

AMENDED IN ASSEMBLY JUNE 11, 2015

SENATE BILL

No. 92

Introduced by Committee on Budget and Fiscal Review

January 9, 2015

An act relating to the ~~Budget Act of 2015~~, to amend Sections 1324.23, 1324.29, and 1324.30 of the Health and Safety Code, and to amend Sections 14126.022, 14126.027, 14126.033, and 14126.036 of the Welfare and Institutions Code, relating to public health, and making an appropriation therefor, to take effect immediately, bill related to the budget.

LEGISLATIVE COUNSEL'S DIGEST

SB 92, as amended, Committee on Budget and Fiscal Review. ~~Budget Act of 2015~~. *Public health: Medi-Cal: nursing facilities.*

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 Program provisions.

Existing law requires the department to impose a uniform quality assurance fee on each skilled nursing facility, with certain exceptions, in accordance with a prescribed formula. Existing law requires that the fee be based on the entire net revenue of all skilled nursing facilities subject to the fee. Under existing law, the fee may not be assessed after July 31, 2015, and these provisions will be repealed on January 1, 2016.

Existing law, the Medi-Cal Long-Term Care Reimbursement Act, requires the department to implement a facility-specific reimbursement ratesetting system for certain skilled nursing facilities. Reimbursement rates for freestanding skilled nursing facilities are funded by a

combination of federal funds and moneys collected pursuant to the skilled nursing uniform quality assurance fee. Existing law also establishes the Skilled Nursing Facility Quality and Accountability Special Fund in the State Treasury, which is a continuously appropriated fund that contains moneys from the assessment of specified administrative penalties and set asides of General Fund moneys, for the purposes of making quality and accountability payments. Under existing law, the rate methodology will become inoperative after July 31, 2015, and these provisions will be repealed on January 1, 2016.

This bill would modify the calculation of rates under the above-referenced rate methodology, and would extend the assessment of the quality assurance fee, implementation of the rate methodology, as modified, and implementation of related provisions until July 31, 2020. By extending the period of time during which transfers are made to the Skilled Nursing Facility Quality and Accountability Special Fund, the bill would make an appropriation. The bill would also make changes to the amount of set-asides to be transferred to the fund. The bill would require the department, in coordination with the State Department of Public Health, to report specified information to the relevant Assembly and Senate budget subcommittees by May 1, 2016.

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.

This bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.

~~This bill would express the intent of the Legislature to enact statutory changes relating to the Budget Act of 2015.~~

Vote: ~~majority~~^{2/3}. Appropriation: ~~no~~-yes. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

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

1 SECTION 1. Section 1324.23 of the Health and Safety Code
2 is amended to read:

3 1324.23. (a) The Director of Health Care Services, or his or
4 her designee, shall administer this article.

5 (b) The director may adopt regulations as are necessary to
6 implement this article. These regulations may be adopted as
7 emergency regulations in accordance with the rulemaking

1 provisions of the Administrative Procedure Act (Chapter 3.5
2 (commencing with Section 11340) of Part 1 of Division 3 of Title
3 2 of the Government Code). For purposes of this article, the
4 adoption of regulations shall be deemed an emergency and
5 necessary for the immediate preservation of the public peace, health
6 and safety, or general welfare. The regulations shall include, but
7 need not be limited to, any regulations necessary for any of the
8 following purposes:

9 (1) The administration of this article, including the proper
10 imposition and collection of the quality assurance fee not to exceed
11 amounts reasonably necessary for purposes of this article.

12 (2) The development of any forms necessary to obtain required
13 information from facilities subject to the quality assurance fee.

14 (3) To provide details, definitions, formulas, and other
15 requirements.

16 (c) As an alternative to subdivision (b), and notwithstanding
17 the rulemaking provisions of Chapter 3.5 (commencing with
18 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
19 Code, the director may implement this article, in whole or in part,
20 by means of a provider bulletin or other similar instructions,
21 without taking regulatory action, provided that no such bulletin or
22 other similar instructions shall remain in effect after July 31, ~~2015~~
23 2020. It is the intent of the Legislature that the regulations adopted
24 pursuant to subdivision (b) shall be adopted on or before July 31,
25 ~~2015~~ 2020.

26 *SEC. 2. Section 1324.29 of the Health and Safety Code is*
27 *amended to read:*

28 1324.29. (a) The quality assurance fee shall cease to be
29 assessed after July 31, ~~2015~~ 2020.

30 (b) Notwithstanding subdivision (a) and Section 1324.30, the
31 department's authority and obligation to collect all quality
32 assurance fees and penalties, including interest, shall continue in
33 effect and shall not cease until the date that all amounts are paid
34 or recovered in full.

35 (c) This section shall remain operative until the date that all fees
36 and penalties, including interest, have been recovered pursuant to
37 subdivision (b), and as of that date is repealed.

38 *SEC. 3. Section 1324.30 of the Health and Safety Code is*
39 *amended to read:*

1 1324.30. This article shall become inoperative after July 31,
2 ~~2015~~, 2020, and, as of January 1, ~~2016~~, 2021, is repealed, unless
3 a later enacted statute, that becomes operative on or before January
4 1, ~~2016~~, 2021, deletes or extends the dates on which it becomes
5 inoperative and is repealed.

6 *SEC. 4. Section 14126.022 of the Welfare and Institutions Code*
7 *is amended to read:*

8 14126.022. (a) (1) By August 1, 2011, the department shall
9 develop the Skilled Nursing Facility Quality and Accountability
10 Supplemental Payment System, subject to approval by the federal
11 Centers for Medicare and Medicaid Services, and the availability
12 of federal, state, or other funds.

13 (2) (A) The system shall be utilized to provide supplemental
14 payments to skilled nursing facilities that improve the quality and
15 accountability of care rendered to residents in skilled nursing
16 facilities, as defined in subdivision (c) of Section 1250 of the
17 Health and Safety Code, and to penalize those facilities that do
18 not meet measurable standards.

19 (B) A freestanding pediatric subacute care facility, as defined
20 in Section 51215.8 of Title 22 of the California Code of
21 Regulations, shall be exempt from the Skilled Nursing Facility
22 Quality and Accountability Supplemental Payment System.

23 (3) The system shall be phased in, beginning with the 2010–11
24 rate year.

25 (4) The department may utilize the system to do all of the
26 following:

27 (A) Assess overall facility quality of care and quality of care
28 improvement, and assign quality and accountability payments to
29 skilled nursing facilities pursuant to performance measures
30 described in subdivision (i).

31 (B) Assign quality and accountability payments or penalties
32 relating to quality of care, or direct care staffing levels, wages, and
33 benefits, or both.

34 (C) Limit the reimbursement of legal fees incurred by skilled
35 nursing facilities engaged in the defense of governmental legal
36 actions filed against the facilities.

37 (D) Publish each facility's quality assessment and quality and
38 accountability payments in a manner and form determined by the
39 director, or his or her designee.

1 (E) Beginning with the 2011–12 fiscal year, establish a base
2 year to collect performance measures described in subdivision (i).

3 (F) Beginning with the 2011–12 fiscal year, in coordination
4 with the State Department of Public Health, publish the direct care
5 staffing level data and the performance measures required pursuant
6 to subdivision (i).

7 *(5) The department, in coordination with the State Department*
8 *of Public Health, shall report to the relevant Assembly and Senate*
9 *budget subcommittees by May 1, 2016, information regarding the*
10 *quality and accountability supplemental payments, including, but*
11 *not limited to, its assessment of whether the payments are adequate*
12 *to incentivize quality care and to sustain the program.*

13 (b) (1) There is hereby created in the State Treasury, the Skilled
14 Nursing Facility Quality and Accountability Special Fund. The
15 fund shall contain moneys deposited pursuant to subdivisions (g)
16 and (j) to ~~(t)~~, (m), inclusive. Notwithstanding Section 16305.7 of
17 the Government Code, the fund shall contain all interest and
18 dividends earned on moneys in the fund.

19 (2) Notwithstanding Section 13340 of the Government Code,
20 the fund shall be continuously appropriated without regard to fiscal
21 year to the department for making quality and accountability
22 payments, in accordance with subdivision ~~(m)~~, (n), to facilities
23 that meet or exceed predefined measures as established by this
24 section.

25 (3) Upon appropriation by the Legislature, moneys in the fund
26 may also be used for any of the following purposes:

27 (A) To cover the administrative costs incurred by the State
28 Department of Public Health for positions and contract funding
29 required to implement this section.

30 (B) To cover the administrative costs incurred by the State
31 Department of Health Care Services for positions and contract
32 funding required to implement this section.

33 (C) To provide funding assistance for the Long-Term Care
34 Ombudsman Program activities pursuant to Chapter 11
35 (commencing with Section 9700) of Division 8.5.

36 (c) No appropriation associated with this bill is intended to
37 implement the provisions of Section 1276.65 of the Health and
38 Safety Code.

39 (d) (1) There is hereby appropriated for the 2010–11 fiscal year,
40 one million nine hundred thousand dollars (\$1,900,000) from the

1 Skilled Nursing Facility Quality and Accountability Special Fund
2 to the California Department of Aging for the Long-Term Care
3 Ombudsman Program activities pursuant to Chapter 11
4 (commencing with Section 9700) of Division 8.5. It is the intent
5 of the Legislature for the one million nine hundred thousand dollars
6 (\$1,900,000) from the fund to be in addition to the four million
7 one hundred sixty-eight thousand dollars (\$4,168,000) proposed
8 in the Governor's May Revision for the 2010–11 Budget. It is
9 further the intent of the Legislature to increase this level of
10 appropriation in subsequent years to provide support sufficient to
11 carry out the mandates and activities pursuant to Chapter 11
12 (commencing with Section 9700) of Division 8.5.

13 (2) The department, in partnership with the California
14 Department of Aging, shall seek approval from the federal Centers
15 for Medicare and Medicaid Services to obtain federal Medicaid
16 reimbursement for activities conducted by the Long-Term Care
17 Ombudsman Program. The department shall report to the fiscal
18 committees of the Legislature during budget hearings on progress
19 being made and any unresolved issues during the 2011–12 budget
20 deliberations.

21 (e) There is hereby created in the Special Deposit Fund
22 established pursuant to Section 16370 of the Government Code,
23 the Skilled Nursing Facility Minimum Staffing Penalty Account.
24 The account shall contain all moneys deposited pursuant to
25 subdivision (f).

26 (f) (1) Beginning with the 2010–11 fiscal year, the State
27 Department of Public Health shall use the direct care staffing level
28 data it collects to determine whether a skilled nursing facility has
29 met the nursing hours per patient per day requirements pursuant
30 to Section 1276.5 of the Health and Safety Code.

31 (2) (A) Beginning with the 2010–11 fiscal year, the State
32 Department of Public Health shall assess a skilled nursing facility,
33 licensed pursuant to subdivision (c) of Section 1250 of the Health
34 and Safety Code, an administrative penalty if the State Department
35 of Public Health determines that the skilled nursing facility fails
36 to meet the nursing hours per patient per day requirements pursuant
37 to Section 1276.5 of the Health and Safety Code as follows:

38 (i) Fifteen thousand dollars (\$15,000) if the facility fails to meet
39 the requirements for 5 percent or more of the audited days up to
40 49 percent.

1 (ii) Thirty thousand dollars (\$30,000) if the facility fails to meet
2 the requirements for over 49 percent or more of the audited days.

3 (B) (i) If the skilled nursing facility does not dispute the
4 determination or assessment, the penalties shall be paid in full by
5 the licensee to the State Department of Public Health within 30
6 days of the facility's receipt of the notice of penalty and deposited
7 into the Skilled Nursing Facility Minimum Staffing Penalty
8 Account.

9 (ii) The State Department of Public Health may, upon written
10 notification to the licensee, request that the department offset any
11 moneys owed to the licensee by the Medi-Cal program or any other
12 payment program administered by the department to recoup the
13 penalty provided for in this section.

14 (C) (i) If a facility disputes the determination or assessment
15 made pursuant to this paragraph, the facility shall, within 15 days
16 of the facility's receipt of the determination and assessment,
17 simultaneously submit a request for appeal to both the department
18 and the State Department of Public Health. The request shall
19 include a detailed statement describing the reason for appeal and
20 include all supporting documents the facility will present at the
21 hearing.

22 (ii) Within 10 days of the State Department of Public Health's
23 receipt of the facility's request for appeal, the State Department
24 of Public Health shall submit, to both the facility and the
25 department, all supporting documents that will be presented at the
26 hearing.

27 (D) The department shall hear a timely appeal and issue a
28 decision as follows:

29 (i) The hearing shall commence within 60 days from the date
30 of receipt by the department of the facility's timely request for
31 appeal.

32 (ii) The department shall issue a decision within 120 days from
33 the date of receipt by the department of the facility's timely request
34 for appeal.

35 (iii) The decision of the department's hearing officer, when
36 issued, shall be the final decision of the State Department of Public
37 Health.

38 (E) The appeals process set forth in this paragraph shall be
39 exempt from Chapter 4.5 (commencing with Section 11400) and
40 Chapter 5 (commencing with Section 11500), of Part 1 of Division

1 3 of Title 2 of the Government Code. The provisions of Section
2 100171 and 131071 of the Health and Safety Code shall not apply
3 to appeals under this paragraph.

4 (F) If a hearing decision issued pursuant to subparagraph (D)
5 is in favor of the State Department of Public Health, the skilled
6 nursing facility shall pay the penalties to the State Department of
7 Public Health within 30 days of the facility's receipt of the
8 decision. The penalties collected shall be deposited into the Skilled
9 Nursing Facility Minimum Staffing Penalty Account.

10 (G) The assessment of a penalty under this subdivision does not
11 supplant the State Department of Public Health's investigation
12 process or issuance of deficiencies or citations under Chapter 2.4
13 (commencing with Section 1417) of Division 2 of the Health and
14 Safety Code.

15 (g) The State Department of Public Health shall transfer, on a
16 monthly basis, all penalty payments collected pursuant to
17 subdivision (f) into the Skilled Nursing Facility Quality and
18 Accountability Special Fund.

19 (h) Nothing in this section shall impact the effectiveness or
20 utilization of Section 1278.5 or 1432 of the Health and Safety Code
21 relating to whistleblower protections, or Section 1420 of the Health
22 and Safety Code relating to complaints.

23 (i) (1) Beginning in the 2010–11 fiscal year, the department,
24 in consultation with representatives from the long-term care
25 industry, organized labor, and consumers, shall establish and
26 publish quality and accountability measures, benchmarks, and data
27 submission deadlines by November 30, 2010.

28 (2) The methodology developed pursuant to this section shall
29 include, but not be limited to, the following requirements and
30 performance measures:

31 (A) Beginning in the 2011–12 fiscal year:

32 (i) Immunization rates.

33 (ii) Facility acquired pressure ulcer incidence.

34 (iii) The use of physical restraints.

35 (iv) Compliance with the nursing hours per patient per day
36 requirements pursuant to Section 1276.5 of the Health and Safety
37 Code.

38 (v) Resident and family satisfaction.

39 (vi) Direct care staff retention, if sufficient data is available.

1 (B) If this act is extended beyond the dates on which it becomes
2 inoperative and is repealed, in accordance with Section 14126.033,
3 the department, in consultation with representatives from the
4 long-term care industry, organized labor, and consumers, beginning
5 in the 2013–14 rate year, shall incorporate additional measures
6 into the system, including, but not limited to, quality and
7 accountability measures required by federal health care reform
8 that are identified by the federal Centers for Medicare and Medicaid
9 Services.

10 (C) The department, in consultation with representatives from
11 the long-term care industry, organized labor, and consumers, may
12 incorporate additional performance measures, including, but not
13 limited to, the following:

14 (i) Compliance with state policy associated with the United
15 States Supreme Court decision in *Olmstead v. L.C. ex rel. Zimring*
16 (1999) 527 U.S. 581.

17 (ii) Direct care staff retention, if not addressed in the 2012–13
18 rate year.

19 (iii) The use of chemical restraints.

20 (D) *Beginning with the 2015–16 fiscal year, the department, in*
21 *consultation with representatives from the long-term care industry,*
22 *organized labor, and consumers, shall incorporate direct care*
23 *staff retention as a performance measure in the methodology*
24 *developed pursuant to this section.*

25 (j) (1) Beginning with the 2010–11 rate year, and pursuant to
26 subparagraph (B) of paragraph (5) of subdivision (a) of Section
27 14126.023, the department shall set aside savings achieved from
28 setting the professional liability insurance cost category, including
29 any insurance deductible costs paid by the facility, at the 75th
30 percentile. From this amount, the department shall transfer the
31 General Fund portion into the Skilled Nursing Facility Quality and
32 Accountability Special Fund. A skilled nursing facility shall
33 provide supplemental data on insurance deductible costs to
34 facilitate this adjustment, in the format and by the deadlines
35 determined by the department. If this data is not provided, a
36 facility's insurance deductible costs will remain in the
37 administrative costs category.

38 (2) Notwithstanding paragraph (1), for the 2012–13 rate year
39 only, savings from capping the professional liability insurance cost
40 category pursuant to paragraph (1) shall remain in the General

1 Fund and shall not be transferred to the Skilled Nursing Facility
2 Quality and Accountability Special Fund.

3 ~~(k) Beginning with~~ For the 2013–14 rate year, if there is a rate
4 increase in the weighted average Medi-Cal reimbursement rate,
5 the department shall set aside the first 1 percent of the weighted
6 average Medi-Cal reimbursement rate increase for the Skilled
7 Nursing Facility Quality and Accountability Special Fund.

8 (l) If this act is extended beyond the dates on which it becomes
9 inoperative and is repealed, ~~in accordance with Section 14126.033,~~
10 ~~beginning with~~ for the 2014–15 rate year, in addition to the amount
11 set aside pursuant to subdivision (k), if there is a rate increase in
12 the weighted average Medi-Cal reimbursement rate, the department
13 shall set aside at least one-third of the weighted average Medi-Cal
14 reimbursement rate increase, up to a maximum of 1 percent, from
15 which the department shall transfer the General Fund portion of
16 this amount into the Skilled Nursing Facility Quality and
17 Accountability Special Fund.

18 (m) *Beginning with the 2015–16 rate year, and each subsequent*
19 *rate year thereafter for which this article is operative, an amount*
20 *equal to the amount deposited in the fund pursuant to subdivisions*
21 *(k) and (l) for the 2014–15 rate year shall be deposited into the*
22 *Skilled Nursing Facility Quality and Accountability Special Fund,*
23 *for the purposes specified in this section.*

24 ~~(m)~~

25 (n) (1) (A) Beginning with the 2013–14 rate year, the
26 department shall pay a supplemental payment, by April 30, 2014,
27 to skilled nursing facilities based on all of the criteria in subdivision
28 (i), as published by the department, and according to performance
29 measure benchmarks determined by the department in consultation
30 with stakeholders.

31 (B) (i) The department may convene a diverse stakeholder
32 group, including, but not limited to, representatives from consumer
33 groups and organizations, labor, nursing home providers, advocacy
34 organizations involved with the aging community, staff from the
35 Legislature, and other interested parties, to discuss and analyze
36 alternative mechanisms to implement the quality and accountability
37 payments provided to nursing homes for reimbursement.

38 (ii) The department shall articulate in a report to the fiscal and
39 appropriate policy committees of the Legislature the
40 implementation of an alternative mechanism as described in clause

1 (i) at least 90 days prior to any policy or budgetary changes, and
2 seek subsequent legislation in order to enact the proposed changes.

3 (2) Skilled nursing facilities that do not submit required
4 performance data by the department's specified data submission
5 deadlines pursuant to subdivision (i) shall not be eligible to receive
6 supplemental payments.

7 (3) Notwithstanding paragraph (1), if a facility appeals the
8 performance measure of compliance with the nursing hours per
9 patient per day requirements, pursuant to Section 1276.5 of the
10 Health and Safety Code, to the State Department of Public Health,
11 and it is unresolved by the department's published due date, the
12 department shall not use that performance measure when
13 determining the facility's supplemental payment.

14 (4) Notwithstanding paragraph (1), if the department is unable
15 to pay the supplemental payments by April 30, 2014, then on May
16 1, 2014, the department shall use the funds available in the Skilled
17 Nursing Facility Quality and Accountability Special Fund as a
18 result of savings identified in subdivisions (k) and (l), less the
19 administrative costs required to implement subparagraphs (A) and
20 (B) of paragraph (3) of subdivision (b), in addition to any Medicaid
21 funds that are available as of December 31, 2013, to increase
22 provider rates retroactively to August 1, 2013.

23 ~~(n)~~

24 (o) The department shall seek necessary approvals from the
25 federal Centers for Medicare and Medicaid Services to implement
26 this section. The department shall implement this section only in
27 a manner that is consistent with federal Medicaid law and
28 regulations, and only to the extent that approval is obtained from
29 the federal Centers for Medicare and Medicaid Services and federal
30 financial participation is available.

31 ~~(o)~~

32 (p) In implementing this section, the department and the State
33 Department of Public Health may contract as necessary, with
34 California's Medicare Quality Improvement Organization, or other
35 entities deemed qualified by the department or the State
36 Department of Public Health, not associated with a skilled nursing
37 facility, to assist with development, collection, analysis, and
38 reporting of the performance data pursuant to subdivision (i), and
39 with demonstrated expertise in long-term care quality, data
40 collection or analysis, and accountability performance measurement

1 models pursuant to subdivision (i). This subdivision establishes
 2 an accelerated process for issuing any contract pursuant to this
 3 section. Any contract entered into pursuant to this subdivision shall
 4 be exempt from the requirements of the Public Contract Code,
 5 through December 31, ~~2013~~; 2020.

6 ~~(p)~~

7 (q) Notwithstanding Chapter 3.5 (commencing with Section
 8 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
 9 the following shall apply:

10 (1) The director shall implement this section, in whole or in
 11 part, by means of provider bulletins, or other similar instructions
 12 without taking regulatory action.

13 (2) The State Public Health Officer may implement this section
 14 by means of all facility letters, or other similar instructions without
 15 taking regulatory action.

16 ~~(q)~~

17 (r) Notwithstanding paragraph (1) of subdivision ~~(m)~~; (n), if a
 18 final judicial determination is made by any state or federal court
 19 that is not appealed, in any action by any party, or a final
 20 determination is made by the administrator of the federal Centers
 21 for Medicare and Medicaid Services, that any payments pursuant
 22 to subdivisions (a) and ~~(m)~~; (n), are invalid, unlawful, or contrary
 23 to any provision of federal law or regulations, or of state law, these
 24 subdivisions shall become inoperative, and for the 2011–12 rate
 25 year, the rate increase provided under subparagraph (A) of
 26 paragraph (4) of subdivision (c) of Section 14126.033 shall be
 27 reduced by the amounts described in subdivision (j). For the
 28 2013–14 rate year, and for each subsequent 2014–15 rate year,
 29 years, any rate increase shall be reduced by the amounts described
 30 in subdivisions (j) to (l), inclusive.

31 *SEC. 5. Section 14126.027 of the Welfare and Institutions Code*
 32 *is amended to read:*

33 14126.027. (a) (1) The Director of Health Care Services, or
 34 his or her designee, shall administer this article.

35 (2) The regulations and other similar instructions adopted
 36 pursuant to this article shall be developed in consultation with
 37 representatives of the long-term care industry, organized labor,
 38 seniors, and consumers.

39 (b) (1) The director may adopt regulations as are necessary to
 40 implement this article. The adoption, amendment, repeal, or

1 readoption of a regulation authorized by this section is deemed to
2 be necessary for the immediate preservation of the public peace,
3 health and safety, or general welfare, for purposes of Sections
4 11346.1 and 11349.6 of the Government Code, and the department
5 is hereby exempted from the requirement that it describe specific
6 facts showing the need for immediate action.

7 (2) The regulations adopted pursuant to this section may include,
8 but need not be limited to, any regulations necessary for any of
9 the following purposes:

10 (A) The administration of this article, including the specific
11 analytical process for the proper determination of long-term care
12 rates.

13 (B) The development of any forms necessary to obtain required
14 cost data and other information from facilities subject to the
15 ratesetting methodology.

16 (C) To provide details, definitions, formulas, and other
17 requirements.

18 (c) As an alternative to the adoption of regulations pursuant to
19 subdivision (b), and notwithstanding Chapter 3.5 (commencing
20 with Section 11340) of Part 1 of Division 3 of Title 2 of the
21 Government Code, the director may implement this article, in
22 whole or in part, by means of a provider bulletin or other similar
23 instructions, without taking regulatory action, provided that no
24 such bulletin or other similar instructions shall remain in effect
25 after July 31, ~~2015~~. 2020. It is the intent of the Legislature that
26 regulations adopted pursuant to subdivision (b) shall be in place
27 on or before July 31, ~~2015~~. 2020.

28 *SEC. 6. Section 14126.033 of the Welfare and Institutions Code*
29 *is amended to read:*

30 14126.033. (a) The Legislature finds and declares all of the
31 following:

32 (1) Costs within the Medi-Cal program continue to grow due
33 to the rising cost of providing health care throughout the state and
34 also due to increases in enrollment, which are more pronounced
35 during difficult economic times.

36 (2) In order to minimize the need for drastically cutting
37 enrollment standards or benefits during times of economic crisis,
38 it is crucial to find areas within the program where reimbursement
39 levels are higher than required under the standard provided in

1 Section 1902(a)(30)(A) of the federal Social Security Act and can
2 be reduced in accordance with federal law.

3 (3) The Medi-Cal program delivers its services and benefits to
4 Medi-Cal beneficiaries through a wide variety of health care
5 providers, some of which deliver care via managed care or other
6 contract models while others do so through fee-for-service
7 arrangements.

8 (4) The setting of rates within the Medi-Cal program is complex
9 and is subject to close supervision by the United States Department
10 of Health and Human Services.

11 (5) As the single state agency for Medicaid in California, the
12 State Department of Health Care Services has unique expertise
13 that can inform decisions that set or adjust reimbursement
14 methodologies and levels consistent with the requirements of
15 federal law.

16 (b) Therefore, it is the intent of the Legislature for the
17 department to analyze and identify where reimbursement levels
18 can be reduced consistent with the standard provided in Section
19 1902(a)(30)(A) of the federal Social Security Act and also
20 consistent with federal and state law and policies, including any
21 exemptions contained in the act that added this section, provided
22 that the reductions in reimbursement shall not exceed 10 percent
23 on an aggregate basis for all providers, services, and products.

24 (c) This article, including Section 14126.031, shall be funded
25 as follows:

26 (1) General Fund moneys appropriated for purposes of this
27 article pursuant to Section 6 of the act adding this section shall be
28 used for increasing rates, except as provided in Section 14126.031,
29 for freestanding skilled nursing facilities, and shall be consistent
30 with the approved methodology required to be submitted to the
31 federal Centers for Medicare and Medicaid Services pursuant to
32 Article 7.6 (commencing with Section 1324.20) of Chapter 2 of
33 Division 2 of the Health and Safety Code.

34 (2) (A) Notwithstanding Section 14126.023, for the 2005–06
35 rate year, the maximum annual increase in the weighted average
36 Medi-Cal rate required for purposes of this article shall not exceed
37 8 percent of the weighted average Medi-Cal reimbursement rate
38 for the 2004–05 rate year as adjusted for the change in the cost to
39 the facility to comply with the nursing facility quality assurance
40 fee for the 2005–06 rate year, as required under subdivision (b) of

1 Section 1324.21 of the Health and Safety Code, plus the total
2 projected Medi-Cal cost to the facility of complying with new state
3 or federal mandates.

4 (B) Beginning with the 2006–07 rate year, the maximum annual
5 increase in the weighted average Medi-Cal reimbursement rate
6 required for purposes of this article shall not exceed 5 percent of
7 the weighted average Medi-Cal reimbursement rate for the prior
8 fiscal year, as adjusted for the projected cost of complying with
9 new state or federal mandates.

10 (C) Beginning with the 2007–08 rate year and continuing
11 through the 2008–09 rate year, the maximum annual increase in
12 the weighted average Medi-Cal reimbursement rate required for
13 purposes of this article shall not exceed 5.5 percent of the weighted
14 average Medi-Cal reimbursement rate for the prior fiscal year, as
15 adjusted for the projected cost of complying with new state or
16 federal mandates.

17 (D) For the 2009–10 rate year, the weighted average Medi-Cal
18 reimbursement rate required for purposes of this article shall not
19 be increased with respect to the weighted average Medi-Cal
20 reimbursement rate for the 2008–09 rate year, as adjusted for the
21 projected cost of complying with new state or federal mandates.

22 (3) (A) For the 2010–11 rate year, if the increase in the federal
23 medical assistance percentage (FMAP) pursuant to the federal
24 American Recovery and Reinvestment Act of 2009 (ARRA)
25 (Public Law 111-5) is extended for the entire 2010–11 rate year,
26 the maximum annual increase in the weighted average Medi-Cal
27 reimbursement rate for the purposes of this article shall not exceed
28 3.93 percent, or 3.14 percent, if the increase in the FMAP pursuant
29 to ARRA is not extended for that period of time, plus the projected
30 cost of complying with new state or federal mandates. If the
31 increase in the FMAP pursuant to ARRA is extended at a different
32 rate, or for a different time period, the rate adjustment for facilities
33 shall be adjusted accordingly.

34 (B) The weighted average Medi-Cal reimbursement rate increase
35 specified in subparagraph (A) shall be adjusted by the department
36 for the following reasons:

37 (i) If the federal Centers for Medicare and Medicaid Services
38 does not approve exemption changes to the facilities subject to the
39 quality assurance fee.

1 (ii) If the federal Centers for Medicare and Medicaid Services
2 does not approve any proposed modification to the methodology
3 for calculation of the quality assurance fee.

4 (iii) To ensure that the state does not incur any additional
5 General Fund expenses to pay for the 2010–11 weighted average
6 Medi-Cal reimbursement rate increase.

7 (C) If the maximum annual increase in the weighted average
8 Medi-Cal rate is reduced pursuant to subparagraph (B), the
9 department shall recalculate and publish the final maximum annual
10 increase in the weighted average Medi-Cal reimbursement rate.

11 (4) (A) Subject to the following provisions, for the 2011–12
12 rate year, the increase in the Medi-Cal reimbursement rate for the
13 purpose of this article, for each skilled nursing facility as defined
14 in subdivision (c) of Section 1250 of the Health and Safety Code,
15 shall not exceed 2.4 percent of the rate on file that was applicable
16 on May 31, 2011, plus the projected cost of complying with new
17 state or federal mandates. The percentage increase shall be applied
18 equally to each rate on file as of May 31, 2011.

19 (B) The weighted average Medi-Cal reimbursement rate increase
20 specified in subparagraph (A) shall be adjusted by the department
21 for the following reasons:

22 (i) If the federal Centers for Medicare and Medicaid Services
23 does not approve exemption changes to the facilities subject to the
24 quality assurance fee.

25 (ii) If the federal Centers for Medicare and Medicaid Services
26 does not approve any proposed modification to the methodology
27 for calculation of the quality assurance fee.

28 (iii) To ensure that the state does not incur any additional
29 General Fund expenses to pay for the 2011–12 weighted average
30 Medi-Cal reimbursement rate increase.

31 (C) The department may recalculate and publish the weighted
32 average Medi-Cal reimbursement rate increase for the 2011–12
33 rate year if the difference in the projected quality assurance fee
34 collections from the 2011–12 rate year, compared to the projected
35 quality assurance fee collections for the 2010–11 rate year, would
36 result in any additional General Fund expense to pay for the
37 2011–12 rate year weighted average reimbursement rate increase.

38 (5) To the extent that rates are projected to exceed the adjusted
39 limits calculated pursuant to subparagraphs (A) to (D), inclusive,
40 of paragraph (2) and, as applicable, paragraphs (3) and (4), the

1 department shall adjust each skilled nursing facility's projected
2 rate for the applicable rate year by an equal percentage.

3 (6) (A) (i) Notwithstanding any other provision of law, and
4 except as provided in subparagraph (B), payments resulting from
5 the application of paragraphs (3) and (4), the provisions of
6 paragraph (5), and all other applicable adjustments and limits as
7 required by this section, shall be reduced by 10 percent for dates
8 of service on and after June 1, 2011, through July 31, 2012. This
9 is a one-time reduction evenly distributed across all facilities to
10 ensure long-term stability of nursing homes serving the Medi-Cal
11 population.

12 (ii) Notwithstanding any other provision of law, the director
13 may adjust the percentage reductions specified in clause (i), as
14 long as the resulting reductions, in the aggregate, total no more
15 than 10 percent.

16 (iii) The adjustments authorized under this subparagraph shall
17 be implemented only if the director determines that the payments
18 resulting from the adjustments comply with paragraph (7).

19 (B) Payments to facilities owned or operated by the state shall
20 be exempt from the payment reduction required by this paragraph.

21 (7) (A) Notwithstanding any other provision of this section,
22 the payment reductions and adjustments required by paragraph (6)
23 shall be implemented only if the director determines that the
24 payments that result from the application of paragraph (6) will
25 comply with applicable federal Medicaid requirements and that
26 federal financial participation will be available.

27 (B) In determining whether federal financial participation is
28 available, the director shall determine whether the payments
29 comply with applicable federal Medicaid requirements, including
30 those set forth in Section 1396a(a)(30)(A) of Title 42 of the United
31 States Code.

32 (C) To the extent that the director determines that the payments
33 do not comply with applicable federal Medicaid requirements or
34 that federal financial participation is not available with respect to
35 any payment that is reduced pursuant to this section, the director
36 retains the discretion to not implement the particular payment
37 reduction or adjustment and may adjust the payment as necessary
38 to comply with federal Medicaid requirements.

39 (8) For managed care health plans that contract with the
40 department pursuant to this chapter and Chapter 8 (commencing

1 with Section 14200), except for contracts with the Senior Care
2 Action Network and AIDS Healthcare Foundation, and to the
3 extent that these services are provided through any of those
4 contracts, payments shall be reduced by the actuarial equivalent
5 amount of the reduced provider reimbursements specified in
6 paragraph (6) pursuant to contract amendments or change orders
7 effective on July 1, 2011, or thereafter.

8 (9) (A) For the 2012–13 rate year, all of the following shall
9 apply:

10 (i) The department shall determine the amounts of reduced
11 payments for each skilled nursing facility, as defined in subdivision
12 (c) of Section 1250 of the Health and Safety Code, resulting from
13 the 10-percent reduction imposed pursuant to clause (i) of
14 subparagraph (A) of paragraph (6) for the period beginning on
15 June 1, 2011, through July 31, 2012.

16 (ii) For claims adjudicated through October 1, 2012, each skilled
17 nursing facility as defined in subdivision (c) of Section 1250 of
18 the Health and Safety Code that is reimbursed under the Medi-Cal
19 fee-for-service program, shall receive the total payments calculated
20 by the department in clause (i), not later than December 31, 2012.

21 (iii) For managed care plans that contract with the department
22 pursuant to this chapter or Chapter 8 (commencing with Section
23 14200), except contracts with Senior Care Action Network and
24 AIDS Healthcare Foundation, and to the extent that skilled nursing
25 services are provided through any of those contracts, payments
26 shall be adjusted by the actuarial equivalent amount of the
27 reimbursements calculated in clause (i) pursuant to contract
28 amendments or change orders effective on July 1, 2012, or
29 thereafter.

30 (B) Notwithstanding subparagraph (A), beginning on August
31 1, 2012, through July 31, 2013, the department shall pay the facility
32 specific Medi-Cal reimbursement rate that was on file and
33 applicable to the specific skilled nursing facility on August 1, 2011,
34 prior to and excluding any rate reduction implemented pursuant
35 to clause (i) of subparagraph (A) of paragraph (6) for the period
36 beginning on June 1, 2011, to July 31, 2012, inclusive, and adjusted
37 for the projected costs of complying with new state or federal
38 mandates. These rates are deemed to be sufficient to meet operating
39 expenses.

1 (C) The weighted average Medi-Cal reimbursement rate increase
2 specified in subparagraph (B) shall be adjusted by the department
3 if the federal Centers for Medicare and Medicaid Services does
4 not approve any proposed modification to the methodology for
5 calculation of the skilled nursing quality assurance fee pursuant
6 to Article 7.6 (commencing with Section 1324.20) of Chapter 2
7 of Division 2 of the Health and Safety Code.

8 (D) Notwithstanding any other provision of law, beginning on
9 January 1, 2013, Article 7.6 (commencing with Section 1324.20)
10 of Chapter 2 of Division 2 of the Health and Safety Code, which
11 imposes a skilled nursing facility quality assurance fee, shall not
12 be enforceable against any skilled nursing facility unless each
13 skilled nursing facility is paid the rate provided for in
14 subparagraphs (A) and (B). Any amount collected during the
15 2012–13 rate year by the department pursuant to Article 7.6
16 (commencing with Section 1324.20) of Chapter 2 of Division 2
17 of the Health and Safety Code shall be refunded to each facility
18 not later than February 1, 2013.

19 (E) The provisions of this paragraph shall also be included as
20 part of a state plan amendment implementing the 2011–12 and
21 2012–13 Medi-Cal reimbursement rates authorized under this
22 article.

23 (10) (A) Subject to the following provisions, for the 2013–14
24 and 2014–15 rate years, the annual increase in the weighted average
25 Medi-Cal reimbursement rate for the purpose of this article, for
26 each skilled nursing facility as defined in subdivision (c) of Section
27 1250 of the Health and Safety Code, shall be 3 percent for each
28 rate year, respectively, plus the projected cost of complying with
29 new state or federal mandates.

30 (B) (i) For the 2013–14 rate year, if there is a rate increase in
31 the weighted average Medi-Cal reimbursement rate, the department
32 shall set aside 1 percent of the increase in the weighted average
33 Medi-Cal reimbursement rate, from which the department shall
34 transfer the nonfederal portion into the Skilled Nursing Facility
35 Quality and Accountability Special Fund, to be used for the
36 supplemental rate pool.

37 (ii) For the 2014–15 rate year, if there is a rate increase in the
38 weighted average Medi-Cal reimbursement rate, the department
39 shall set aside at least one-third of the weighted average Medi-Cal
40 reimbursement rate increase, up to a maximum of 1 percent, from

1 which the department shall transfer the nonfederal portion of this
2 amount into the Skilled Nursing Facility Quality and Accountability
3 Special Fund.

4 (C) The weighted average Medi-Cal reimbursement rate increase
5 specified in subparagraph (A) shall be adjusted by the department
6 for the following reasons:

7 (i) If the federal Centers for Medicare and Medicaid Services
8 does not approve exemption changes to the facilities subject to the
9 quality assurance fee.

10 (ii) If the federal Centers for Medicare and Medicaid Services
11 does not approve any proposed modification to the methodology
12 for calculation of the quality assurance fee.

13 (11) The director shall seek any necessary federal approvals for
14 the implementation of this section. This section shall not be
15 implemented until federal approval is obtained. When federal
16 approval is obtained, the payments resulting from the application
17 of paragraph (6) shall be implemented retroactively to June 1,
18 2011, or on any other date or dates as may be applicable.

19 *(12) (A) Beginning with the 2015–16 rate year, the annual*
20 *increase in the weighted average Medi-Cal reimbursement rate,*
21 *required for the purposes of this article, shall be 3.62 percent, plus*
22 *the projected cost of complying with new state or federal mandates.*

23 *(B) The weighted average Medi-Cal reimbursement rate*
24 *increase specified in subparagraph (A) may be adjusted by the*
25 *department as it deems necessary to obtain any applicable federal*
26 *approval.*

27 (d) The rate methodology shall cease to be implemented after
28 July 31, ~~2015~~: 2020.

29 (e) (1) It is the intent of the Legislature that the implementation
30 of this article result in individual access to appropriate long-term
31 care services, quality resident care, decent wages and benefits for
32 nursing home workers, a stable workforce, provider compliance
33 with all applicable state and federal requirements, and
34 administrative efficiency.

35 (2) Not later than December 1, 2006, the Bureau of State Audits
36 shall conduct an accountability evaluation of the department's
37 progress toward implementing a facility-specific reimbursement
38 system, including a review of data to ensure that the new system
39 is appropriately reimbursing facilities within specified cost

1 categories and a review of the fiscal impact of the new system on
2 the General Fund.

3 (3) Not later than January 1, 2007, to the extent information is
4 available for the three years immediately preceding the
5 implementation of this article, the department shall provide baseline
6 information in a report to the Legislature on all of the following:

7 (A) The number and percent of freestanding skilled nursing
8 facilities that complied with minimum staffing requirements.

9 (B) The staffing levels prior to the implementation of this article.

10 (C) The staffing retention rates prior to the implementation of
11 this article.

12 (D) The numbers and percentage of freestanding skilled nursing
13 facilities with findings of immediate jeopardy, substandard quality
14 of care, or actual harm, as determined by the certification survey
15 of each freestanding skilled nursing facility conducted prior to the
16 implementation of this article.

17 (E) The number of freestanding skilled nursing facilities that
18 received state citations and the number and class of citations issued
19 during calendar year 2004.

20 (F) The average wage and benefits for employees prior to the
21 implementation of this article.

22 (4) Not later than January 1, 2009, the department shall provide
23 a report to the Legislature that does both of the following:

24 (A) Compares the information required in paragraph (2) to that
25 same information two years after the implementation of this article.

26 (B) Reports on the extent to which residents who had expressed
27 a preference to return to the community, as provided in Section
28 1418.81 of the Health and Safety Code, were able to return to the
29 community.

30 (5) The department may contract for the reports required under
31 this subdivision.

32 *SEC. 7. Section 14126.036 of the Welfare and Institutions Code*
33 *is amended to read:*

34 14126.036. This article shall become inoperative on August 1,
35 ~~2015~~, 2020, and as of January 1, ~~2016~~, 2021, is repealed, unless a
36 later enacted statute that is enacted before January 1, ~~2016~~, 2021,
37 deletes or extends that date.

38 *SEC. 8. This act is a bill providing for appropriations related*
39 *to the Budget Bill within the meaning of subdivision (e) of Section*
40 *12 of Article IV of the California Constitution, has been identified*

- 1 *as related to the budget in the Budget Bill, and shall take effect*
- 2 *immediately.*
- 3 ~~SECTION 1. It is the intent of the Legislature to enact statutory~~
- 4 ~~changes relating to the Budget Act of 2015.~~

O