

**ASSEMBLY BILL**

**No. 19**

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**Introduced by Assembly Members Bonta and Levine**

September 8, 2015

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An act to add Article 6.7 (commencing with Section 14199.50) to Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, relating to Medi-Cal.

LEGISLATIVE COUNSEL'S DIGEST

AB 19, as introduced, Bonta. Managed care organization provider tax.

Existing law establishes the Medi-Cal program, administered by the State Department of Health Care Services, under which health care services are provided to qualified low-income persons. The Medi-Cal program is, in part, governed and funded by federal Medicaid Program provisions. Under existing law, one of the methods by which Medi-Cal services are provided is pursuant to contracts with various types of managed care plans. Existing law also imposes a sales tax on sellers of Medi-Cal managed care plans.

This bill would establish a new managed care organization provider tax, to be administered by the department in consultation with the Department of Managed Health Care. The tax would be assessed by the department on licensed health care service plans and managed care plans contracted with the department to provide Medi-Cal services, except as excluded by the bill. The bill would require the health plans to report to the department specified enrollment information, on a quarterly basis, beginning with the 2016–17 state fiscal year. On December 1, 2016, or the date upon which the department receives approval for federal financial participation, whichever is later, the

department would commence notification to the health plans of the assessed tax amount and due date for the first taxable quarter.

This bill would establish applicable taxing tiers and per enrollee amounts for the 2016–17 fiscal year, for both Medi-Cal enrollees and other enrollees, as defined. Commencing with the 2017–18 fiscal year, the bill would require the department and the Department of Managed Health Care to determine tax tiers and per enrollee tax amounts. The bill would require the department to request approval from the federal Centers for Medicare and Medicaid Services as necessary to implement the bill. The bill would authorize the department to implement its provisions by means of provider bulletins, all-plan letters, or similar instructions, and to notify the Legislature of this action.

This bill would establish the Health and Human Services Special Fund in the State Treasury, into which all revenues, less refunds, derived from taxes imposed by the bill would be deposited into the State Treasury to the credit of the fund. Interest and dividends earned on moneys in the fund would be retained in the fund for health care and prevention programs. Expenditures of the revenues, interest, and dividends would be made upon appropriation by the Legislature.

This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of  $\frac{2}{3}$  of the membership of each house of the Legislature.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

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

1     SECTION 1. Article 6.7 (commencing with Section 14199.50)  
2     is added to Part 3 of Chapter 7 of Division 9 of the Welfare and  
3     Institutions Code, to read:  
4  
5             Article 6.7. Managed Care Organization Provider Tax  
6  
7     14199.50. It is the intent of the Legislature that the department  
8     implement a managed care organization provider tax effective July  
9     1, 2016, to provide ongoing funding for health care and prevention,  
10    minimize to the extent possible any need for new reductions to the  
11    program, and meet all of the following goals:

1 (a) Generate an amount of nonfederal funds for the Medi-Cal  
2 program equivalent to the funds generated by the tax imposed  
3 pursuant to Article 5 (commencing with Section 6174) of Chapter  
4 2 of Part 1 of Division 2 of the Revenue and Taxation Code.

5 (b) Comply with federal Medicaid requirements applicable to  
6 permissible health care-related taxes.

7 (c) Structure the tax, to the extent possible, to have the lowest  
8 aggregate net financial impact on the health plans subject to the  
9 tax imposed pursuant to this article.

10 14199.51. The following definitions shall apply for the purposes  
11 of this article:

12 (a) “Countable enrollee” means an individual enrolled in a health  
13 plan, as defined in subdivision (e), each month of a taxable quarter.  
14 “Countable enrollee” does not include an individual enrolled in a  
15 Medicare plan, or a plan-to-plan enrollee, as defined in subdivision  
16 (l).

17 (b) “Department” means the State Department of Health Care  
18 Services.

19 (c) “Director” means the Director of Health Care Services.

20 (d) “Excluded plan” means a health plan licensed pursuant to  
21 Section 1351.2 of the Health and Safety Code.

22 (e) “Health care service plan” or “health plan” means a  
23 full-service health care service plan licensed by the Department  
24 of Managed Health Care under the Knox-Keene Health Care  
25 Service Plan Act of 1975 (Chapter 2.2 (commencing with Section  
26 1340) of Division 2 of the Health and Safety Code) or a managed  
27 care plan contracted with the State Department of Health Care  
28 Services to provide Medi-Cal services.

29 (f) “Medi-Cal enrollee” means an individual enrolled in a health  
30 plan, as defined in subdivision (e), who is a Medi-Cal beneficiary  
31 and who is not concurrently enrolled in an additional health plan  
32 during a taxable quarter.

33 (g) “Medi-Cal per enrollee tax amount” means the amount of  
34 tax assessed per countable Medi-Cal enrollee within a Medi-Cal  
35 taxing tier.

36 (h) “Medi-Cal taxing tier” means a range of cumulative  
37 enrollment of countable Medi-Cal enrollees for a taxable quarter.

38 (i) “Other enrollee” means an individual enrolled in a health  
39 plan, as defined in subdivision (e), who is not a Medi-Cal  
40 beneficiary.

(j) “Other per enrollee tax amount” means the amount of tax assessed per countable other enrollee within another taxing tier.

(k) “Other taxing tier” means a range of cumulative enrollment of countable other enrollees for a taxable quarter.

(l) “Plan-to-plan enrollee” means an individual who receives his or her health care services through a full-service health plan pursuant to a subcontract from another full-service health plan.

(m) “Taxable quarter” means a calendar quarter of the state fiscal year.

14199.52. (a) The Health and Human Services Special Fund is hereby created in the State Treasury.

(b) All revenues, less refunds, derived from the taxes provided for in this article shall be deposited in the State Treasury to the credit of the fund.

(c) Notwithstanding Section 16305.7 of the Government Code, any interest and dividends earned on moneys in the fund shall be retained in the fund for health care and prevention programs.

(d) Expenditures pursuant to this section shall be made upon appropriation by the Legislature.

14199.53. (a) Beginning with the 2016–17 state fiscal year, within 45 days after the end of each state fiscal quarter, each health plan shall submit reports to the department for the state fiscal quarter that includes all of the following:

(1) Total cumulative enrollment for the quarter.

(2) Total Medicare cumulative enrollment for the quarter.

(3) Total Medi-Cal cumulative enrollment for the quarter.

(4) Total plan-to-plan cumulative enrollment for the quarter.

(5) Total other cumulative enrollment for the quarter that is not otherwise counted in paragraphs (2) through (4), inclusive.

(b) The department, in consultation with the Department of Managed Health Care, shall develop the methodologies used to determine the enrollments required to be reported by health plans and the format of those submissions.

(c) A report submitted under this section shall be accompanied by a certification by the health plan attesting to the accuracy of the reports.

(d) For the efficient operation of this section, the director, in consultation with the Director of the Department of Managed Health Care, may delegate the development of the format of the

1 reports or the collection of the reports, or both, to the Department  
2 of Managed Health Care.

3 14199.54. (a) A managed care organization provider tax shall  
4 be imposed on each health plan that is not an excluded plan.

5 (b) The department shall compute the quarterly tax for each  
6 health plan subject to the tax during the state fiscal year pursuant  
7 to Section 14197.55.

8 (c) On December 1, 2016, or the date the department receives  
9 federal approval necessary for receipt of federal financial  
10 participation in conjunction with the tax assessed pursuant to this  
11 article, whichever is later, the following activities shall commence:

12 (1) The director shall certify in writing that federal approval  
13 has been received, and within five business days shall post the  
14 certification on its Internet Web site and send a copy of the  
15 certification to the Secretary of State, the Secretary of the Senate,  
16 the Chief Clerk of the Assembly, and the Legislative Counsel.

17 (2) Within 10 business days following receipt of the notice of  
18 federal approval, the department shall send a notice to each health  
19 plan subject to the tax, which shall contain the following  
20 information:

21 (A) The quarterly tax due for the first taxable quarter, and any  
22 subsequent taxable quarters for which data has been submitted and  
23 a tax has been calculated.

24 (B) The date on which the tax payments are due.

25 (3) A health plan shall pay the quarterly tax, based on a schedule  
26 developed by the department. The department shall establish the  
27 date that each tax payment is due, provided that the first tax  
28 payment shall be due no earlier than 20 days following the date  
29 the department sends the notice pursuant to paragraph (2), and the  
30 tax payments shall be paid at least one month apart, but no more  
31 than one quarter apart.

32 (4) A health plan shall pay the quarterly taxes that are due, if  
33 any, in the amounts and at the times set forth in the notice unless  
34 superseded by a subsequent notice issued by the department.

35 (d) The managed care organization provider tax, as assessed  
36 pursuant to this article, shall be paid by each health plan subject  
37 to the tax to the department for deposit in the Health and Human  
38 Services Special Fund created pursuant to Section 14199.52.

39 (e) (1) Interest shall be assessed on managed care organization  
40 provider taxes that are not paid on the date due at a rate of 10

1 percent per annum. Interest shall begin to accrue the day after the  
2 date the tax payment was due, and shall be deposited in the Health  
3 and Human Services Special Fund created pursuant to Section  
4 14199.52.

5 (2) If a tax payment is more than 60 days overdue, a penalty  
6 equal to the interest charge described in paragraph (1) shall be  
7 assessed and due for each month for which the tax payment is not  
8 received after 60 days.

9 (f) (1) Subject to paragraph (2), the director may waive a portion  
10 or all of either the interest or penalties, or both, assessed under this  
11 article in the event that the director determines, in his or her sole  
12 discretion, that the health plan has demonstrated that imposition  
13 of the full amount of the managed care organization provider tax  
14 pursuant to the timelines applicable under this article has a high  
15 likelihood of creating an undue financial hardship for the health  
16 plan, or creates a significant financial difficulty in providing needed  
17 services to Medi-Cal beneficiaries.

18 (2) Waiver of some or all of the interest or penalties pursuant  
19 to this subdivision shall be conditioned on the health plan's  
20 agreement to make tax payments on an alternative schedule  
21 developed by the department that takes into account the financial  
22 situation of the health plan and the potential impact on services.

23 (g) For the efficient operation of this section, the director, in  
24 consultation with the Director of Managed Health Care, may  
25 delegate the collection of the taxes under this article to the  
26 Department of Managed Health Care.

27 14199.55. (a) Prior to each fiscal year, beginning with the  
28 2017–18 fiscal year and each fiscal year thereafter, the department,  
29 in consultation with the Department of Managed Health Care, shall  
30 determine the Medi-Cal taxing tiers, the other taxing tiers, the  
31 Medi-Cal per enrollee tax amounts for each Medi-Cal taxing tier  
32 and the other per enrollee tax amounts for each other taxing tier,  
33 for the fiscal year, in order to achieve the goals specified in Section  
34 14199.50.

35 (b) For each fiscal year, beginning with the 2017–18 fiscal year,  
36 the department shall include in the Medi-Cal Local Assistance  
37 Estimate, released each January and May of the preceding fiscal  
38 year, the Medi-Cal taxing tiers, the other taxing tiers, the Medi-Cal  
39 per enrollee tax amounts for each Medi-Cal taxing tier and the  
40 other per enrollee tax amounts for each other taxing tier, determined

1 pursuant to subdivision (a) and attributable to the applicable fiscal  
2 year.

3 (c) For the 2016–17 fiscal year, the Medi-Cal taxing tiers for  
4 each fiscal quarter shall be as follows:

5 (1) Medi-Cal taxing tier I shall consist of all countable Medi-Cal  
6 enrollees in a health plan for the fiscal quarter from 0 through  
7 500,000, inclusive.

8 (2) Medi-Cal taxing tier II shall consist of all countable  
9 Medi-Cal enrollees in a health plan for the fiscal quarter from  
10 500,001 through 1,250,000, inclusive.

11 (3) Medi-Cal taxing tier III shall consist of all countable  
12 Medi-Cal enrollees in a health plan for the fiscal quarter from  
13 1,250,001 through 2,500,000, inclusive.

14 (4) Medi-Cal taxing tier IV shall consist of all countable  
15 Medi-Cal enrollees in a health plan for the fiscal quarter greater  
16 than 2,500,000.

17 (d) For the 2016–17 fiscal year, the Medi-Cal per enrollee tax  
18 amount for each Medi-Cal taxing tier for each fiscal quarter shall  
19 be as follows:

20 (1) The Medi-Cal per enrollee tax for Medi-Cal taxing tier I  
21 shall be twenty-seven dollars and fifty cents (\$27.50).

22 (2) The Medi-Cal per enrollee tax for Medi-Cal taxing tier II  
23 shall be ten dollars and twenty-five cents (\$10.25).

24 (3) The Medi-Cal per enrollee tax for Medi-Cal taxing tier III  
25 shall be five dollars (\$5.00).

26 (4) The Medi-Cal per enrollee tax for Medi-Cal taxing tier IV  
27 shall be one dollar (\$1.00).

28 (e) For the 2016–17 fiscal year, the other taxing tiers for each  
29 fiscal quarter shall be as follows:

30 (1) Other taxing tier I shall consist of all countable other  
31 enrollees in a health plan for the fiscal quarter from 0 through  
32 125,000, inclusive.

33 (2) Other taxing tier II shall consist of all countable other  
34 enrollees in a health plan for the fiscal quarter from 125,001  
35 through 1,250,000, inclusive.

36 (3) Other taxing tier III shall consist of all countable other  
37 enrollees in a health plan for the fiscal quarter greater than  
38 1,250,000.

39 (f) For the 2016–17 fiscal year, the other per enrollee tax amount  
40 for each other taxing tier for each fiscal quarter shall be as follows:

1 (1) The other per enrollee tax for the other taxing tier I shall be  
2 three dollars (\$3.00).

3 (2) The other per enrollee tax for the other taxing tier II shall  
4 be five dollars and eighty cents (\$5.80).

5 (3) The other per enrollee tax for the other taxing tier III shall  
6 be seventy-five cents (\$0.75).

7 (g) The department may modify any methodology or other  
8 provision specified in this article to the extent necessary to meet  
9 the requirements of federal law or regulations, obtain federal  
10 approval, or ensure federal financial participation is available,  
11 provided the modifications do not otherwise conflict with the  
12 purposes of this article.

13 (h) The department shall make adjustments, as necessary, to the  
14 tax amounts specified in this section in order to ensure compliance  
15 with the federal requirements set forth in Section 433.68 of Title  
16 42 of the Code of Federal Regulations, or elsewhere in federal law  
17 or regulation.

18 (i) The department shall request approval from the federal  
19 Centers for Medicare and Medicaid Services as is necessary to  
20 implement this article. In making such request, the department  
21 may seek, as it deems necessary, a request for waiver of the  
22 broad-based requirement, waiver of the uniformity requirement,  
23 or both, pursuant to paragraphs (1) and (2) of subsection (e) of  
24 Section 433.68 of Title 42 of the Code of Federal Regulations, or  
25 a request for waiver of any other provision of federal law or  
26 regulation necessary to implement this article.

27 (j) Notwithstanding Chapter 3.5 (commencing with Section  
28 11340) of Part 1 of Division 3 of Title 2 of the Government Code,  
29 the department may implement this article by means of provider  
30 bulletins, all-plan letters, or other similar instruction, without taking  
31 regulatory action. The department shall provide notification to the  
32 Joint Legislative Budget Committee and to the Senate Committees  
33 on Appropriations, Budget and Fiscal Review, and Health, and the  
34 Assembly Committees on Appropriations, Budget, and Health  
35 within 10 business days after the above-described action is taken  
36 to inform the Legislature that the action is being implemented.

O