AMENDED IN ASSEMBLY AUGUST 31, 2015

CALIFORNIA LEGISLATURE—2015–16 SECOND EXTRAORDINARY SESSION

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~~ *Sections 12302.2 and* 12306.6 of, and to add ~~Article 6.3 (commencing with Section 14197.50)~~ *Article 6.4 (commencing with Section 14197.100)* 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 amended, 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 ⅔ of the membership of each house of the Legislature.

Vote: ⅔. Appropriation: ~~yes~~ *no*. Fiscal committee: yes. State-mandated local program: no.

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

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

6172. This article shall remain in effect only until July 1, 2016, and as of January 1, 2017, is repealed.

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

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

(b) This section shall remain in effect only until July 1, 2016, and as of January 1, 2017, is repealed.

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

12302.2. (a) (1) If the state or a county makes or provides for direct payment to a provider chosen by a recipient or to the recipient for the purchase of in-home supportive services, the department shall perform or assure the performance of all rights, duties and obligations of the recipient relating to those services as required for purposes of unemployment compensation, unemployment compensation disability benefits, workers' compensation, federal and state income tax, and federal old-age survivors and disability insurance benefits. Those rights, duties, and obligations include, but are not limited to, registration and obtaining employer account numbers, providing information, notices, and reports, making applications and returns, and withholding in trust from the payments made to or on behalf of a recipient amounts to be withheld from the wages of the provider by the recipient as an employer, and transmitting those amounts along with amounts required for all contributions, premiums, and taxes payable by the recipient as the employer to the appropriate person or state or federal agency. The department may assure the

performance of any or all of these rights, duties, and obligations by contract with any person, or any public or private agency.

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

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

(b) If the state makes or provides for direct payment to a provider chosen by a recipient, the Controller shall make any deductions from the wages of in-home supportive services personnel that are authorized by Sections 1152 and 1153 of the Government Code, as limited by Section 3515.6 of the Government Code.

(c) Funding for the costs of administering this section and for contributions, premiums, and taxes paid or transmitted on the recipient's behalf as an employer pursuant to this section shall qualify, where possible, for the maximum federal reimbursement.

To the extent that federal funds are inadequate, notwithstanding Section 12306, the state shall provide funding for the purposes of this section.

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

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

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

(3) The supplementary payment of an individual provider whose payroll withholding required for federal income tax purposes and for purposes of taxation for the Social Security and Medicare programs is increased due to the supplementary payment, in comparison to the amounts for those purposes that would be withheld without the supplementary payment, shall be increased by an additional amount that is equal to the amount of this additional federal withholding.

(b) (1) All revenues deposited in the Personal Care IHSS Quality Assurance Revenue Fund established pursuant to Section

6168 of the Revenue and Taxation Code shall be used solely for purposes of the In-Home Supportive Services program, including, but not limited to, those services provided under the Medi-Cal program. All supplementary payments required by this section shall be paid from the Personal Care IHSS Quality Assurance Revenue Fund.

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

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

(c) (1) The Director of Health Care Services shall seek all federal Medicaid approvals necessary to implement this section, including using the revenues obtained pursuant to Article 4 (commencing with Section 6150) of Chapter 2 of Part 1 of Division 2 of the Revenue and Taxation Code as the nonfederal share for supplementary payments. As part of that request for approval, the director shall seek to make the supplementary payments effective as of January 1, 2012.

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

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

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

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

(2) The initial adoption of emergency regulations implementing this section and the one readoption of emergency regulations authorized by this subdivision shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare. Initial emergency regulations and the one readoption of emergency regulations authorized by this section shall be exempt from review and approval by the Office of Administrative Law. The initial emergency regulations and the one readoption of emergency regulations authorized by this section shall be submitted to the Office of Administrative Law for filing with the Secretary of State and each shall remain in effect for no more than 180 days, by which time final regulations may be adopted.

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

SEC. 5. Article ~~6.3~~ *6.4* (commencing with Section ~~14197.50)~~ *14197.100)* is added to Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:

Article ~~6.3.~~ *6.4.* Managed Care Organization Provider Tax

~~14197.50.~~

14197.100. (a) The Legislature finds and declares the following:

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

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

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

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

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

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

(7) It is essential that these programs be funded through a reliable funding mechanism that allows services to be provided 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 *sufficient* funding for *community-based* developmental ~~services at rates that~~ *services, to* allow for ~~appropriate levels of service.~~ *no less than a 10-percent increase in levels of services and supports.*

~~14197.51.~~

14197.101. 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.

(g) "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.

(h) "Taxable quarter" means a calendar quarter of the state fiscal year.

~~14197.52.~~

14197.102. (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 the purposes specified in subdivisions (d) and (e).

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

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

(2) To the State Department of Health Care Services, for purposes of reinstating *rates to offset* previous *freezes and* reductions to Medi-Cal reimbursement rates pursuant to Sections ~~14105.192~~ *14105.07, 14105.192,* and 14105.194.

(3) To the State Department of Developmental Services, for purposes of ~~increasing~~ *providing no less than a 10-percent increase in* provider rates for vendor~~ services, establishing~~ *services and funds to community-based service providers, and to establish* adequate care for those individuals transitioning out of the developmental~~ centers, and providing funds to community-based resources.~~ *centers.*

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

~~14197.53.~~

14197.103. (a) Beginning with the 2016–17 state fiscal year, each health plan, within 45 days after the end of each state fiscal quarter, shall submit a report to the department for the state fiscal quarter that includes all of the following information:

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

~~14197.54.~~

14197.104. (a) A managed care organization provider tax shall be imposed on every health plan that is not an excluded plan.

(b) The department shall compute the quarterly tax for each health plan subject to the tax during the fiscal year, pursuant to Section ~~14197.55.~~ *14197.105.*

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

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

(2) Within 10 business days following the receipt of the notice of federal approval, the department shall send a notice to each

health plan subject to the tax, which shall contain the following information:

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

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

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

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

(d) The managed care organization provider tax, as assessed pursuant to this article, shall be paid to the department by each health plan subject to the tax, and deposited by the department into the Health and Human Services Special Fund created pursuant to Section ~~14197.52.~~ *14197.102.*

(e) (1) Interest shall be assessed on managed care organization provider taxes that are not paid on the date due at a rate of 10 percent per annum. Interest shall begin to accrue the day after the date the payment was due, and shall be deposited in the Health and Human Services Special Fund created pursuant to Section ~~14197.52.~~ *14197.102.*

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

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

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

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

~~14197.55.~~

14197.105. (a) Effective July 1, 2016, in order to achieve the goals specified in Section ~~14197.50,~~ *14197.100,* the per enrollee tax amount shall be seven dollars and eighty-eight cents ($7.88).

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

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

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