

Assembly Bill No. 2325

Passed the Assembly August 28, 2014

Chief Clerk of the Assembly

Passed the Senate August 28, 2014

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2014, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Chapter 13 (commencing with Section 3599.50) to Division 4 of Title 1 of the Government Code, and to add Article 4.6 (commencing with Section 14146) to Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, relating to Medi-Cal.

LEGISLATIVE COUNSEL'S DIGEST

AB 2325, John A. Pérez. Medi-Cal: CommuniCal.

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 provides for increased administrative funding for translation and interpretation services provided in connection with the enrollment, retention, and use of services under the Medicaid Program.

This bill would require the department to establish the Medi-Cal Patient-Centered Communication program (CommuniCal), to be administered by a 3rd-party administrator, to, commencing July 1, 2015, provide and reimburse for medical interpretation services to Medi-Cal beneficiaries who are limited English proficient (LEP). This bill would establish the CommuniCal Program Fund in the State Treasury, which would consist of moneys dedicated to the CommuniCal program, to be used upon appropriation by the Legislature to the department solely to fund the CommuniCal program.

Existing law provides for the certification of administrative hearing interpreters and medical examination interpreters for purposes of administrative adjudications.

This bill would require the department to be the certifying body for CommuniCal certified medical interpreters (CCMIs), and to authorize other interpreters meeting specified requirements, including a screening test, to provide CommuniCal services. The bill would require the department to (1) develop, monitor, and evaluate interpreter competency, qualifications, training, certification, and continuing education, (2) by September 1, 2015,

approve an examination and certification process to test and certify the competency of medical interpreters, and (3) maintain a registry of those persons who meet the requirements to provide CommuniCal services. The bill would require the department to establish the Community Advisory Committee for purposes of assisting the department in the above-described tasks. The bill would also require the department to establish and charge fees that do not exceed reasonable costs for applicants to take any department-administered examinations and be certified or authorized and listed in the registry, and would require the department, in consultation with the Community Advisory Committee, to adopt quality standards and medical interpretation certification requirements through regulations.

The Ralph C. Dills Act provides for employer-employee relations between the state and its employees, as specified, including, among other things, the right of state employees to form, join, and participate in the activities of employee organizations for the purpose of representation on all matters of employer-employee relations, as specified.

This bill would provide that CommuniCal interpreters would have the right to form, join, and participate in the activities of a labor organization of their own choosing for the purpose of representation of specified employer-employee matters. The bill would provide that CommuniCal interpreters would not be considered state employees for purposes of the bill, but would have the right to be represented by an exclusive labor organization of their own choosing for the purpose of collective bargaining with the state on matters of mutual concern, including their base reimbursement rate.

The bill would provide that upon application by petition, authorization cards, or union membership cards of a labor organization adequately showing that a majority of CommuniCal interpreters in the state desire to be represented exclusively by that labor organization, and no other labor organization is currently certified as the exclusive representative, the Public Employment Relations Board shall certify and grant exclusive representation to that labor organization, and would establish other election procedures to be administered by that board.

The bill would require that any agreement resulting from collective bargaining be legally binding upon the state and

committed to writing, and would further require that, upon the completion of discussions and collective bargaining, any agreement be reduced to writing and be presented to the appropriate administrative, legislative, or other governing body in the form of a binding agreement, resolution, bill, law, or other form required for adoption.

The bill would provide that, after the certification of a labor organization, the state shall approve and have deducted, upon authorization in the case of dues deduction, from the appropriate reimbursement or other payment to the members of the labor organization the monthly amount of dues or service fees as certified by an executive officer of the labor organization, and shall transmit the amount to the treasurer of the labor organization.

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

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

(a) California has long been recognized as one of the most racially and linguistically diverse states; the state is home to residents who speak over 200 languages.

(b) Approximately one in five Californians is limited English proficient (LEP) and identifies as speaking English less than very well.

(c) Language access and the right to interpretation services is required under Title VI of the federal Civil Rights Act of 1964, the Dymally-Alatorre Bilingual Services Act of 1973 (Chapter 17.5 (commencing with Section 7290) of Division 7 of Title 1 of the Government Code), the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code), Section 11135 of the Government Code, Section 1259 of the Health and Safety Code, and California civil rights law.

(d) The demand for medical interpretation services by Medi-Cal beneficiaries is significant, with 45.2 percent of Medi-Cal beneficiaries speaking a language other than English.

(e) The state will experience an even greater demand for language services as health care reform measures are implemented over the next few years and 35 percent of Californians expected to become newly eligible for Medi-Cal as a result of the federal

Patient Protection and Affordable Care Act (Public Law 111-148) will speak English less than well.

(f) In California, language assistance services are provided in an uncoordinated manner that lacks transparency and accountability, and a majority of services are currently provided ad hoc by family members and friends or untrained staff.

(g) California has the opportunity to meet the growing demand early on by accessing millions of dollars in federal matching funds to provide medical interpretation services to LEP Medi-Cal beneficiaries.

(h) Professional medical interpretation services help reduce avoidable medical errors and provider malpractice liability for physicians and other health care providers.

(i) A coordinated program to offer medical interpreter services will improve health care outcomes for LEP Californians and help control health care costs that result from a lack of access to preventative and primary care.

SEC. 2. It is the intent of the Legislature to do all of the following:

(a) Create the CommuniCal program, which shall provide reliable access to language interpretation for Medi-Cal beneficiaries who are limited English proficient.

(b) Establish a mechanism for accessing federal Medicaid matching funds to provide a majority of the funding for the CommuniCal program.

(c) Enable trained and qualified interpreters to meet the demand for language services for a significant portion of the estimated 3,000,000 Medi-Cal beneficiaries with limited English proficiency.

(d) Facilitate accurate and timely communication between limited-English-proficient patients and their health care providers, which will improve quality of care, reduce medical errors, increase patient understanding and compliance with health diagnoses and care plans, and reduce the cost of health care by eliminating waste, such as unnecessary tests and other care.

SEC. 3. Chapter 13 (commencing with Section 3599.50) is added to Division 4 of Title 1 of the Government Code, to read:

CHAPTER 13. COMMUNICAL MEDICAL INTERPRETERS

Article 1. Certification and Registration of CommuniCal Medical Interpreters

3599.50. (a) For purposes of this chapter, the following definitions apply:

(1) “CommuniCal” means the Medi-Cal Patient-Centered Communication program established pursuant to Article 4.6 (commencing with Section 14146) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code.

(2) “CommuniCal certified medical interpreter” or “CCMI” means an interpreter who has been certified pursuant to subdivision (b) of Section 3599.51.

(3) “CommuniCal interpreter” means an interpreter who is authorized to provide CommuniCal services pursuant to Section 3599.51.

(4) “Certifying body” or “department” means the State Department of Health Care Services.

(5) “Community Advisory Committee” means the committee established pursuant to Section 3599.53.

(6) “Interpreter” means an oral interpreter who is fluent in English and in a necessary second language, who can accurately speak, read, and readily interpret the necessary second language, but does not include a sign language interpreter or transliterator.

(b) Notwithstanding any other law, the State Department of Health Care Services shall serve as the CommuniCal certified medical interpreter (CCMI) certifying body. The certifying body shall do both of the following:

(1) Develop, monitor, and evaluate interpreter competency, qualifications, training, certification, and continuing education requirements for medical interpreters.

(2) By September 1, 2015, in consultation with the Community Advisory Committee, approve an examination and certification process to test and certify the competency of medical interpreters pursuant to Section 3599.51.

3599.51. (a) As a condition of certification, an interpreter shall complete at least one of the following:

(1) Pass an examination administered by a nonprofit organization selected by the department that is nationally accredited to offer certification examinations for health care interpreters.

(2) Pass an examination developed by a state-established language testing and certification program that includes, at a minimum, both an oral and written component and the following competency standards:

(A) A documented and demonstrated professional level of language fluency in both English and the other specified language.

(B) A fundamental knowledge, in both English and the other specified language, of health care terminology and concepts relevant to health care delivery systems.

(C) Education and training in interpreter ethics, conduct, practice, and confidentiality. The department shall adopt standards in interpreter ethics, conduct, practice, and confidentiality promulgated by the California Healthcare Interpreting Association, the National Council on Interpreting in Health Care, or both.

(3) Achieve the designation of Certified Healthcare Interpreter from the Certification Commission for Healthcare Interpreters (CCHI).

(4) Achieve the designation of Certified Medical Interpreter from the National Board of Certification for Medical Interpreters (NBCMI).

(5) Hold a current interpreter's certification pursuant to Article 4 (commencing with Section 68560) of Chapter 2 of Title 8 or Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2.

(b) Each interpreter who has met the requirements of subdivision (a), is listed on the CommuniCal Medical Interpreter Registry established pursuant to subdivision (e), and has been issued a certificate by the certifying body shall be known as a CommuniCal Certified Medical Interpreter (CCMI).

(c) (1) In addition to the certification process described in subdivision (b), commencing July 1, 2015, the department shall authorize CommuniCal services to be provided by an interpreter of languages of lesser diffusion or languages for which a CCMI examination has not been created. The department shall send an authorization letter to any person who satisfies the requirements of this subdivision.

(2) The certifying body, in consultation with the Community Advisory Committee, shall authorize an interpreter to provide CommuniCal services if the interpreter passes a screening test that includes both of the following:

(A) A written test, which need not be language specific, but which shall include the following categories of knowledge, skills, and abilities:

- (i) Managing an interpreter encounter.
- (ii) Health care terminology.
- (iii) Interacting with other health care professionals.
- (iv) Preparing for an interpreting encounter.
- (v) Cultural responsiveness.

(B) An oral test utilizing the target language spoken by the interpreter to test his or her linguistic and interpreting skills.

(d) Commencing July 1, 2015, in order to be eligible to provide CommuniCal services pursuant to Article 4.6 (commencing with Section 14146) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, an interpreter shall be certified as a CCMI or shall be authorized to provide CommuniCal services pursuant to subdivision (c).

(e) The certifying body shall maintain a list of all interpreters who meet the requirements of subdivisions (b) and (c), which shall be known as the CommuniCal Medical Interpreter Registry.

(f) (1) In order to meet anticipated demand for services under CommuniCal, the certifying body shall authorize an interpreter to provide CommuniCal services, until the interpreter becomes certified pursuant to subdivision (b) or receives an authorization letter pursuant to subdivision (c), if the person meets all of the following requirements:

(A) The interpreter can demonstrate that as of January 1, 2015, he or she has worked regularly and professionally as an in-person medical interpreter during the previous two years.

(B) The interpreter is at least 18 years of age.

(C) The interpreter has a minimum of a United States high school diploma or General Education Development (GED), or its equivalent from another country.

(D) The interpreter has demonstrated linguistic proficiency in English and another specified language.

(2) In addition to the provisional authorization provided in paragraph (1), the certifying body shall authorize an interpreter to

provide CommuniCal services, until the interpreter becomes certified pursuant to subdivision (b) or receives an authorization letter pursuant to subdivision (c), if the person graduated from an accredited medical interpreter training program at a college or university before January 1, 2014.

(3) If an interpreter who is authorized to provide CommuniCal services pursuant to paragraphs (1) and (2) does not become certified or receive an authorization letter by December 31, 2017, he or she shall not be authorized to provide CommuniCal services.

3599.52. (a) The certifying body shall establish and charge fees, which do not exceed the reasonable costs, for applicants to take any department-administered examination offered pursuant to Section 3599.51. The certifying body shall establish and charge a single fee that does not exceed the reasonable costs for certification, authorization, and listing on the registry. The purpose of these fees is to cover the annual projected costs of carrying out this article.

(b) Each CommuniCal interpreter shall pay a registry and certification or authorization fee, not to exceed the reasonable costs, for the renewal of the certification or authorization and continued listing on the registry. The registry and certificate or authorization fee shall be due on July 1 of each year.

(c) The certifying body shall establish, maintain, administer, and publish annually an updated registry of CommuniCal interpreters. The certifying body may remove the name of a person from the registry if any of the following conditions occurs:

- (1) The person is deceased.
 - (2) The person notifies the board that the person is unavailable for work.
 - (3) The person does not submit a registry and certification or authorization fee or renewal fee as required by subdivision (b).
 - (4) The person fails to meet the quality standards and medical certification requirements established pursuant to Section 3599.53.
- (d) For the 2014–15 fiscal year only, the fee for certification, authorization, and listing on the registry as described in Section 3599.51 is waived.

3599.53. (a) The certifying body shall adopt quality standards and medical interpretation certification requirements through regulations, which shall include, but not be limited to, maintaining patient confidentiality and familiarity or experience working with

medical terminology. It shall determine the testing requirements for certification in each language and create a list of those languages where standards permit registration of the interpreter.

(b) For purposes of assisting with the tasks described in subdivision (a), the certifying body shall establish the Community Advisory Committee. The Community Advisory Committee shall include interested stakeholders that reflect the diversity of the state in terms of race, ethnicity, gender, sexual orientation, immigration status, and geography, including representatives of all of the following industries:

- (1) Government.
- (2) Health care providers, such as health care service plans, physicians, community and federally qualified health clinics, hospitals, or both.
- (3) Limited-English-proficient consumers.
- (4) Health care or language access advocates.
- (5) Medical or health care interpreters.
- (6) Any other expert or individual that the department deems appropriate.

3599.54. The exclusive representative of CommuniCal interpreters and a nonprofit organization, and the Community Advisory Committee shall partner to create and administer a training program for medical interpreters, in order to prepare interpreters for any department-administered examination offered pursuant to Section 3599.51 or other certification standards established for languages of lesser diffusion and provide continuing education for those CommuniCal interpreters placed on the registry. The Community Advisory Committee shall make recommendations on interpreter certification and services.

3599.55. The relationship of CommuniCal interpreters to all parties and recipients of service is one of independent contractor, unless otherwise specified by law.

3599.56. Only CommuniCal interpreters shall be represented by a labor organization for purposes of collective bargaining pursuant to Article 2 (commencing with Section 3599.70).

Article 2. Collective Bargaining for CommuniCal Certified
Medical Interpreters

3599.70. (a) CommuniCal interpreters shall have the right to form, join, and participate in the activities of a labor organization of their own choosing for the purpose of representation on all matters specified in this section. The state action antitrust exemption to the application of federal and state antitrust laws is applicable to the activities of CommuniCal interpreters and their exclusive representatives authorized under this article or other applicable law.

(b) CommuniCal interpreters shall have the right to be represented by an exclusive labor organization of their own choosing for the purpose of collective bargaining with the State of California on matters of mutual concern, including, but not limited to, the following:

- (1) Development, maintenance, and application of the registry.
- (2) The setting of reimbursements and rates for state-funded medical interpreter programs.
- (3) The allocation, process, procedure, distribution, methodology, and manner of payment of interpreter reimbursements and rates.
- (4) Professional development, certification and training, recruitment and retention of qualified interpreters, and language access quality standards.
- (5) Dispute resolution mechanisms binding on third-party administrators and their subcontractors of state-funded interpreter programs.
- (6) Mechanisms and funding to improve state-funded medical interpreter programs and the stability, funding, rules, regulations, and operation of state-funded medical interpretation programs.
- (7) Scheduling systems of interpreter services under state-funded interpreter programs.
- (8) Mediums and modes of delivery of interpretation services under state-funded medical interpretation programs.
- (9) The improvement and expansion of quality medical interpretation services.
- (10) The collection and disbursement of established dues or fees to the exclusive representative of CommuniCal interpreters.

(c) This section shall not apply to work performed as an employee of an employer.

(d) The appropriate bargaining unit for CommuniCal interpreters shall be a statewide unit of eligible CommuniCal interpreters.

(e) CommuniCal interpreters are not public employees and this article does not create an employer-employee relationship between CommuniCal interpreters and the state or patient-centered communication brokers for any purpose, including, but not limited to, state employee eligibility for health or retirement benefits, or vicarious liability in tort.

3599.71. A labor organization as referenced in this section is defined as a labor organization described in Section 501(c)(5) of the Internal Revenue Code which has as its primary purpose the representation of public service providers in their relations with state and other public entities.

3599.72. Upon request by a labor organization that is signed by 20 percent of CommuniCal interpreters, the certifying body shall furnish to the labor organization a list of all CommuniCal interpreters including full names, telephone numbers, email addresses, and mailing or home addresses within five days of the request.

3599.73. (a) Upon application by petition, authorization cards, or union membership cards of a labor organization adequately showing that a majority of CommuniCal interpreters in the state desire to be represented exclusively by that labor organization, and no other labor organization is currently certified as the exclusive representative, the Public Employment Relations Board (PERB) shall certify and grant exclusive representation of the CommuniCal interpreters to the labor organization for the purposes set forth in this section.

(b) Upon application by petition, authorization cards, or union membership cards of a labor organization adequately showing that less than a majority but at least 30 percent of CommuniCal interpreters desire to be represented exclusively by that labor organization, and no other labor organization is currently certified as the exclusive representative, the matter to determine representation shall be set for a mail ballot election administered by PERB pursuant to its rules and regulations for administering elections. If a PERB regulation or rule conflicts with this section, this section shall control.

(c) PERB shall accept, review, and certify all valid applications submitted pursuant to subdivisions (a) and (b) pursuant to its rules and regulations. If a PERB regulation or rule conflicts with this section, this section shall control.

(d) Any representation election shall be a mail ballot election.

(e) Within 10 days of receipt of an adequate petition, authorization cards, or union membership cards necessitating an election, PERB shall conduct a preelection conference with the labor organization and the state prior to scheduling an election for the purpose of clarifying issues, obtaining stipulations, executing a directed election order or consent election agreement, and taking other actions to expedite the process. The labor organization and the state shall engage in a good faith effort to reach a consent election agreement stipulating the parties to appear on the ballot, the form of the ballot, the CommuniCal interpreters eligible to vote, the rules governing the election, and the date, time, and other specifics of the mail ballot election. The state shall be represented by the Department of Human Resources and the State Department of Health Care Services.

3599.74. No other labor organization shall be permitted to intervene in an election unless prior to the preelection conference, by petition, authorization cards, or union membership cards, the intervening labor organization adequately shows at least 30 percent of CommuniCal interpreters in the state as of January 1 of the year the application is made desire to be represented exclusively by the intervening labor organization.

3599.75. PERB shall proceed to determine all issues or matters in dispute. The determination and a directed election order or consent election agreement between the labor organization and the state shall be made within seven days of the conference.

3599.76. (a) PERB shall initiate a mail ballot election within 10 days of the execution of a directed election order or consent election agreement. The election shall provide for an affirmative vote for employee representation by the petitioning employee organization. The proposition receiving the votes of a majority of all valid votes cast shall win the election. Should no option receive an absolute majority vote of all valid votes cast, a runoff vote between the two options receiving the highest number of votes shall occur within seven days.

(b) A preelection meeting shall occur with the labor organization and the state 30 minutes prior to the mailing of ballots for the purpose of resolving any final issues prior to the commencement of the mail ballot election.

(c) The election shall be conducted in accordance with the procedures established and approved pursuant to the consent election agreement or directed election order.

(d) The supervising official from PERB shall determine the date and time ballots must be received for tabulation, which date shall not be sooner than 10 days or more than 20 days from the date the voting commences. PERB shall be charged with validating the ballots against a list of CommuniCal interpreters provided by the State Department of Health Care Services.

(e) A labor organization certified by PERB as receiving a majority of all valid votes cast is the exclusive representative of all CommuniCal interpreters in the state for purposes set forth in this section. All CommuniCal interpreters who are eligible for the bargaining unit pursuant to Section 3599.70 subsequent to certification of the labor organization shall be part of the bargaining unit and represented by the certified labor organization.

3599.77. Discussions and collective bargaining between the certified labor organization and the state and its designated agents in the Department of Human Resources and the State Department of Health Care Services shall commence within 30 days upon certification and at any time thereafter upon request of the labor organization.

3599.78. The state and its designated agents in the Department of Human Resources and the State Department of Health Care Services shall be required to meet with the certified labor organization before any regulation is proposed, promulgated, set, or otherwise presented concerning any of the purposes for collective bargaining set forth in Section 3599.70.

3599.79. Any agreement resulting from collective bargaining shall be legally binding upon the state and committed to writing. Upon the completion of discussions and collective bargaining, any agreement shall be reduced to writing and be presented to the appropriate administrative, legislative, or other governing body in the form of a binding agreement, resolution, bill, law, or other form required for adoption. Nothing herein shall prevent the parties from agreeing to and effecting those provisions of an agreement

which have received legislative approval or those provisions which do not require legislative action.

3599.80. Nothing in this article shall affect the right of a CommuniCal interpreter to authorize a dues or service fee deduction from his or her reimbursement.

3599.81. (a) After the certification of a labor organization, the state shall approve and have deducted, upon authorization in the case of dues deduction, from the appropriate reimbursement or other payment to members of the labor organization the monthly amount of dues or service fees as certified by an executive officer of the labor organization and shall transmit the amount to the treasurer of the labor organization.

(b) After the certification of a labor organization, the state shall approve and have deducted from the appropriate reimbursement or other payment to nonmembers a reasonable fair share service fee for the cost of representing them in negotiations, contract administration, subsidy rates, benefits, payment systems, training opportunities, and other matters related to those purposes listed in subdivision (b) of Section 3599.70. This fair share service fee shall not exceed the annual dues paid by members of the labor organization. The state shall transmit the amount of the fair share fee to the treasurer of the labor organization.

3599.82. Dues or fair share service fee obligations shall continue in effect as long as the labor organization is the recognized bargaining representative, notwithstanding the expiration of any agreement between the state and the recognized labor organization.

3599.83. (a) The state, through its designated agents in the Department of Human Resources and the State Department of Health Care Services, shall meet and collectively bargain in good faith with representatives of a certified labor organization and shall consider fully the proposals made by the labor organization on behalf of CommuniCal interpreters. “Meet and collectively bargain in good faith” means that the state and its designated agent and representatives of a certified labor organization shall have the mutual obligation to collectively bargain within a reasonable length of time in order to freely exchange information, opinions, and proposals.

(b) The state shall not interfere with, intimidate, restrain, coerce, or discriminate against CommuniCal interpreters due to the exercise of their rights under this section. A complaint alleging any violation

of this section shall be processed as an unfair practice charge by PERB pursuant to its rules and regulations. The initial determination as to whether the charge of unfair practice is justified and, if so, the appropriate remedy necessary to effectuate the purposes of this section, shall be a matter within the exclusive jurisdiction of PERB. PERB shall apply and interpret unfair labor practices consistent with existing judicial interpretations of this section. If a PERB practice, regulation, interpretation, or rule conflicts with this section, this section shall control.

3599.84. Any charging party, respondent, or intervenor aggrieved by a final decision or order of PERB in an unfair practice case, except a decision of PERB not to issue a complaint in such a case, and any party to a final decision or order of PERB in a representation, recognition, or election matter that is not brought as an unfair practice case, may petition for a writ of extraordinary relief from that decision or order pursuant to Section 3520.

3599.85. Execution of a valid written agreement between the state and the certified labor organization shall bar the filing of an application or petition for certification of a majority representative for the length of the agreement except as otherwise provided in this article. No application or petition for certification shall be valid within one year of any prior certification.

3599.86. Should any court declare any other provision of this chapter void, invalid, illegal, or unconstitutional, the remaining provisions shall remain in full force.

3599.87. (a) The state shall not encourage or discourage membership in a labor organization and shall not discriminate against any CommuniCal interpreter on the basis of union activity, concerted action, union membership, age, sex, race, religious beliefs, color, national origin, sexual orientation, gender identity, or disability in accordance with and as required by applicable state and federal law. A CommuniCal interpreter shall not be subject to punitive action, or threatened with punitive action, for the exercise of lawful action as an elected, appointed, or recognized representative of any bargaining unit.

(b) Unless otherwise stated in this article, the state may adopt reasonable rules and regulations after consultation in good faith with representatives of a certified labor organization for the administration of CommuniCal interpreter employer-employee relations under this article. In the case of any conflict between

rules and regulations enacted pursuant to this article, including those subdivisions adopting PERB rules, regulations, or procedures, the provisions of this section shall control.

3599.88. Nothing in this chapter may be construed to interfere with CommuniCal interpreter rights and responsibilities under federal law.

SEC. 4. Article 4.6 (commencing with Section 14146) is added to Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:

Article 4.6. CommuniCal

14146. For the purposes of this article, the following definitions shall apply:

(a) “CommuniCal” means the Medi-Cal Patient-Centered Communication program.

(b) “CommuniCal certified medical interpreter” or “CCMI” means an interpreter certified under the CommuniCal program pursuant to subdivision (b) of Section 3599.51 of the Government Code.

(c) “CommuniCal interpreter” means an interpreter who is authorized to provide CommuniCal services pursuant to Section 3599.51.

(d) “Community Advisory Committee” means the committee established pursuant to Section 3599.53 of the Government Code.

(e) “Department” means the State Department of Health Care Services.

(f) “Interpreter” means an oral interpreter who is fluent in English and in a necessary second language, who can accurately speak, read, and readily interpret the necessary second language, but does not include a sign language interpreter or transliterator.

(g) “Medi-Cal managed care organizations” or “MMCOS” means all models of Medi-Cal managed care, including county-organized health systems, geographic managed care, and two-plan models.

(h) “Patient-centered communication broker” or “broker” means any third-party administrator for the CommuniCal program.

14146.10. (a) The department shall establish the CommuniCal program to provide and reimburse for certified medical interpretation services to Medi-Cal beneficiaries who are limited English proficient (LEP).

(b) Commencing July 1, 2015, CommuniCal shall offer medical interpreter services to Medi-Cal providers serving Medi-Cal beneficiaries on either a fee-for-service or managed care basis pursuant to this article. The department shall adopt policies to prohibit duplicate payments to CommuniCal interpreters and MMCOs for beneficiaries enrolled in an MMCO, in consultation with the Community Advisory Committee.

(c) A health care provider or entity entering into a Medi-Cal provider agreement or a Medi-Cal managed care contract with the state, including MMCOs and their subcontracting plans, and fee-for-service providers, may utilize CommuniCal to provide medical interpreter services to Medi-Cal beneficiaries.

(d) All contracts between MMCOs and their subcontractors, including health providers and other health plans, shall include provisions describing access to CommuniCal medical interpreter services.

(e) The department shall pursue all available sources of federal funding to establish and operate CommuniCal and shall seek any federal approvals necessary to implement this article, in consultation with the Community Advisory Committee.

14146.11. CommuniCal shall include the provision of in-person, telephonic, and video medical interpretation services by a CommuniCal interpreter. To meet language access requirements and ensure patient safety, in-person interpreter services shall be the preferred mode of medical interpretation in the following instances whenever possible:

- (a) Family meetings regarding medical care.
- (b) Medical encounters involving difficult or agitated patients.
- (c) Medical encounters to make treatment decisions.
- (d) Obtaining informed consent involving review of documents.
- (e) Any medical encounter that, in the physician's judgment, requires in-person interpretation for the health, safety, or well-being of the patient.
- (f) Psychiatric encounters.
- (g) End-of-life discussions.
- (h) Other circumstances identified by the Community Advisory Committee.

14146.12. (a) CommuniCal shall be administered by a patient-centered communication broker.

(b) The department shall create and administer a competitive Request for Proposals (RFP), and shall execute the resulting contract.

(c) The broker shall be responsible for all of the following duties:

(1) Registering CommuniCal interpreters with Medi-Cal.

(2) Verifying the eligibility of an interpreter to provide CommuniCal services with the State Department of Health Care Services.

(3) Verifying Medi-Cal eligibility for interpreter services utilizing the state's Medi-Cal Eligibility Data System (MEDS).

(4) Submitting billing summaries to Medi-Cal, aggregating the cost for services provided.

(5) Ensuring compliance with all Medi-Cal and applicable CommuniCal reporting requirements.

(6) Making payments to CommuniCal interpreters, including any dues and service fee deductions.

(7) Scheduling CommuniCal interpreter appointments with Medi-Cal providers.

(8) Monitoring the quality of CommuniCal interpreter services and complying with state oversight requirements of the program, in consultation with the Community Advisory Committee, including determining the need for multiple brokers to administer CommuniCal.

(9) Creating CommuniCal promotional materials for distribution to Medi-Cal providers, MMCOs, and beneficiaries.

(10) Any other duties determined to be appropriate by the Community Advisory Committee.

(d) The department shall make all applicable Medi-Cal reporting requirements known to the broker and shall be responsible for the broker's compliance with these requirements.

14146.13. (a) Notwithstanding any other law, only interpreters certified or authorized pursuant to Article 1 (commencing with Section 3599.50) of Chapter 13 of Division 4 of Title 1 of the Government Code may participate in CommuniCal.

(b) CommuniCal interpreters shall be responsible for all of the following:

(1) Performing interpreter services independent of other policies, rules, or procedures of conduct, except as provided by this article or by applicable law.

(2) Performing interpreter services independent of direction, except as otherwise provided by this article and applicable law.

(3) Preparing and submitting documentation to the broker in support of time worked or other services rendered.

(4) Directing and controlling the manner and means of interpretation services, except as otherwise provided in this article.

(c) Unless otherwise prohibited by this article or applicable law, CommuniCal interpreters may do any of the following:

(1) Advertise, promote, or otherwise communicate availability for services to clients and the general public.

(2) Provide office space, equipment, support services, forms, supplies, and business cards, except as otherwise provided in this article.

(d) (1) For purposes of the CommuniCal program, CommuniCal interpreters are not state employees. CommuniCal interpreters shall be independent contractors of the state.

(2) For purposes of the CommuniCal program, CommuniCal interpreters are not employees of the broker, health care providers, or consumers.

(3) The state action antitrust exemption to the application of federal and state antitrust laws is applicable to the activities of CommuniCal interpreters and their exclusive representatives authorized under this article or other applicable law.

14146.135. (a) The base reimbursement rate for CommuniCal interpreters shall be subject to collective bargaining.

(b) Reimbursement may be adjusted for factors, including, but not limited to, geography, language spoken, availability of interpreters, level of certification, travel time, or other factors, in consultation with the Community Advisory Committee.

14146.14. The department shall issue guidance on the administration of the CommuniCal program to ensure compliance with this article and all applicable state and federal laws by all contractors and subcontractors of the program, in consultation with the Community Advisory Committee.

14146.15. (a) The CommuniCal Program Fund is hereby created in the State Treasury. Notwithstanding Section 16305.7 of the Government Code, any interest and dividends earned on deposits in the fund shall be retained in the fund for purposes specified in subdivision (c).

(b) Moneys in the fund shall consist of any funds dedicated to the CommuniCal program.

(c) Moneys in the fund shall, upon appropriation by the Legislature to the department, be used solely to fund the CommuniCal program.

Approved _____, 2014

Governor