

AMENDED IN ASSEMBLY JUNE 30, 2016

AMENDED IN SENATE MAY 31, 2016

AMENDED IN SENATE APRIL 26, 2016

AMENDED IN SENATE APRIL 5, 2016

SENATE BILL

No. 1300

Introduced by Senator Hernandez

February 19, 2016

An act to add Article 3.91 (commencing with Section 14129) to Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, relating to Medi-Cal, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1300, as amended, Hernandez. Medi-Cal: emergency medical transport providers: quality assurance fee.

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 establishes a quality assurance fee program for skilled nursing and intermediate care facilities, as prescribed.

This bill, commencing July 1, 2017, and subject to federal approval, would impose a quality assurance fee for each transport provided by an emergency medical transport provider, as defined, subject to the quality assurance fee in accordance with a prescribed methodology. The bill would authorize the director to exempt categories of emergency medical transport providers from the quality assurance fee if necessary

to obtain federal approval. The bill would require the Director of Health Care Services to deposit the collected quality assurance fee into the Medi-Cal Emergency Medical Transport Fund, which the bill would create in the State Treasury, to be continuously appropriated, thereby making an appropriation, to the department to be used exclusively in a specified order of priority to enhance federal financial participation for ambulance services under the Medi-Cal program, and to provide additional reimbursement to, and to support quality improvement efforts of, emergency medical transport providers, to pay for state administrative costs, and to provide funding for health care coverage for Californians. The bill, on or before ~~August 15, 2016~~, *November 15, 2016*, would require each emergency medical transport provider to report to the department specified data, including data on gross receipts, as defined, from the provision of emergency medical transports, as specified, in a manner and form prescribed by the department and, commencing on ~~October 1, 2016~~, *January 1, 2017*, and each fiscal quarter thereafter, would require each emergency medical transport provider to report this data to the department. The bill would authorize the department to establish an Internet Web site for the submission of these data reports. The bill would authorize the department to require a certification by each emergency medical transport provider, under penalty of perjury, of the truth of these data reports. By expanding the scope of the crime of perjury, the bill would impose a state-mandated local program. The bill would authorize the department, upon written notice to the emergency medical transport provider, to impose a \$100 per day penalty against the provider for each day that the provider fails to make a report within 5 business days of the date upon which the data report was due. ~~The bill would provide that the failure to make a report under these provisions within 90 days of the date upon which the report was due shall be considered a violation that relates to his or her licensed activities for purposes of a specified section of the Vehicle Code, which authorizes the Commissioner of the California Highway Patrol to suspend, revoke, or take other disciplinary action against a license if the licensee violates any section of the Vehicle Code that relates to his or her licensed activities.~~

The bill, commencing July 1, 2017, and subject to federal approval, would increase the Medi-Cal reimbursement to emergency medical transport providers for emergency medical transports, including both fee-for-service transports paid by the department and managed care transports paid by Medi-Cal managed care health plans, as specified.

The bill would authorize the department to adopt regulations as necessary to implement these provisions, as specified.

The bill would provide that the provisions of the bill shall cease to be implemented if any of certain conditions, including withdrawal of federal approval, are satisfied.

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 no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: yes.

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

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) The Legislature recognizes the essential role that emergency
4 medical transport providers play in serving the state's Medi-Cal
5 beneficiaries. To that end, it has been and remains the intent of the
6 Legislature to improve funding for emergency medical transport
7 providers and obtain all available federal funds to make
8 supplemental Medi-Cal payments to emergency medical transport
9 providers.

10 (b) It is the intent of the Legislature to impose a quality
11 assurance fee to be paid by emergency medical transport providers,
12 which will be used to increase federal financial participation in
13 order to increase Medi-Cal payments to emergency medical
14 transport providers.

15 (c) It is the intent of the Legislature to increase the Medi-Cal
16 emergency medical transport reimbursement in Medi-Cal
17 fee-for-service and Medi-Cal managed care by increasing the
18 fee-for-service payment schedule for emergency medical transports
19 to support quality improvement efforts by emergency medical
20 transport providers, including, but not limited to, the provision of
21 advanced life support services, as defined in Section 1797.52 of
22 the Health and Safety Code.

(d) It is the further intent of the Legislature that the increased fee-for-service and Medi-Cal managed care payment schedule amounts pursuant to this article shall not result in any expenditure from the General Fund.

SEC. 2. Article 3.91 (commencing with Section 14129) is added to Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:

Article 3.91. Medi-Cal Emergency Medical Transportation
Reimbursement Act

14129. For purposes of this article, the following definitions shall apply:

(a) “Annual quality assurance fee rate” means the quality assurance fee assessed on each emergency medical transport applicable to each state fiscal year.

(b) “Aggregate fee schedule increase amount” means the product of the quotient described in paragraph (2) of subdivision (a) of Section 14129.3 and the Medi-Cal emergency medical transports, including both fee-for-service transports paid by the department and managed care transports paid by Medi-Cal managed care health plans, utilizing the billing codes for emergency medical transport for the state fiscal year.

(c) “Available fee amount” shall be calculated as the sum of the following:

(1) The amount deposited in the Medi-Cal Emergency Transportation Fund established under Section 14129.2 during the applicable state fiscal year, less the amounts described in subparagraphs (A) and (B) of paragraph (2) of subdivision (f) of Section 14129.2.

(2) Any federal financial participation obtained as a result of the deposit of the amount described in paragraph (1) in the Medi-Cal Emergency Transportation Fund for the applicable fiscal year.

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

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

(f) “Effective state medical assistance percentage” means a ratio of the aggregate expenditures from state-only sources for the Medi-Cal program divided by the aggregate expenditures from

1 state and federal sources for the Medi-Cal program for a state fiscal
2 year.

3 (g) “Emergency medical transport” means the act of transporting
4 an individual from any point of origin to the nearest medical facility
5 capable of meeting the emergency medical needs of the patient by
6 an ambulance licensed, operated, and equipped in accordance with
7 applicable state or local statutes, ordinances, or regulations that
8 are billed with billing codes A0429 BLS Emergency, A0427 ALS
9 Emergency, and A0433 ALS2, and any equivalent, predecessor,
10 or successor billing codes as may be determined by the director.
11 “Emergency medical transports” shall not include transportation
12 of beneficiaries by passenger car, taxicabs, litter vans, wheelchair
13 vans, or other forms of public or private conveyances, nor shall it
14 include transportation by an air ambulance provider. An
15 “emergency medical transport” does not occur when, following
16 evaluation of a patient, a transport is not provided.

17 (h) “Gross receipts” means gross payments received as patient
18 care revenue for emergency medical transports, determined on a
19 cash basis of accounting, excluding supplemental amounts received
20 pursuant to Section 14105.94.

21 (i) “Emergency medical transport provider” means any provider
22 of emergency medical transports.

23 (j) “Emergency medical transport provider subject to the fee”
24 means all emergency medical transport providers that bill and
25 receive patient care revenue from the provision of emergency
26 medical transports, except emergency medical transport providers
27 that are exempt pursuant to subdivision (c) of Section 14129.6.

28 (k) “Medi-Cal managed care health plan” means a “managed
29 health care plan” as that term is defined in subdivision (ab) of
30 Section 14169.51.

31 14129.1. (a) On or before ~~August 15, 2016~~, *November 15,*
32 *2016*, each emergency medical transport provider shall report to
33 the department data on the number of actual emergency medical
34 transports by payor type, including, without limitation, Medi-Cal
35 fee-for-service emergency medical transports and Medi-Cal
36 managed care emergency medical transports, and gross receipts
37 from the provision of emergency medical transports provided in
38 each quarter from July 1, 2015, to ~~June 30, 2016~~, *October 31,*
39 *2016*, inclusive, in a manner and format prescribed by the
40 department.

(b) Commencing with the fiscal quarter beginning on ~~October 1, 2016~~, *January 1, 2017*, and each fiscal quarter thereafter, on or before the 45th day of the quarter, each emergency medical transport provider shall report to the department data on the number of actual emergency medical transports by payor type, including, without limitation, Medi-Cal fee-for-service emergency medical transports and Medi-Cal managed care emergency medical transports, and gross receipts from the provision of emergency medical transports provided in the quarter preceding the quarter in which the report is due, in a manner and format prescribed by the department.

(c) The department may establish an Internet Web site for the submission of reports required by this section.

(d) The department may require a certification by each emergency medical transport under penalty of perjury of the truth of the reports required under this section. Upon written notice to an emergency medical transport provider, the department may impose a penalty of one hundred dollars (\$100) per day against an emergency medical transport provider for every day that an emergency medical transport provider fails to make a report required by this section within five days of the date upon which the report was due. ~~If an emergency medical transport provider has not made a report as required by this section within 90 days of the date upon which the report was due, the failure to make the report shall be considered a violation of a section of the Vehicle Code that relates to the emergency medical transport provider's licensed activities for the purposes of Section 2542 of the Vehicle Code.~~

14129.2. (a) Commencing with the state fiscal quarter beginning on July 1, 2017, and continuing each state fiscal quarter thereafter, there shall be imposed a quality assurance fee for each emergency medical transport provided by each emergency medical transport provider subject to the fee in accordance with this section.

(b) (1) On or before June 15, 2017, and each June 15 thereafter, the director shall calculate the annual quality assurance fee rate applicable to the following state fiscal year based on the most recently collected data collected from emergency medical transport providers pursuant to Section 14129.1, and publish the annual quality assurance fee rate on its Internet Web site. In no case shall the fees calculated pursuant to this subdivision and collected

1 pursuant to this article exceed the amounts allowable under federal
2 law.

3 (A) For state fiscal year 2017–18, the annual quality assurance
4 fee rate shall be calculated by multiplying the projected total annual
5 gross receipts for all emergency medical transport providers subject
6 to the fee by 5.5 percent, which resulting product shall be divided
7 by the projected total annual emergency medical transports by all
8 emergency medical transport providers subject to the fee for the
9 state fiscal year.

10 (B) For state fiscal years 2018–19 and thereafter, the annual
11 quality assurance fee rate shall be calculated by a ratio, the
12 numerator of which shall be the sum of the product of the projected
13 aggregate fee schedule amount and the effective state medical
14 assistance percentage, and the amount described in subparagraph
15 (A) of paragraph (2) of subdivision (f), and the denominator of
16 which shall be 95 percent of the projected total annual emergency
17 medical transports by all emergency medical transport providers
18 subject to the fee for the state fiscal year.

19 (2) On or before June 15, 2017, and each June 15 thereafter, the
20 director shall publish the annual quality assurance fee rate on its
21 Internet Web site.

22 (3) In no case shall the fees calculated pursuant to this
23 subdivision and collected pursuant to this article exceed the
24 amounts allowable under federal law.

25 (4) If, during a state fiscal year, the actual or projected available
26 fee amount exceeds or is less than the actual or projected aggregate
27 fee schedule amount by more than 1 percent, the director shall
28 adjust the annual quality assurance fee rate so that the available
29 fee amount for the state fiscal year will approximately equal the
30 aggregate fee schedule amount for the state fiscal year. The
31 available fee amount for a state fiscal year will be considered to
32 equal the aggregate fee schedule amount for the state fiscal year
33 if the difference between the available fee amount for the state
34 fiscal year and the aggregate fee schedule amount for the state
35 fiscal year constitutes less than 1 percent of the aggregate fee
36 schedule amount for the state fiscal year.

37 (c) (1) Each emergency medical transport provider subject to
38 the fee shall remit to the department an amount equal to the annual
39 quality assurance fee rate for the 2017–18 state fiscal year
40 multiplied by the number of transports reported or that should have

1 been reported by the emergency medical transport provider
2 pursuant to subdivision (b) of Section 14129.1 in the quarter
3 commencing April 1, 2017, based on a schedule established by
4 the director. The schedule established by the director for the fee
5 payment described in this paragraph shall not require payment of
6 any of the fee payment prior to July 1, 2017, and shall not require
7 payment of more than 50 percent of the fee payment prior to
8 August 1, 2017.

9 (2) Commencing with the state fiscal quarter beginning on
10 October 1, 2017, and each state fiscal quarter thereafter, on or
11 before the first day of each state fiscal quarter, each emergency
12 medical transport provider subject to the fee shall remit to the
13 department an amount equal to the annual quality assurance fee
14 rate for the applicable state fiscal year multiplied by the number
15 of transports reported or that should have been reported by the
16 emergency medical transport provider pursuant to subdivision (b)
17 of Section 14129.1 in the immediately preceding quarter.

18 (d) (1) Interest shall be assessed on quality assurance fees not
19 paid on the date due at the greater of 10 percent per annum or the
20 rate at which the department assesses interest on Medi-Cal program
21 overpayments to hospitals that are not repaid when due. Interest
22 shall begin to accrue the day after the date the payment was due
23 and shall be deposited in the Medi-Cal Emergency Medical
24 Transport Fund established in subdivision (f).

25 (2) In the event that any fee payment is more than 60 days
26 overdue, the department may deduct the unpaid fee and interest
27 owed from any Medi-Cal reimbursement payments owed to the
28 provider until the full amount of the fee and interest are recovered.
29 Any deduction made pursuant to this subdivision shall be made
30 only after the department gives the provider written notification.
31 Any deduction made pursuant to this subdivision may be deducted
32 over a period of time that takes into account the financial condition
33 of the provider.

34 (3) In the event that any fee payment is more than 60 days
35 overdue, a penalty equal to the interest charge described in
36 paragraph (1) shall be assessed and due for each month for which
37 the payment is not received after 60 days.

38 (e) The department shall accept an emergency medical transport
39 provider's payment even if the payment is submitted in a rate year
40 subsequent to the rate year in which the fee was assessed.

(f) (1) The director shall deposit the quality assurance fee collected pursuant to this section in the Medi-Cal Emergency Medical Transport Fund, which is hereby created in the State Treasury and, notwithstanding Section 13440 of the Government Code, is continuously appropriated without regard to fiscal years to the department for the purposes specified in this article. Notwithstanding Section 16305.7 of the Government Code, the fund shall also include interest and dividends earned on moneys in the fund.

(2) The moneys in the Medi-Cal Emergency Medical Transport Fund, including any interest and dividends earned on money in the fund, shall be available exclusively to enhance federal financial participation for ambulance services under the Medi-Cal program and to provide additional reimbursement to, and to support quality improvement efforts of, emergency medical transport providers, as well as to pay for the state's administrative costs and to provide funding for health care coverage for Californians, in the following order of priority:

(A) To pay for the department's staffing and administrative costs directly attributable to implementing this article, not to exceed three hundred fifty thousand dollars (\$350,000) for each fiscal year, exclusive of any federal matching funds.

(B) To pay for the health care coverage in each fiscal year in the amount of 10 percent of the projected quality assurance fee revenue for that fiscal year, as calculated by the department on or before June 15 preceding that fiscal year, exclusive of any federal matching funds.

(C) To make increased payments to emergency medical transport providers pursuant to this article.

14129.3. (a) Effective July 1, 2017, the Medi-Cal fee-for-service payment schedule governing reimbursement to emergency medical transport providers for emergency medical transports shall be increased. The department shall calculate the projections required by this subdivision based on the data submitted pursuant to Section 14129.1. The resulting fee-for-service payment schedule amounts after the application of this section shall be equal to the sum of both of the following:

(1) The Medi-Cal fee-for-service payment schedule amount for the state fiscal year 2015–16.

(2) The quotient of the projected available fee amount for the state fiscal year 2017–18, divided by the total projected Medi-Cal emergency medical transports, including both fee-for-service transports paid by the department and managed care transports paid by Medi-Cal managed care health plans, utilizing these billing codes for the state fiscal year 2017–18.

(b) Each Medi-Cal managed care health plan shall satisfy its obligation under Section 438.114(c) of Title 42 of the Code of Federal Regulations for emergency medical transports by providing payment to emergency medical transport providers that is equal to the amount of payment described in Section 1396u-2(b)(2)(D) of Title 42 of the United States Code.

(c) The fee-for-service and Medi-Cal managed care payment schedule increase established pursuant to this section shall be funded solely from the following:

(1) The quality assurance fee set forth in Section 14129.2, along with any interest or other investment income thereon.

(2) Federal reimbursement and any other related federal funds.

(d) The proceeds of the quality assurance fee set forth in Section 14129.2, the matching amount provided by the federal government, and any interest earned on those proceeds shall be used to supplement existing funding for emergency medical transports provided by emergency transport providers and not supplant this funding.

14129.4. If there is a delay in the implementation of this article for any reason, including a delay in any required approval of the quality assurance fee and reimbursement methodology specified by the federal Centers for Medicare and Medicaid Services, all of the following shall apply:

(a) An emergency transport provider subject to the fee may be assessed the amount the provider would be required to pay to the department if the fee-for-service payment schedule increases described in Section 14129.3 were already approved, but shall not be required to pay the fee until the fee-for-service payment schedule increases described in Section 14129.3 are approved. The director shall establish a schedule for payment of retroactive fees pursuant to this subdivision in consultation with emergency medical transport providers to minimize the disruption to the cashflow of emergency medical transport providers.

1 (b) The department may retroactively increase and make
2 payment of supplemental rates to emergency medical transport
3 providers pursuant to Section 14129.3.

4 14129.5. (a) The director 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
8 provisions of the Administrative Procedure Act (Chapter 3.5
9 (commencing with Section 11340) of Part 1 of Division 3 of Title
10 2 of the Government Code). For purposes of this article, the first
11 adoption of regulations shall be deemed an emergency and
12 necessary for the immediate preservation of the public peace, health
13 and safety, or general welfare. The regulations shall include, but
14 need not be limited to, any regulations necessary for any of the
15 following purposes:

16 (1) The administration of this article, including the proper
17 imposition of the quality assurance fee and process for its
18 collection, reporting, and refunds. The costs associated with the
19 administration of this article are not to exceed the amounts
20 reasonably necessary to administer this article.

21 (2) The development of any forms necessary to obtain required
22 information from providers subject to the quality assurance fee.

23 (3) The provision of details, definitions, formulas, and other
24 requirements.

25 (c) As an alternative to subdivision (b), and notwithstanding
26 the rulemaking provisions of the Administrative Procedure Act
27 (Chapter 3.5 (commencing with Section 11340) of Part 1 of
28 Division 3 of Title 2 of the Government Code), the director may
29 implement this article, in whole or in part, by means of a provider
30 bulletin, or other similar instructions, without taking regulatory
31 action, provided that no such bulletin or other similar instructions
32 shall remain in effect after June 30, 2018. It is the intent of the
33 Legislature that the regulations adopted pursuant to subdivision
34 (b) be adopted on or before June 30, 2018.

35 (d) The director shall ensure that the quality assurance fee per
36 transport imposed pursuant to this article is collected.

37 14129.6. (a) The department shall request approval from the
38 federal Centers for Medicare and Medicaid Services for the use
39 of fees collected pursuant to this article for the purpose of receiving
40 federal matching funds.

(b) The director may alter the methodology specified in this article to the extent necessary to meet the requirements of federal law or regulations or to obtain federal approval. If the director, after consulting with affected emergency medical transport providers, determines that an alteration is needed, the director shall execute a declaration stating that this determination has been made. The director shall retain the declaration and provide a copy, within five working days of the execution of the declaration, to the fiscal and appropriate policy committees of the Legislature.

(c) The director may add categories of exempt emergency medical transport providers or apply a nonuniform fee per transport to emergency medical transport providers that are subject to the fee in order to meet requirements of federal law or regulations. The director may exempt categories of emergency medical transport providers from the fee if necessary to obtain federal approval.

14129.7. (a) This article shall be implemented only if, and as long as, both of the following conditions are met:

(1) The state receives federal approval of the quality assurance fee from the federal Centers for Medicare and Medicaid Services.

(2) The state receives federal approval for the increased fee-for-service payment schedule increases described in subdivision (a) of Section 14129.3.

(b) This article shall cease to be implemented if one of the following conditions is satisfied:

(1) The federal Centers for Medicare and Medicaid Services no longer allows the use of the provider assessment provided in this article.

(2) The Medi-Cal fee-for-service payment schedule increase described in subdivision (a) of Section 14129.3 no longer remains in effect.

(3) The quality assurance fee assessed and collected pursuant to this article is no longer available for the purposes specified in this article.

(4) A final judicial determination by the California Supreme Court or any California Court of Appeal that the revenues collected pursuant to this article that are deposited in the Medi-Cal Emergency Medical Transport Fund are either of the following:

(A) “General Fund proceeds of taxes appropriated pursuant to Article XIII B of the California Constitution,” as used in

1 subdivision (b) of Section 8 of Article XVI of the California
2 Constitution.

3 (B) “Allocated local proceeds of taxes,” as used in subdivision
4 (b) of Section 8 of Article XVI of the California Constitution.

5 (c) If all of the conditions in subdivision (a) are met, this article
6 is implemented. If, subsequently, any one of the conditions in
7 subdivision (b) is met, this article shall become inoperative
8 notwithstanding that the condition or conditions subsequently may
9 be met.

10 (d) Notwithstanding subdivisions (a), (b), and (c), in the event
11 of a final judicial determination made by any state or federal court
12 that is not appealed, or by a court of appellate jurisdiction that is
13 not further appealed, in any action by any party, or a final
14 determination by the administrator of the federal Centers for
15 Medicare and Medicaid Services, that federal financial participation
16 is not available with respect to any payment made under the
17 methodology implemented pursuant to this article because the
18 methodology is invalid, unlawful, or contrary to any provision of
19 federal law or regulations or of state law, this article shall become
20 inoperative.

21 SEC. 3. No reimbursement is required by this act pursuant to
22 Section 6 of Article XIII B of the California Constitution because
23 the only costs that may be incurred by a local agency or school
24 district will be incurred because this act creates a new crime or
25 infraction, eliminates a crime or infraction, or changes the penalty
26 for a crime or infraction, within the meaning of Section 17556 of
27 the Government Code, or changes the definition of a crime within
28 the meaning of Section 6 of Article XIII B of the California
29 Constitution.

30 SEC. 4. This act is an urgency statute necessary for the
31 immediate preservation of the public peace, health, or safety within
32 the meaning of Article IV of the Constitution and shall go into
33 immediate effect. The facts constituting the necessity are:

34 In order to make the necessary changes to increase Medi-Cal
35 payments to emergency ambulance providers and to improve
36 access, at the earliest possible time, to allow this act to be operative
37 as soon as approval from the federal Centers for Medicare and

- 1 Medicaid Services is obtained by the State Department of Health
- 2 Care Services, it is necessary that this act take effect immediately.

O