

ASSEMBLY BILL

No. 4

Introduced by Assembly Member Levine

(Coauthors: Assembly Members Bloom, Brown, Chau, Chu, Cristina Garcia, Roger Hernández, Jones-Sawyer, McCarty, Nazarian, Quirk, Rendon, Mark Stone, and Williams)

July 16, 2015

An act to amend Section 6172 of, and to amend and repeal Section 17131.9 of, the Revenue and Taxation Code, and to amend Section 12302.2 of, to amend and repeal Section 12306.6 of, and to add Article 6.3 (commencing with Section 14197.50) to Chapter 7 of Part 3 of Division 9 of, the Welfare and Institutions Code, relating to public social services.

LEGISLATIVE COUNSEL'S DIGEST

AB 4, as introduced, Levine. 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 provides for the county-administered In-Home Supportive Services (IHSS) program, under which qualified aged, blind, and disabled persons are provided with services to permit them to remain in their own homes and avoid institutionalization. Existing law provides, as part of the Coordinated Care Initiative, that IHSS is a Medi-Cal

benefit available through managed care health plans in specified counties. Existing law provides for a 7% reduction in hours of service to each IHSS recipient of services.

Existing law imposes a sales tax on providers of support services for the privilege of selling support services at retail, measured by the gross receipts from the sale of those services in this state at a specified rate of those gross receipts. Existing law specifies that a seller is the State Department of Social Services, a county, or other person or entity, as provided. Existing law also imposes a sales tax on sellers of Medi-Cal managed care plans.

This bill would repeal the support services sales tax and 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. The amount of the tax would be \$7.88 per plan enrollee, as defined.

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. Moneys in the fund would be used for designated health care purposes, subject to appropriation in the annual Budget Act. The remaining moneys in the fund would be available to the department for the purpose of funding the nonfederal share of Medi-Cal managed care rates, as prescribed, upon appropriation in the annual Budget Act.

This bill would also make conforming and technical changes.

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: yes. Fiscal committee: yes.

State-mandated local program: no.

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

1 SECTION 1. Section 6172 of the Revenue and Taxation Code
2 is amended to read:

3 6172. This article shall remain in effect only until the January
4 1 following the date the tax extended by this article becomes
5 inoperative pursuant to subdivision (b) of Section 6170, July 1,
6 2016, and as of that date January 1, 2017, is repealed.

7 SEC. 2. Section 17131.9 of the Revenue and Taxation Code
8 is amended to read:

9 17131.9. (a) Gross income does not include any supplementary
10 payment received by an individual pursuant to Section 12306.6 of
11 the Welfare and Institutions Code.

12 (b) *This section shall remain in effect only until July 1, 2016,*
13 *and as of January 1, 2017, is repealed.*

14 SEC. 3. Section 12302.2 of the Welfare and Institutions Code
15 is amended to read:

16 12302.2. (a) (1) If the state or a county makes or provides for
17 direct payment to a provider chosen by a recipient or to the
18 recipient for the purchase of in-home supportive services, the
19 department shall perform or assure the performance of all rights,
20 duties and obligations of the recipient relating to those services as
21 required for purposes of unemployment compensation,
22 unemployment compensation disability benefits, workers'
23 compensation, federal and state income tax, and federal old-age
24 survivors and disability insurance benefits. Those rights, duties,
25 and obligations include, but are not limited to, registration and
26 obtaining employer account numbers, providing information,
27 notices, and reports, making applications and returns, and
28 withholding in trust from the payments made to or on behalf of a
29 recipient amounts to be withheld from the wages of the provider
30 by the recipient as an employer, ~~including the sales tax extended~~
31 ~~to support services by Article 4 (commencing with Section 6150)~~
32 ~~of Chapter 2 of Part 1 of Division 2 of the Revenue and Taxation~~
33 ~~Code~~, and transmitting those amounts along with amounts required

1 for all contributions, premiums, and taxes payable by the recipient
2 as the employer to the appropriate person or state or federal agency.
3 The department may assure the performance of any or all of these
4 rights, duties, and obligations by contract with any person, or any
5 public or private agency.

6 (2) Contributions, premiums, and taxes shall be paid or
7 transmitted on the recipient's behalf as the employer for any period
8 commencing on or after January 1, 1978, except that contributions,
9 premiums, and taxes for federal and state income taxes and federal
10 old-age, survivors and disability insurance contributions shall be
11 paid or transmitted pursuant to this section commencing with the
12 first full month that begins 90 days after the effective date of this
13 section.

14 (3) Contributions, premiums, and taxes paid or transmitted on
15 the recipient's behalf for unemployment compensation, workers'
16 compensation, and the employer's share of federal old-age
17 survivors and disability insurance benefits shall be payable in
18 addition to the maximum monthly amount established pursuant to
19 Section 12303.5 or subdivision (a) of Section 12304 or other
20 amount payable to or on behalf of a recipient. Contributions,
21 premiums, or taxes resulting from liability incurred by the recipient
22 as employer for unemployment compensation, workers'
23 compensation, and federal old-age, survivors and disability
24 insurance benefits with respect to any period commencing on or
25 after January 1, 1978, and ending on or before the effective date
26 of this section shall also be payable in addition to the maximum
27 monthly amount established pursuant to Section 12303.5 or
28 subdivision (a) of Section 12304 or other amount payable to or on
29 behalf of the recipient. Nothing in this section shall be construed
30 to permit any interference with the recipient's right to select the
31 provider of services or to authorize a charge for administrative
32 costs against any amount payable to or on behalf of a recipient.

33 (b) If the state makes or provides for direct payment to a
34 provider chosen by a recipient, the Controller shall make any
35 deductions from the wages of in-home supportive services
36 personnel that are authorized by Sections 1152 and 1153 of the
37 Government Code, as limited by Section 3515.6 of the Government
38 Code, and for the sales tax extended to support services by Article
39 4 (commencing with Section 6150) of Chapter 2 of Part 1 of
40 Division 2 of the Revenue and Taxation Code. Code.

1 (c) Funding for the costs of administering this section and for
2 contributions, premiums, and taxes paid or transmitted on the
3 recipient's behalf as an employer pursuant to this section shall
4 qualify, where possible, for the maximum federal reimbursement.
5 To the extent that federal funds are inadequate, notwithstanding
6 Section 12306, the state shall provide funding for the purposes of
7 this section.

8 SEC. 4. Section 12306.6 of the Welfare and Institutions Code
9 is amended to read:

10 12306.6. (a) (1) Notwithstanding any other provision of law,
11 beginning on the date for which the federal Centers for Medicare
12 and Medicaid Services authorizes commencement of the
13 implementation of this section, but no earlier than January 1, 2012,
14 and concurrent with the collection of the sales tax extended to
15 support services pursuant to Article 4 (commencing with Section
16 6150) of Chapter 2 of Part 1 of Division 2 of the Revenue and
17 Taxation Code, a provider of in-home supportive services shall
18 receive a supplementary payment under this article equal to a
19 percentage, as set forth in paragraph (2), of the gross receipts, as
20 defined in subdivision (b) of Section 6150 of the Revenue and
21 Taxation Code, of the provider for the sale of in-home supportive
22 services, plus an amount described in paragraph (3) if applicable.
23 If the underlying payment for in-home supportive services that is
24 being supplemented is a Medi-Cal payment, then the supplementary
25 payment shall also be a Medi-Cal payment. Supplementary
26 payments shall be made only to those providers from whom the
27 tax imposed pursuant to Section 6151 of the Revenue and Taxation
28 Code has been collected.

29 (2) The percentage applicable to the supplementary payment
30 required by paragraph (1) shall equal the rate described in
31 subdivision (b) of Section 6151 of the Revenue and Taxation Code
32 and shall only be applied to services provided under this article,
33 including personal care option services reimbursable under the
34 Medi-Cal program.

35 (3) The supplementary payment of an individual provider whose
36 payroll withholding required for federal income tax purposes and
37 for purposes of taxation for the Social Security and Medicare
38 programs is increased due to the supplementary payment, in
39 comparison to the amounts for those purposes that would be
40 withheld without the supplementary payment, shall be increased

1 by an additional amount that is equal to the amount of this
2 additional federal withholding.

3 (b) (1) All revenues deposited in the Personal Care IHSS
4 Quality Assurance Revenue Fund established pursuant to Section
5 6168 of the Revenue and Taxation Code shall be used solely for
6 purposes of the In-Home Supportive Services program, including,
7 but not limited to, those services provided under the Medi-Cal
8 program. All supplementary payments required by this section
9 shall be paid from the Personal Care IHSS Quality Assurance
10 Revenue Fund.

11 (2) The Director of Finance shall determine the sum required
12 to be deposited in the Personal Care IHSS Quality Assurance
13 Revenue Fund to fund the initial supplementary payments from
14 the fund. As soon thereafter as reasonably possible, this sum shall
15 be transferred, in the form of a loan, from the General Fund to the
16 Personal Care IHSS Quality Assurance Revenue Fund. At the time
17 sufficient revenues have been deposited in the Personal Care IHSS
18 Quality Assurance Revenue Fund pursuant to Section 6168 of the
19 Revenue and Taxation Code to sustain the continued operation of
20 the fund for that portion of the supplementary payment described
21 in paragraph (2) of subdivision (a) plus an additional amount equal
22 to the General Fund loan made pursuant to this paragraph, plus
23 interest, the sum transferred from the General Fund, including
24 interest, shall be repaid to the General Fund. Subsequent
25 supplementary payments pursuant to this section shall be made
26 from revenue deposited in the Personal Care IHSS Quality
27 Assurance Revenue Fund pursuant to Section 6168 of the Revenue
28 and Taxation Code.

29 (3) The Department of Finance, on an ongoing basis, shall
30 determine the amount necessary to implement paragraph (3) of
31 subdivision (a), and subdivision (c) of Section 12302.2, and
32 immediately transfer this amount from the General Fund to the
33 Personal Care IHSS Quality Assurance Revenue Fund.

34 (c) (1) The Director of Health Care Services shall seek all
35 federal Medicaid approvals necessary to implement this section,
36 including using the revenues obtained pursuant to Article 4
37 (commencing with Section 6150) of Chapter 2 of Part 1 of Division
38 2 of the Revenue and Taxation Code as the nonfederal share for
39 supplementary payments. As part of that request for approval, the

1 director shall seek to make the supplementary payments effective
2 as of January 1, 2012.

3 (2) This section shall become operative only if the federal
4 Centers for Medicare and Medicaid Services grants Medicaid
5 approvals sought pursuant to paragraph (1).

6 (3) If Medicaid approval is granted pursuant to paragraph (2),
7 within 10 days of that approval the Director of Health Care
8 Services shall notify the State Board of Equalization and the
9 appropriate fiscal and policy committees of the Legislature of the
10 approval.

11 (d) If Article 4 (commencing with Section 6150) of Chapter 2
12 of Part 1 of Division 2 of the Revenue and Taxation Code becomes
13 inoperative pursuant to subdivision (b) of Section 6170 of the
14 Revenue and Taxation Code, supplementary payments shall cease
15 to be made pursuant to subdivision (a) when all moneys in the
16 fund have been expended.

17 (e) (1) Notwithstanding the rulemaking provisions of the
18 Administrative Procedure Act, Chapter 3.5 (commencing with
19 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
20 Code, the department and the State Department of Health Care
21 Services may implement and administer this section through
22 all-county letters or similar instruction from the department and
23 the State Department of Health Care Services until regulations are
24 adopted. The department and the State Department of Health Care
25 Services shall adopt emergency regulations implementing this
26 section no later than 12 months following the initial effective date
27 of the supplementary payments. The department and the State
28 Department of Health Care Services may readopt any emergency
29 regulation authorized by this section that is the same as or
30 substantially equivalent to an emergency regulation previously
31 adopted under this section.

32 (2) The initial adoption of emergency regulations implementing
33 this section and the one readoption of emergency regulations
34 authorized by this subdivision shall be deemed an emergency and
35 necessary for the immediate preservation of the public peace,
36 health, safety, or general welfare. Initial emergency regulations
37 and the one readoption of emergency regulations authorized by
38 this section shall be exempt from review and approval by the Office
39 of Administrative Law. The initial emergency regulations and the
40 one readoption of emergency regulations authorized by this section

1 shall be submitted to the Office of Administrative Law for filing
2 with the Secretary of State and each shall remain in effect for no
3 more than 180 days, by which time final regulations may be
4 adopted.

5 ~~(f) This section shall remain in effect only until the January 1~~
6 ~~following the date supplementary payments cease to be made~~
7 ~~pursuant to subdivision (d), and as of that date is repealed.~~

8 *(f) This section shall remain in effect only until July 1, 2016,*
9 *and as of January 1, 2017, is repealed.*

10 SEC. 5. Article 6.3 (commencing with Section 14197.50) is
11 added to Chapter 7 of Part 3 of Division 9 of the Welfare and
12 Institutions Code, to read:

13
14 Article 6.3. Managed Care Organization Provider Tax

15
16 14197.50. (a) The Legislature finds and declares the following:

17 (1) California's expansion of health care coverage has resulted
18 in more than four million additional Californians receiving
19 coverage through Medi-Cal.

20 (2) California is in need of at least one billion one hundred
21 million dollars (\$1,100,000,000) annually to stabilize the cost of
22 Medi-Cal.

23 (3) The In-Home Supportive Services Program provides vital
24 services to elderly and disabled populations across our state to
25 ensure that they are able to remain in their homes and continue to
26 receive the care and attention they need.

27 (4) Thousands of dedicated care providers have suffered years
28 of rate cuts to In-Home Supportive Services and are in desperate
29 need of stable funding source.

30 (5) The State Department of Developmental Services oversees
31 the care of our state's most vulnerable population, and these
32 services have continuously been underfunded.

33 (6) As the state transitions away from the use of developmental
34 centers, a population of medically fragile and behaviorally
35 challenged individuals will need to identify adequate care in the
36 community.

37 (7) It is essential that these programs be funded through a
38 reliable funding mechanism that allows services to be provided
39 on an ongoing basis.

(b) Accordingly, it is the intent of the Legislature that the State Department of Health Care Services implement a managed care organization provider tax, effective July 1, 2016, to provide reliable ongoing funding for the Medi-Cal program, minimize to the extent possible any need for new reductions to the program, and meet all of the following goals:

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

(2) In addition to the amount in paragraph (1), and in a manner consistent with Section 12301.03, generate an amount of nonfederal funds sufficient to offset the 7 percent reduction to the In-Home Supportive Services Program imposed pursuant to Section 12301.02.

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

(4) Provide funding for developmental services at rates that allow for appropriate levels of service.

14197.51. The following definitions shall apply for purposes of this article:

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

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

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

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

(e) “Health care service plan” or “health plan” means a full service health care service plan licensed by the Department of Managed Health Care under 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) or a managed care plan contracted with the State Department of Health Care Services to provide Medi-Cal services.

(f) “Per enrollee tax amount” means the amount of tax assessed per countable enrollee within a taxing tier.

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

4 (h) “Taxable quarter” means a calendar quarter of the state fiscal
5 year.

6 14197.52. (a) The Health and Human Services Special Fund
7 is hereby created in the State Treasury.

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

11 (c) Notwithstanding Section 16305.7 of the Government Code,
12 any interest and dividends earned on moneys in the fund shall be
13 retained in the fund for the purposes specified in subdivisions (d)
14 and (e).

15 (d) Subject to an appropriation in the annual Budget Act, moneys
16 in the fund shall be available for health services including, but not
17 limited to, all of the following:

18 (1) To the State Department of Social Services, to offset the
19 reductions to the In-Home Supportive Services Program imposed
20 pursuant to Section 12301.02, not to exceed an amount beyond a
21 7 percent reduction in hours of service, in a manner consistent with
22 Section 12301.03.

23 (2) To the State Department of Health Care Services, for
24 purposes of reinstating previous reductions to Medi-Cal
25 reimbursement rates pursuant to Sections 14105.192 and
26 14105.194.

27 (3) To the State Department of Developmental Services, for
28 purposes of increasing provider rates for vendor services,
29 establishing adequate care for those individuals transitioning out
30 of the developmental centers, and providing funds to
31 community-based resources.

32 (e) Subject to an appropriation in the annual Budget Act, after
33 meeting the funding obligations pursuant to subdivision (d), the
34 remaining funds deposited in the Health and Human Services
35 Special Fund pursuant to this article shall be available to the State
36 Department of Health Care Services for purposes of funding the
37 nonfederal share of Medi-Cal managed care rates for children,
38 adults, seniors and persons with disabilities, and persons dually
39 eligible for Medi-Cal and Medicare.

1 14197.53. (a) Beginning with the 2016–17 state fiscal year,
2 each health plan, within 45 days after the end of each state fiscal
3 quarter, shall submit a report to the department for the state fiscal
4 quarter that includes all of the following information:

- 5 (1) Total cumulative enrollment for the quarter.
- 6 (2) Total Medicare cumulative enrollment for the quarter.
- 7 (3) Total Medi-Cal cumulative enrollment for the quarter.
- 8 (4) Total plan-to-plan cumulative enrollment for the quarter.
- 9 (5) Total other cumulative enrollment for the quarter that is not
10 otherwise counted in paragraphs (2) through (4), inclusive.

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

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

18 (d) For the efficient operation of this section, the director, in
19 consultation with the Director of the Department of Managed
20 Health Care, may delegate the development of the format of the
21 reports or the collection of the reports, or both, to the Department
22 of Managed Health Care.

23 14197.54. (a) A managed care organization provider tax shall
24 be imposed on every health plan that is not an excluded plan.

25 (b) The department shall compute the quarterly tax for each
26 health plan subject to the tax during the fiscal year, pursuant to
27 Section 14197.55.

28 (c) On December 1, 2016, or the date the department receives
29 federal approval necessary for receipt of federal financial
30 participation in conjunction with the tax created by this article,
31 whichever is later, the following activities shall commence:

32 (1) The director shall certify in writing that federal approval
33 has been received, and within 5 business days shall post the
34 certification on its Internet Web site and send a copy of the
35 certification to the Secretary of State, the Secretary of the Senate,
36 the Chief Clerk of the Assembly, and the Legislative Counsel.

37 (2) Within 10 business days following the receipt of the notice
38 of federal approval, the department shall send a notice to each
39 health plan subject to the tax, which shall contain the following
40 information:

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

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

5 (3) A health plan shall pay the quarterly tax, based on a schedule
6 developed by the department. The department shall establish the
7 date that each payment is due, provided that the first payment shall
8 be due no earlier than 20 days following the date the department
9 sends the notice pursuant to paragraph (2), and the payments shall
10 be paid at least one month apart, but no more than one quarter
11 apart.

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

15 (d) The managed care organization provider tax, as assessed
16 pursuant to this article, shall be paid to the department by each
17 health plan subject to the tax, and deposited by the department into
18 the Health and Human Services Special Fund created pursuant to
19 Section 14197.52.

20 (e) (1) Interest shall be assessed on managed care organization
21 provider taxes that are not paid on the date due at a rate of 10
22 percent per annum. Interest shall begin to accrue the day after the
23 date the payment was due, and shall be deposited in the Health
24 and Human Services Special Fund created pursuant to Section
25 14197.52.

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

30 (f) (1) Subject to paragraph (2), the director may waive any or
31 all interest and penalties assessed under this article in the event
32 that the director determines, in his or her sole discretion, that the
33 health plan has demonstrated that imposition of the full amount
34 of the managed care organization provider tax pursuant to the
35 timelines applicable under this article has a high likelihood of
36 creating an undue financial hardship for the health plan, or creates
37 a significant financial difficulty in providing needed services to
38 Medi-Cal beneficiaries.

39 (2) Waiver of some or all of the interest or penalties imposed
40 pursuant to this subdivision shall be conditioned on the health

1 plan's agreement to make tax payments on an alternative schedule
2 developed by the department that takes into account the financial
3 situation of the health plan and the potential impact on services.

4 (g) For the efficient operation of this section, the director, in
5 consultation with the Director of the Department of Managed
6 Health Care, may delegate the collection of the taxes under this
7 article to the Department of Managed Health Care.

8 14197.55. (a) Effective July 1, 2016, in order to achieve the
9 goals specified in Section 14197.50, the per enrollee tax amount
10 shall be seven dollars and eighty-eight cents (\$7.88).

11 (b) The department shall request approval from the federal
12 Centers for Medicare and Medicaid Services as is necessary to
13 implement this article. In making the request, the department may
14 seek, as it deems necessary, a request for waiver of the broad based
15 requirement, waiver of the uniformity requirement, or both,
16 pursuant to paragraphs (1) and (2) of subsection (e) of Section
17 433.68 of Title 42 of the Code of Federal Regulations, or a request
18 for waiver of any other provision of federal law or regulation
19 necessary to implement this article.

20 (c) Notwithstanding Chapter 3.5 (commencing with Section
21 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
22 the department may implement this article by means of provider
23 bulletins, all plan letters, or other similar instruction, without taking
24 legal regulatory action. The department shall provide notification
25 to the Joint Legislative Budget Committee and to the Senate
26 Committees on Appropriations, Budget and Fiscal Review, and
27 Health and the Assembly Committees on Appropriations, Budget,
28 and Health within 10 business days after the above-described action
29 is taken to inform the Legislature that the action is being
30 implemented.

O