

AMENDED IN ASSEMBLY APRIL 23, 2015

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1235

Introduced by Assembly Member Gipson

February 27, 2015

An act to ~~amend Section 14005.12 of~~ *add Section 14005.125* to the Welfare and Institutions Code, relating to Medi-Cal.

LEGISLATIVE COUNSEL'S DIGEST

AB 1235, as amended, Gipson. Medi-Cal: beneficiary maintenance needs: home upkeep ~~allowance; personal and incidental needs~~ allowance.

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 provisions. Qualified individuals under the Medi-Cal program include medically needy persons and medically needy family persons who meet the required eligibility criteria, including applicable income requirements.

Existing law requires the department to establish income levels for maintenance need at the lowest levels that reasonably permit a medically needy individual to meet his or her basic needs for food, clothing, and shelter, and for which federal financial participation will still be provided under applicable federal law. In calculating the income of a medically needy individual in a medical institution or nursing facility, or a person receiving institutional or noninstitutional services from a Program of All-Inclusive Care for the Elderly organization, the required monthly

maintenance amount includes, among other things, an amount providing for the upkeep and maintenance of the individual's home. This amount is also referred to as the home upkeep allowance.

Existing law requires that the maintenance of need amount provide for personal and incidental needs in an amount not less than \$35 for a person in a medical institution or nursing facility, or for a person receiving institutional or noninstitutional services from a Program of All-Inclusive Care for the Elderly organization.

Existing law authorizes the Director of Health Care Services to adopt, amend, or repeal reasonable rules and regulations to carry out the purposes and intent of the Medi-Cal program, that are not inconsistent with any state statute. The department has adopted regulatory requirements relating to the determination of the home upkeep allowance described above.

~~This bill would increase the above-specified personal and incidental needs allowance to an amount not less than \$80. Because counties are required to make Medi-Cal eligibility determinations and this bill would expand Medi-Cal eligibility, the bill would impose a state-mandated local program.~~

~~This bill would further declare the intent of the Legislature to enact legislation to prohibit the use of in-kind value of housing as a basis for calculating *establish eligibility and other requirements for providing the home upkeep allowance for a patient to a Medi-Cal patient residing in a long-term care and prohibit eligibility for the allowance from being based on the date when patient status is established, and to require the calculation for the allowance to be based on the actual cost of maintaining the patient's home. The bill would declare the intent of the Legislature to enact legislation to facility. The bill would prescribe general requirements as well as specific requirements both for facility residents who intend to leave the facility and return to an existing home, and residents who intend to leave the facility and establish a new home. The bill would require the department to adopt conforming regulations, and to notify specified parties of those regulatory changes. The bill would declare the Legislature's intent to enact legislation to require the department regulations and to advise appropriate Medi-Cal patients of the existence and availability of the home upkeep allowance. Because counties are required to make Medi-Cal eligibility determinations and this bill would impose new eligibility requirements for purposes of the home upkeep allowance, this bill would impose a state-mandated local program.*~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

1 *SECTION 1. Section 14005.125 is added to the Welfare and*
2 *Institutions Code, to read:*

3 *14005.125. (a) As authorized under federal Medicaid law,*
4 *and in accordance with subdivisions (b) and (c), a home upkeep*
5 *allowance shall be available to certain long-term care facility*
6 *residents, who will be allowed to use that income to maintain or*
7 *establish a home in which they intend to reside after leaving the*
8 *facility.*

9 *(b) The likelihood of the resident's ability to return to the*
10 *community shall be certified by a physician, pursuant to Section*
11 *50605 of Title 22 of the California Code of Regulations.*

12 *(c) The home upkeep allowance shall be subject to all of the*
13 *following requirements:*

14 *(1) For a resident who intends to leave the facility and return*
15 *to his or her existing home, the allowance shall be available to for*
16 *up to six months while the person resides in the facility. The*
17 *allowance shall be based on the actual minimum cost of*
18 *maintaining the home, such as mortgage or rent, property taxes,*
19 *and required insurance.*

20 *(2) For a resident who intends to leave the facility and establish*
21 *a home, the allowance shall be available for up to three months.*
22 *The allowance shall be used to cover the costs of securing a home,*
23 *such as rent, security and utility deposits, and accessibility*
24 *modifications necessary to meet the needs of the person. The*
25 *allowance shall be subject to all of the following:*

26 *(A) The allowance shall be set aside from the income that*
27 *provides the resident's share of cost for care in the facility.*

1 (B) The total allowance shall not exceed seven thousand five
 2 hundred dollars (\$7,500).

3 (C) The allowance shall be an exempt resource for purposes of
 4 determining the value of the resident’s assets.

5 (D) If the resident is unable secure a home within the time period
 6 prescribed by this section, the allowance shall revert to the state
 7 to defray the costs of the resident’s care in the facility.

8 (d) The department shall take the following information and
 9 outreach activities with respect to the existence and availability
 10 of the home upkeep allowance:

11 (1) Adopt or revise regulations as necessary to reflect the
 12 requirements of this section.

13 (2) Inform residents in all Medi-Cal funded long-term care
 14 facilities of the existence and availability of the home upkeep
 15 allowance. The department shall provide information to Medi-Cal
 16 funded long-term care facilities, which shall be posted in prominent
 17 locations in the facility that are accessible to both the public and
 18 to the facility’s family council.

19 (3) Include information regarding the availability of the home
 20 upkeep allowance in the “Notice Regarding Standards for
 21 Medi-Cal Eligibility” provided for in Section 14006.4.

22 (4) Notify all Medi-Cal branches, eligibility workers, long-term
 23 care facilities, hospital discharge planners, and organizations
 24 receiving state funds to assist nursing home residents of the new
 25 regulatory requirements.

26 (5) Ensure that all Medi-Cal patients discharged to a long-term
 27 care facility are informed of the existence and availability of the
 28 home upkeep allowance.

29 ~~SECTION 1. Section 14005.12 of the Welfare and Institutions~~
 30 ~~Code is amended to read:~~

31 ~~14005.12. (a) For the purposes of Sections 14005.4 and~~
 32 ~~14005.7, the department shall establish the income levels for~~
 33 ~~maintenance need at the lowest levels that reasonably permit~~
 34 ~~medically needy persons to meet their basic needs for food,~~
 35 ~~clothing, and shelter, and for which federal financial participation~~
 36 ~~will still be provided under Title XIX of the federal Social Security~~
 37 ~~Act. It is the intent of the Legislature that the income levels for~~
 38 ~~maintenance need for medically needy aged, blind, and disabled~~
 39 ~~adults, in particular, shall be based upon amounts that adequately~~
 40 ~~reflect their needs.~~

1 ~~(1) Subject to paragraph (2), reductions in the maximum aid~~
2 ~~payment levels set forth in subdivision (a) of Section 11450 in the~~
3 ~~1991-92 fiscal year, and thereafter, shall not result in a reduction~~
4 ~~in the income levels for maintenance under this section.~~

5 ~~(2) (A) The department shall seek any necessary federal~~
6 ~~authorization for maintaining the income levels for maintenance~~
7 ~~at the levels in effect June 30, 1991.~~

8 ~~(B) If federal authorization is not obtained, medically needy~~
9 ~~persons shall not be required to pay the difference between the~~
10 ~~share of cost as determined based on the payment levels in effect~~
11 ~~on June 30, 1991, under Section 11450, and the share of cost as~~
12 ~~determined based on the payment levels in effect on July 1, 1991,~~
13 ~~and thereafter.~~

14 ~~(3) Any medically needy person who was eligible for benefits~~
15 ~~under this chapter as categorically needy for the calendar month~~
16 ~~immediately preceding the effective date of the reductions in the~~
17 ~~minimum basic standards of adequate care for the Aid to Families~~
18 ~~with Dependent Children program as set forth in Section 11452.018~~
19 ~~made in the 1995-96 Regular Session of the Legislature shall not~~
20 ~~be responsible for paying his or her share of cost if all of the~~
21 ~~following apply:~~

22 ~~(A) He or she had eligibility as categorically needy terminated~~
23 ~~by the reductions in the minimum basic standards of adequate care.~~

24 ~~(B) He or she, but for the reductions, would be eligible to~~
25 ~~continue receiving benefits under this chapter as categorically~~
26 ~~needy.~~

27 ~~(C) He or she is not eligible to receive benefits without a share~~
28 ~~of cost as a medically needy person pursuant to paragraph (1) or~~
29 ~~(2).~~

30 ~~(b) In the case of a single individual, the amount of the income~~
31 ~~level for maintenance per month shall be 80 percent of the highest~~
32 ~~amount that would ordinarily be paid to a family of two persons,~~
33 ~~without any income or resources, under subdivision (a) of Section~~
34 ~~11450, multiplied by the federal financial participation rate.~~

35 ~~(c) In the case of a family of two adults, the income level for~~
36 ~~maintenance per month shall be the highest amount that would~~
37 ~~ordinarily be paid to a family of three persons without income or~~
38 ~~resources under subdivision (a) of Section 11450, multiplied by~~
39 ~~the federal financial participation rate.~~

1 ~~(d) For the purposes of Sections 14005.4 and 14005.7, for a~~
2 ~~person in a medical institution or nursing facility, or for a person~~
3 ~~receiving institutional or noninstitutional services from a Program~~
4 ~~of All-Inclusive Care for the Elderly organization pursuant to~~
5 ~~Chapter 8.75 (commencing with Section 14591), the amount~~
6 ~~considered as required for maintenance per month shall be~~
7 ~~computed in accordance with, and for those purposes required by,~~
8 ~~Title XIX of the federal Social Security Act, and regulations~~
9 ~~adopted pursuant thereto. Those amounts shall be computed~~
10 ~~pursuant to regulations which include providing for the following~~
11 ~~purposes:~~

12 ~~(1) Personal and incidental needs in the amount of not less than~~
13 ~~eighty dollars (\$80) per month while a patient. The department~~
14 ~~may, by regulation, increase this amount as necessitated by~~
15 ~~increasing costs of personal and incidental needs. A long-term~~
16 ~~health care facility shall not charge an individual for the laundry~~
17 ~~services or periodic hair care specified in Section 14110.4.~~

18 ~~(2) The upkeep and maintenance of the home.~~

19 ~~(3) The support and care of his or her minor children, or any~~
20 ~~disabled relative for whose support he or she has contributed~~
21 ~~regularly, if there is no community spouse.~~

22 ~~(4) If the person is an institutionalized spouse, for the support~~
23 ~~and care of his or her community spouse, minor or dependent~~
24 ~~children, dependent parents, or dependent siblings of either spouse,~~
25 ~~provided the individuals are residing with the community spouse.~~

26 ~~(5) The community spouse monthly income allowance shall be~~
27 ~~established at the maximum amount permitted in accordance with~~
28 ~~Section 1924(d)(1)(B) of Title XIX of the federal Social Security~~
29 ~~Act (42 U.S.C. Sec. 1396r-5(d)(1)(B)).~~

30 ~~(6) The family allowance for each family member residing with~~
31 ~~the community spouse shall be computed in accordance with the~~
32 ~~formula established in Section 1924(d)(1)(C) of Title XIX of the~~
33 ~~federal Social Security Act (42 U.S.C. Sec. 1396r-5(d)(1)(C)).~~

34 ~~(e) For the purposes of Sections 14005.4 and 14005.7, with~~
35 ~~regard to a person in a licensed community care facility, the amount~~
36 ~~considered as required for maintenance per month shall be~~
37 ~~computed pursuant to regulations adopted by the department which~~
38 ~~provide for the support and care of his or her spouse, minor~~
39 ~~children, or any disabled relative for whose support he or she has~~
40 ~~contributed regularly.~~

1 ~~(f) The income levels for maintenance per month, except as~~
2 ~~specified in subdivisions (b) to (d), inclusive, shall be equal to the~~
3 ~~highest amounts that would ordinarily be paid to a family of the~~
4 ~~same size without any income or resources under subdivision (a)~~
5 ~~of Section 11450, multiplied by the federal financial participation~~
6 ~~rate.~~

7 ~~(g) The “federal financial participation rate,” as used in this~~
8 ~~section, shall mean 133 ⅓ percent, or such other rate set forth in~~
9 ~~Section 1903 of the federal Social Security Act (42 U.S.C. Sec.~~
10 ~~1396(b)), or its successor provisions.~~

11 ~~(h) The income levels for maintenance per month shall not be~~
12 ~~decreased to reflect the presence in the household of persons~~
13 ~~receiving forms of aid other than Medi-Cal.~~

14 ~~(i) When family members maintain separate residences, but~~
15 ~~eligibility is determined as a single unit under Section 14008, the~~
16 ~~income levels for maintenance per month shall be established for~~
17 ~~each household in accordance with subdivisions (b) to (h),~~
18 ~~inclusive. The total of these levels shall be the level for the single~~
19 ~~eligibility unit.~~

20 ~~(j) The income levels for maintenance per month established~~
21 ~~pursuant to subdivisions (b) to (i), inclusive, shall be calculated~~
22 ~~on an annual basis, rounded to the next higher multiple of one~~
23 ~~hundred dollars (\$100), and then prorated.~~

24 ~~SEC. 2.—(a) It is the intent of the Legislature to enact legislation~~
25 ~~to do all of the following, with respect to the Medi-Cal home~~
26 ~~upkeep allowance that may be available to long-term care residents:~~

27 ~~(1) Prohibit the use of in-kind value of housing as a basis for~~
28 ~~calculating the home upkeep allowance for a patient in long-term~~
29 ~~care.~~

30 ~~(2) Prohibit eligibility for the allowance being based on the date~~
31 ~~when patient status is established.~~

32 ~~(3) Require the calculation for the allowance to be based on the~~
33 ~~actual cost of maintaining the patient’s home.~~

34 ~~(b) It is the intent of the Legislature to enact legislation to require~~
35 ~~the State Department of Health Care Services to do all of the~~
36 ~~following:~~

37 ~~(1) Adopt or revise regulations to reflect the requirements of~~
38 ~~paragraphs (1) to (3), inclusive, of subdivision (a).~~

39 ~~(2) Notify all Medi-Cal branches, eligibility workers, long-term~~
40 ~~care facilities, hospital discharge planners, and organizations~~

1 receiving state funds to assist nursing home residents, of the new
2 regulatory requirements.

3 ~~(3) Ensure that all Medi-Cal patients who are discharged to or~~
4 ~~residing in a long-term care facility are informed of the availability~~
5 ~~of the allowance.~~

6 ~~SEC. 3.~~

7 *SEC. 2.* If the Commission on State Mandates determines that
8 this act contains costs mandated by the state, reimbursement to
9 local agencies and school districts for those costs shall be made
10 pursuant to Part 7 (commencing with Section 17500) of Division
11 4 of Title 2 of the Government Code.