

AMENDED IN ASSEMBLY AUGUST 7, 2014

AMENDED IN ASSEMBLY JUNE 26, 2014

AMENDED IN SENATE MAY 27, 2014

AMENDED IN SENATE APRIL 29, 2014

SENATE BILL

No. 1339

Introduced by Senator Cannella
(Coauthors: Senators Huff and Vidak)
(Coauthors: Assembly Members Medina and Wilk)

February 21, 2014

An act to *amend Section 14043.38 of, and to add Section 14124.27* to, the Welfare and Institutions Code, relating to Medi-Cal.

LEGISLATIVE COUNSEL'S DIGEST

SB 1339, as amended, Cannella. Medi-Cal: Drug Medi-Cal Treatment Program providers.

Existing law provides for the Drug Medi-Cal (DMC) Treatment Program, under which counties enter into contracts with the State Department of Health Care Services (~~DHCS~~) for the provision of various drug treatment services to Medi-Cal recipients, or the department directly arranges for the provision of these services if a county elects not to do so.

Existing law requires the ~~DHCS~~ *State Department of Health Care Services* to screen Medi-Cal providers and designate each provider *or applicant* as "limited," "moderate," or "high" categorical risk. Existing law requires a provider or applicant designated as a "high" categorical risk, and a person with a 5% or greater direct or indirect ownership interest in the provider, to submit to the Department of Justice fingerprint images and related information for the purpose of obtaining information

as to the existence of past criminal conduct, as specified. Existing law requires the Department of Justice to charge a fee, to be paid by the applicant or provider, sufficient to cover the cost of processing the criminal background check request.

This bill would require DMC providers to be designated as a “high” categorical risk and be subject to the background checks described above. *The bill would provide that if the provider or applicant is a nonprofit Drug Medi-Cal provider or applicant, the criminal background check and the requirement to submit fingerprint images and related information would apply to the officers and executive director of the provider or applicant.* The bill would permit the department to designate a DMC provider as a “limited” or “moderate” categorical risk by executing a declaration stating the reason or reasons that a “high” categorical risk designation is no longer warranted. The bill would provide that it is the responsibility of the DMC provider, or the person with a 5% or greater direct or indirect ownership interest in the provider, to pay the fee imposed for processing the criminal background check request, as applicable. The bill would prohibit, except as provided by federal law, a DMC provider from being excluded from contracting with a county or the department based solely on the existence of a past criminal record of the DMC provider or a person with a 5% or greater direct or indirect ownership interest in the provider.

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 14043.38 of the Welfare and Institutions
- 2 Code is amended to read:
- 3 14043.38. (a) Provider types are designated as “limited,”
- 4 “moderate,” or “high” categorical risk by the federal government
- 5 in Section 424.518 of Title 42 of the Code of Federal Regulations.
- 6 The department shall, at minimum, utilize the federal regulations
- 7 in determining a provider’s or applicant’s categorical risk.
- 8 (b) In accordance with Section 455.450 of Title 42 of the Code
- 9 of Federal Regulations, the department shall designate a provider
- 10 or applicant as a “high” categorical risk if any of the following
- 11 occur:
- 12 (1) The department imposes a payment suspension based on a
- 13 credible allegation of fraud, waste, or abuse.

1 (2) The provider or applicant has an existing Medicaid
2 overpayment based on fraud, waste, or abuse.

3 (3) The provider or applicant has been excluded by the federal
4 Office of the Inspector General or another state’s Medicaid program
5 within the previous 10 years.

6 (4) The federal Centers for Medicare and Medicaid Services
7 lifted a temporary moratorium within the previous six months for
8 the particular provider type submitting the application, the applicant
9 would have been prevented from enrolling based on that previous
10 moratorium, and the applicant applies for enrollment as a provider
11 at any time within six months from the date the moratorium was
12 lifted.

13 (c) If the department designates a provider or applicant as a
14 “high” categorical risk, the department or its designee shall do
15 both of the following:

16 (1) Conduct a criminal background check of ~~the provider or~~
17 ~~applicant, and any person with a 5-percent or greater direct or~~
18 ~~indirect ownership interest in the provider or applicant.~~ *the*
19 *following persons:*

20 (A) *The provider or applicant. If the provider or applicant is a*
21 *nonprofit Drug Medi-Cal provider or applicant, the officers and*
22 *executive director of the provider or applicant.*

23 (B) *Any person with a 5-percent or greater direct or indirect*
24 *ownership interest in the provider or applicant.*

25 (2) ~~Require the provider or applicant, and any person with a~~
26 ~~5-percent or greater direct or indirect ownership interest in the~~
27 ~~provider or applicant,~~ *the following persons* to submit a set of
28 fingerprints within 30 days of the department’s request, in a manner
29 determined by ~~the department.~~ *department:*

30 (A) *The provider or applicant. If the provider or applicant is a*
31 *nonprofit Drug Medi-Cal provider or applicant, the officers and*
32 *executive director of the provider or applicant.*

33 (B) *Any person with a 5-percent or greater direct or indirect*
34 *ownership interest in the provider or applicant.*

35 (d) (1) The department shall submit to the Department of Justice
36 fingerprint images and related information required by the
37 Department of Justice of Medi-Cal providers or applicants
38 determined to be a “high” categorical risk pursuant to subdivision
39 (a), and any person with a 5-percent or greater direct or indirect
40 ownership interest in those providers and applicants, for the

1 purposes of obtaining information as to the existence and content
2 of a record of state or federal convictions and state or federal arrests
3 and also information as to the existence and content of a record of
4 state or federal arrests for which the Department of Justice
5 establishes that the person is free on bail or on his or her
6 recognizance pending trial or appeal.

7 (2) When received, the Department of Justice shall forward to
8 the Federal Bureau of Investigation requests for federal summary
9 criminal history information received pursuant to this section. The
10 Department of Justice shall review the information returned from
11 the Federal Bureau of Investigation and compile and disseminate
12 a response to the department.

13 (3) The Department of Justice shall provide a state or federal
14 level response to the department pursuant to paragraph (1) of
15 subdivision (p) of Section 11105 of the Penal Code.

16 (4) The department shall request from the Department of Justice
17 subsequent notification service, as provided pursuant to Section
18 11105.2 of the Penal Code, for persons described in paragraph (1).

19 (5) The Department of Justice shall charge a fee sufficient to
20 cover the cost of processing the request described in this section.
21 That fee shall be paid by the subject of the criminal background
22 check.

23 (e) For persons subject to the requirements of subdivision (a)
24 of Section 15660, the procedure for obtaining and submitting
25 fingerprints and notification by the Department of Justice of
26 criminal record information set forth in subdivision (c) of Section
27 15660 shall apply instead of the procedure set forth in subdivision
28 (d).

29 **SECTION 1.**

30 *SEC. 2.* Section 14124.27 is added to the Welfare and
31 Institutions Code, to read:

32 14124.27. (a) (1) Certified Drug Medi-Cal (DMC) providers
33 shall be designated as a “high” categorical risk pursuant to Section
34 14043.38 and the provider and any person with a 5 percent or
35 greater direct or indirect ownership interest in the provider shall
36 be subject to background checks pursuant to the provisions of that
37 section.

38 (2) The department may designate a DMC provider as a
39 “limited” or “moderate” categorical risk for purposes of Section
40 14043.38 and federal regulations. To designate a DMC provider

1 as a “limited” or “moderate” categorical risk, the department shall
2 execute a declaration, to be retained by the director, with a copy
3 to be posted on the department’s Internet Web site and a copy
4 transmitted to the Legislature, stating the reason or reasons that a
5 “high” categorical risk designation for that provider is no longer
6 warranted.

7 (b) Payment of the fee imposed pursuant to paragraph (5) of
8 subdivision (d) of Section 14043.38 shall be the responsibility of
9 the DMC provider or person with a 5 percent or greater direct or
10 indirect ownership interest in the provider, as applicable.

11 (c) Except as provided by federal law, a DMC provider shall
12 not be excluded from contracting with a county or the department
13 based solely on the existence of a past criminal record of the DMC
14 provider or a person with 5 percent or greater direct or indirect
15 ownership interest in the provider.

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