37 currently apply to LTSS programs, including IHSS.

38 (b) (1) In addition to the activities set forth in paragraph (9) of
39 subdivision (a) of Section 14186.35, county agencies shall continue
40 IHSS assessment and authorization processes, including making

1 final determinations of IHSS hours pursuant to Article 7
2 (commencing with Section 12300) of Chapter 3 and regulations
3 promulgated by the State Department of Social Services.

4 (2) No sooner than January 1, 2015, for the counties and
5 beneficiary categories specified in subdivision (e), counties shall
6 also utilize the universal assessment tool, as described in
7 subdivision (c), if one is available and upon completion of the
8 stakeholder process, system design and testing, and county training
9 described in subdivisions (c) and (e), for the provision of IHSS
10 services. This paragraph shall only apply to beneficiaries who
11 consent to the use of the universal assessment process. The
12 managed care health plans shall be required to cover IHSS services
13 based on the results of the universal assessment process specified
14 in this section.

15 (c) (1) No later than June 1, 2013, the department, the State
16 Department of Social Services, and the California Department of
17 Aging shall establish a stakeholder workgroup to develop the
18 universal assessment process, including a universal assessment
19 tool, for home- and community-based services, as defined in
20 subdivision (a) of Section 14186.1. The stakeholder workgroup
21 shall include, but not be limited to, consumers of IHSS and other
22 home- and community-based services and their authorized
23 representatives, managed care health plans, counties, IHSS, MSSP,
24 and CBAS providers, *area agencies on aging, independent living*
25 *centers*, and legislative staff. The universal assessment process
26 shall be used for all home- and community-based services,
27 including IHSS. In developing the process, the workgroup shall
28 build upon the IHSS uniform assessment process and hourly task
29 guidelines, the MSSP assessment process, and other appropriate
30 home- and community-based assessment tools.

31 (2) (A) In developing the universal assessment process, the
32 departments described in paragraph (1) shall develop a universal
33 assessment tool that will inform the universal assessment process
34 and facilitate the development of plans of care based on the
35 individual needs of the consumer. The workgroup shall consider
36 issues including, but not limited to, the following:

37 (i) The roles and responsibilities of the health plans, counties,
38 and home- and community-based services providers administering
39 the assessment.

40 (ii) The criteria for reassessment.

1 (iii) How the results of new assessments would be used for the
2 oversight and quality monitoring of home- and community-based
3 services providers.

4 (iv) How the appeals process would be affected by the
5 assessment.

6 (v) The ability to automate and exchange data and information
7 between home- and community-based services providers.

8 (vi) How the universal assessment process would incorporate
9 person-centered principles and protections.

10 (vii) How the universal assessment process would meet the
11 legislative intent of this article and the goals of the demonstration
12 project pursuant to Section 14132.275.

13 (viii) The qualifications for, and how to provide guidance to,
14 the individuals conducting the assessments.

15 (B) The workgroup shall also consider how this assessment may
16 be used to assess the need for nursing facility care and divert
17 individuals from nursing facility care to home- and
18 community-based services.

19 (d) No later than March 1, 2014, the department, the State
20 Department of Social Services, and the California Department of
21 Aging shall report to the Legislature on the stakeholder
22 workgroup's progress in developing the universal assessment
23 process, and shall identify the counties and beneficiary categories
24 for which the universal assessment process may be implemented
25 pursuant to subdivision (e).

26 (e) (1) No sooner than January 1, 2015, upon completion of
27 the design and development of a new universal assessment tool,
28 managed care health plans, counties, and other home- and
29 community-based services providers may test the use of the tool
30 for a specific and limited number of beneficiaries who receive or
31 are potentially eligible to receive home- and community-based
32 services pursuant to this article in no fewer than two, and no more
33 than four, of the counties where the provisions of this article are
34 implemented, if the following conditions have been met:

35 (A) The department has obtained any federal approvals through
36 necessary federal waivers or amendments, or state plan
37 amendments, whichever is later.

38 (B) The system used to calculate the results of the tool has been
39 tested.

1 (C) Any entity responsible for using the tool has been trained
2 in its usage.

3 (2) To the extent the universal assessment tool or universal
4 assessment process results in changes to the authorization process
5 and provision of IHSS services, those changes shall be automated
6 in the Case Management Information and Payroll System.

7 (3) The department shall develop materials to inform consumers
8 of the option to participate in the universal assessment tool testing
9 phase pursuant to this paragraph.

10 (f) The department, the State Department of Social Services,
11 and the California Department of Aging shall implement a
12 rapid-cycle quality improvement system to monitor the
13 implementation of the universal assessment process, identify
14 significant changes in assessment results, and make modifications
15 to the universal assessment process to more closely meet the
16 legislative intent of this article and the goals of the demonstration
17 project pursuant to Section 14132.275.

18 (g) Until existing law relating to the IHSS assessment process
19 pursuant to Article 7 (commencing with Section 12300) of Chapter
20 3 is amended, beneficiaries shall have the option to request an
21 additional assessment using the previous assessment process for
22 those home- and community-based services and to receive services
23 according to the results of the additional assessment.

24 (h) No later than nine months after the implementation of the
25 universal assessment process, the department, the State Department
26 of Social Services, and the California Department of Aging, in
27 consultation with stakeholders, shall report to the Legislature on
28 the results of the initial use of the universal assessment process,
29 and may identify proposed additional beneficiary categories or
30 counties for expanded use of this process and any necessary
31 changes to provide statutory authority for the continued use of the
32 universal assessment process. These departments shall report
33 annually thereafter to the Legislature on the status and results of
34 the universal assessment process.

35 (i) The provisions of this section shall remain operative only
36 until July 1, 2017.

37 SEC. 3. Section 14186.4 of the Welfare and Institutions Code
38 is amended to read:

39 14186.4. (a) This article shall be implemented only to the
40 extent that all necessary federal approvals and waivers have been

1 obtained and only if and to the extent that federal financial
2 participation is available.

3 (b) Notwithstanding any other law, the director, after consulting
4 with the Director of Finance, stakeholders, and the Legislature,
5 retains the discretion to forgo the provision of services in the
6 manner specified in this article in its entirety, or partially, if and
7 to the extent that the director determines that the quality of care
8 for managed care beneficiaries, efficiency, or cost-effectiveness
9 of the program would be jeopardized. In the event the director
10 discontinues the provision of services in the manner specified in
11 this article, contracts implemented pursuant to this article shall
12 accordingly be modified or terminated, to suspend new enrollment
13 or disenroll beneficiaries in an orderly manner that provides for
14 continuity of care and the safety of beneficiaries.

15 (c) To implement this article, the department may contract with
16 public or private entities. Contracts, or amendments to current
17 contracts, entered into under this article may be on a
18 noncompetitive bid basis and shall be exempt from all of the
19 following:

20 (1) Part 2 (commencing with Section 10100) of Division 2 of
21 the Public Contract Code and any policies, procedures, or
22 regulations authorized by that part.

23 (2) Article 4 (commencing with Section 19130) of Chapter 5
24 of Part 2 of Division 5 of Title 2 of the Government Code.

25 (3) Review or approval of contracts by the Department of
26 General Services.

27 (4) Review or approval of feasibility study reports and the
28 requirements of Sections 4819.35 to 4819.37, inclusive, and
29 Sections 4920 to 4928, inclusive, of the State Administrative
30 Manual.

31 (d) Notwithstanding Chapter 3.5 (commencing with Section
32 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
33 the State Department of Health Care Services and State Department
34 of Social Services may implement, interpret, or make specific this
35 section by means of all-county letters, plan letters, plan or provider
36 bulletins, or similar instructions, without taking regulatory action.
37 Prior to issuing any letter or similar instrument authorized pursuant
38 to this section, the departments shall notify and consult with
39 stakeholders, including beneficiaries, providers, *area agencies on*
40 *aging, independent living centers*, and advocates.

1 (e) Beginning July 1, 2012, the department shall provide the
2 fiscal and appropriate policy committees of the Legislature with
3 a copy of any report submitted to CMS that is required under an
4 approved federal waiver or waiver amendments or any state plan
5 amendment for any LTSS.

6 (f) The department shall enter into an interagency agreement
7 with the Department of Managed Health Care to perform some or
8 all of the department’s oversight and readiness review activities
9 specified in this article. These activities may include providing
10 consumer assistance to beneficiaries affected by this article, and
11 conducting financial audits, medical surveys, and a review of the
12 provider networks of the managed care health plans participating
13 in this article. The interagency agreement shall be updated, as
14 necessary, on an annual basis in order to maintain functional clarity
15 regarding the roles and responsibilities of the Department of
16 Managed Health Care and the department. The department shall
17 not delegate its authority as the single state Medicaid agency under
18 this article to the Department of Managed Health Care.

19 (g) (1) Beginning with the May Revision to the 2013–14
20 Governor’s Budget, and annually thereafter, the department shall
21 report to the Legislature on the enrollment status, quality measures,
22 and state costs of the actions taken pursuant to this article.

23 (2) (A) By January 1, 2013, or as soon thereafter as practicable,
24 the department shall develop, in consultation with CMS and
25 stakeholders, quality and fiscal measures for managed care health
26 plans to reflect the short- and long-term results of the
27 implementation of this article. The department shall also develop
28 quality thresholds and milestones for these measures. The
29 department shall update these measures periodically to reflect
30 changes in this program due to implementation factors and the
31 structure and design of the benefits and services being coordinated
32 by the health plans.

33 (B) The department shall require managed care health plans to
34 submit Medicare and Medi-Cal data to determine the results of
35 these measures. If the department finds that a health plan is not in
36 compliance with one or more of the measures set forth in this
37 section, the health plan shall, within 60 days, submit a corrective
38 action plan to the department for approval. The corrective action
39 plan shall, at a minimum, include steps that the health plan shall
40 take to improve its performance based on the standard or standards

1 with which the health plan is out of compliance. The corrective
2 action plan shall establish interim benchmarks for improvement
3 that shall be expected to be met by the health plan in order to avoid
4 a sanction pursuant to Section 14304. Nothing in this paragraph
5 is intended to limit the application of Section 14304.

6 (C) The department shall publish the results of these measures,
7 including via posting on the department's Internet Web site, on a
8 quarterly basis.

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