

AMENDED IN SENATE JULY 9, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

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 amended, 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~~. *Coordinated Care Initiative counties, as specified.*

In implementing the requirements that beneficiaries residing in *Coordinated Care Initiative 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, as amended by Section 22 of Chapter 37 of the Statutes of
3 2013, is amended to read:

4 14186.1. For purposes of this article, the following definitions
5 shall apply unless otherwise specified:

6 (a) “Coordinated Care Initiative counties” shall have the same
7 meaning as that term is defined in paragraph (1) of subdivision (b)
8 of Section 14182.16.

9 (b) “Home- and community-based services” means services
10 provided pursuant to paragraphs (1), (2), and (3) of subdivision
11 (c).

12 (c) “Long-term services and supports” or “LTSS” means all of
13 the following:

14 (1) In-home supportive services (IHSS) provided pursuant to
15 Article 7 (commencing with Section 12300) of Chapter 3, and
16 Sections 14132.95, 14132.952, and 14132.956.

17 (2) Community-Based Adult Services (CBAS).

18 (3) Multipurpose Senior Services Program (MSSP) services
19 include those services approved under a federal home- and
20 community-based services waiver or, beginning January 1, 2015,
21 or after 19 months, equivalent services.

22 (4) Skilled nursing facility services and subacute care services
23 established under subdivision (c) of Section 14132, including those
24 services described in Sections 51511 and 51511.5 of Title 22 of
25 the California Code of Regulations, regardless of whether the
26 service is included in the basic daily rate or billed separately, and
27 any leave of absence or bed hold provided consistent with Section
28 72520 of Title 22 of the California Code of Regulations or the
29 state plan.

30 However, services provided by any category of intermediate
31 care facility for the developmentally disabled shall not be
32 considered long-term services and supports.

33 (d) “Home- and community-based services (HCBS) plan
34 benefits” may include in-home and out-of-home respite, nutritional
35 assessment, counseling, and supplements, minor home or

1 environmental adaptations, habilitation, and other services that
2 may be deemed necessary by the managed care health plan,
3 including its care coordination team. The department, in
4 consultation with stakeholders, may determine whether health
5 plans shall be required to include these benefits in their scope of
6 service, and may establish guidelines for the scope, duration, and
7 intensity of these benefits. The grievance process for these benefits
8 shall be the same process as used for other benefits authorized by
9 managed care health plans, and shall comply with Section 14450,
10 and Sections 1368 and 1368.1 of the Health and Safety Code.

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

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

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

33 (h) “Stakeholder” shall include, but shall not be limited to, area
34 agencies on aging and independent living centers.

35 *SEC. 2. Section 14186.36 of the Welfare and Institutions Code,*
36 *as amended by Section 26 of Chapter 37 of the Statutes of 2013,*
37 *is amended to read:*

38 14186.36. (a) It is the intent of the Legislature that a universal
39 assessment process for LTSS be developed and tested. The initial
40 uses of this tool may inform future decisions about whether to

1 amend existing law regarding the assessment processes that
2 currently apply to LTSS programs, including IHSS.

3 (b) (1) In addition to the activities set forth in paragraph (9) of
4 subdivision (a) of Section 14186.35, county agencies shall continue
5 IHSS assessment and authorization processes, including making
6 final determinations of IHSS hours pursuant to Article 7
7 (commencing with Section 12300) of Chapter 3 and regulations
8 promulgated by the State Department of Social Services.

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

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

36 (2) (A) In developing the universal assessment process, the
37 departments described in paragraph (1) shall develop a universal
38 assessment tool that will inform the universal assessment process
39 and facilitate the development of plans of care based on the

1 individual needs of the consumer. The workgroup shall consider
2 issues including, but not limited to, the following:
3 (i) The roles and responsibilities of the health plans, counties,
4 and home- and community-based services providers administering
5 the assessment.
6 (ii) The criteria for reassessment.
7 (iii) How the results of new assessments would be used for the
8 oversight and quality monitoring of home- and community-based
9 services providers.
10 (iv) How the appeals process would be affected by the
11 assessment.
12 (v) The ability to automate and exchange data and information
13 between home- and community-based services providers.
14 (vi) How the universal assessment process would incorporate
15 person-centered principles and protections.
16 (vii) How the universal assessment process would meet the
17 legislative intent of this article and the goals of the demonstration
18 project pursuant to Section 14132.275.
19 (viii) The qualifications for, and how to provide guidance to,
20 the individuals conducting the assessments.
21 (B) The workgroup shall also consider how this assessment may
22 be used to assess the need for nursing facility care and divert
23 individuals from nursing facility care to home- and
24 community-based services.
25 (d) No later than March 1, 2014, the department, the State
26 Department of Social Services, and the California Department of
27 Aging shall report to the Legislature on the stakeholder
28 workgroup's progress in developing the universal assessment
29 process, and shall identify the counties and beneficiary categories
30 for which the universal assessment process may be implemented
31 pursuant to subdivision (e).
32 (e) (1) No sooner than January 1, 2015, upon completion of the
33 design and development of a new universal assessment tool,
34 managed care health plans, counties, and other home- and
35 community-based services providers may test the use of the tool
36 for a specific and limited number of beneficiaries who receive or
37 are potentially eligible to receive home- and community-based
38 services pursuant to this article in no fewer than two, and no more
39 than four, of the counties where the provisions of this article are
40 implemented, if the following conditions have been met:

1 (A) The department has obtained any federal approvals through
2 necessary federal waivers or amendments, or state plan
3 amendments, whichever is later.

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

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

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

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

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

23 (g) Until existing law relating to the IHSS assessment process
24 pursuant to Article 7 (commencing with Section 12300) of Chapter
25 3 is amended, beneficiaries shall have the option to request an
26 additional assessment using the previous assessment process for
27 those home- and community-based services and to receive services
28 according to the results of the additional assessment.

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

40 (i) This section shall remain operative only until July 1, 2017.

1 SEC. 3. Section 14186.4 of the Welfare and Institutions Code,
2 as amended by Section 27 of Chapter 37 of the Statutes of 2013,
3 is amended to read:

4 14186.4. (a) This article shall be implemented only to the
5 extent that all necessary federal approvals and waivers have been
6 obtained and only if and to the extent that federal financial
7 participation is available.

8 (b) To implement this article, the department may contract with
9 public or private entities. Contracts, or amendments to current
10 contracts, entered into under this article may be on a
11 noncompetitive bid basis and shall be exempt from all of the
12 following:

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

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

18 (3) Review or approval of contracts by the Department of
19 General Services.

20 (4) Review or approval of feasibility study reports and the
21 requirements of Sections 4819.35 to 4819.37, inclusive, and
22 Sections 4920 to 4928, inclusive, of the State Administrative
23 Manual.

24 (c) Notwithstanding Chapter 3.5 (commencing with Section
25 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
26 the State Department of Health Care Services and State Department
27 of Social Services may implement, interpret, or make specific this
28 section by means of all-county letters, plan letters, plan or provider
29 bulletins, or similar instructions, without taking regulatory action.
30 Prior to issuing any letter or similar instrument authorized pursuant
31 to this section, the departments shall notify and consult with
32 stakeholders, including beneficiaries, providers, *area agencies on*
33 *aging, independent living centers*, and advocates.

34 (d) Beginning July 1, 2012, the department shall provide the
35 fiscal and appropriate policy committees of the Legislature with
36 a copy of any report submitted to ~~CMS~~ *the federal Centers for*
37 *Medicare and Medicaid Services (CMS)* that is required under an
38 approved federal waiver or waiver amendments or any state plan
39 amendment for any LTSS.

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

14 (f) (1) Beginning with the May Revision to the 2013–14
15 Governor's Budget, and annually thereafter, the department shall
16 report to the Legislature on the enrollment status, quality measures,
17 and state costs of the actions taken pursuant to this article.

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

28 (B) The department shall require managed care health plans to
29 submit Medicare and Medi-Cal data to determine the results of
30 these measures. If the department finds that a health plan is not in
31 compliance with one or more of the measures set forth in this
32 section, the health plan shall, within 60 days, submit a corrective
33 action plan to the department for approval. The corrective action
34 plan shall, at a minimum, include steps that the health plan shall
35 take to improve its performance based on the standard or standards
36 with which the health plan is out of compliance. The corrective
37 action plan shall establish interim benchmarks for improvement
38 that shall be expected to be met by the health plan in order to avoid
39 a sanction pursuant to Section 14304. Nothing in this paragraph
40 is intended to limit the application of Section 14304.

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

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**All matter omitted in this version of the bill
appears in the bill as introduced in the
Assembly, February 21, 2013. (JR11)**

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