ASSEMBLY BILL No. 598

Introduced by Assembly Member De La Torre

February 25, 2009

An act to amend Section 14166.2 of the Welfare and Institutions Code, relating to Medi-Cal.

LEGISLATIVE COUNSEL'S DIGEST

AB 598, as introduced, De La Torre. Medi-Cal: demonstration project: hospital funding.

Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services and under which qualified low-income persons receive health care benefits. The Medi-Cal program is, in part, governed and funded by federal Medicaid provisions.

Existing law establishes the Medi-Cal Hospital/Uninsured Care Demonstration Project Act, which revises hospital reimbursement methodologies under the Medi-Cal program in order to maximize the use of federal funds consistent with federal Medicaid law and stabilize the distribution of funding for hospitals that provide care to Medi-Cal beneficiaries and uninsured patients. This demonstration project provides for funding, in supplementation of Medi-Cal reimbursement, to various hospitals, including designated public hospitals, nondesignated public hospitals, and private hospitals, as defined in accordance with certain provisions relating to disproportionate share hospitals.

This bill would require the department, by September 1, 2010, to the extent necessary to continue the demonstration project, to submit to the federal Centers for Medicare and Medicaid Services proposed amendments to the Medi-Cal state plan.

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

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

SECTION 1. Section 14166.2 of the Welfare and Institutions Code is amended to read:

14166.2. (a) The demonstration project shall be implemented and administered pursuant to this article.

(b) The director may modify any process or methodology specified in this article to the extent necessary to comply with federal law or the terms of the demonstration project, but only if the modification results in the equitable distribution of funding, consistent with this article, among the hospitals affected by the modification. If the director, after consulting with affected hospitals, determines that an equitable distribution cannot be achieved, 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. This article shall become inoperative on the date that the director executes a declaration pursuant to this subdivision, and as of January 1 of the following year shall be repealed.

(c) The director shall administer the demonstration project and related Medi-Cal payment programs in a manner that attempts to maximize available payment of federal financial participation, consistent with federal law, the Special Terms and Conditions for the demonstration project issued by the federal Centers for Medicare and Medicaid Services, and this article.

(d) As permitted by the federal Centers for Medicare and Medicaid Services, this article shall be effective with regard to services rendered throughout the term of the demonstration project, and retroactively, with regard to services rendered on or after July 1, 2005, but prior to the implementation of the demonstration project.

(e) In the administration of this article, the state shall continue to make payments to hospitals that meet the eligibility requirements for participation in the supplemental reimbursement program for hospital facility construction, renovation, or replacement pursuant

to Section 14085.5 and shall continue to make inpatient hospital payments not covered by the contract. These payments shall not duplicate any other payments made under this article.

(f) The department shall continue to operate the selective provider contracting program in accordance with Article 2.6 (commencing with Section 14081) in a manner consistent with this article. A designated public hospital participating in the certified public expenditure process shall maintain a selective provider contracting program contract. These contracts shall continue to be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

(g) In the event of a final judicial determination made by any state or federal court that is not appealed in any action by any party or a final determination by the administrator of the Centers for Medicare and Medicaid Services that federal financial participation is not available with respect to any payment made under any of the methodologies implemented pursuant to this article because the methodology is invalid, unlawful, or is contrary to any provision of federal law or regulation, the director may modify the process or methodology to comply with law, but only if the modification results in the equitable distribution of demonstration project funding, consistent with this article, among the hospitals affected by the modification. If the director, after consulting with affected hospitals, determines that an equitable distribution cannot be achieved, 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. This article shall become inoperative on the date that the director executes a declaration pursuant to this subdivision, and as of January 1 of the following year shall be repealed.

(h) (1) The department may adopt regulations to implement this article. These regulations may initially be adopted as emergency regulations in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). For purposes of this article, the adoption of regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace,

health, and safety or general welfare. Any emergency regulations adopted pursuant to this section shall not remain in effect subsequent to 24 months after the effective date of this article.

(2) As an alternative, and notwithstanding the rulemaking provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, or any other provision of law, the department may implement and administer this article by means of provider bulletins, manuals, or other similar instructions, without taking regulatory action. The department shall notify the fiscal and appropriate policy committees of the Legislature of its intent to issue a provider bulletin, manual, or other similar instruction, at least five days prior to issuance. In addition, the department shall provide a copy of any provider bulletin, manual, or other similar instruction issued under this paragraph to the fiscal and appropriate policy committees of the Legislature. The department shall consult with interested parties and appropriate stakeholders, regarding the implementation and ongoing administration of this article.

(i) *(1)* To the extent necessary to implement this article, the department shall submit, by September 30, 2005, to the federal Centers for Medicare and Medicaid Services proposed amendments to the Medi-Cal state plan, including, but not limited to, proposals to modify inpatient hospital payments to designated public hospitals, modify the disproportionate share hospital payment program, and provide for supplemental Medi-Cal reimbursement for certain physician and nonphysician professional services. The department shall, subsequent to September 30, 2005, submit any additional proposed amendments to the Medi-Cal state plan that may be required by the federal Centers for Medicare and Medicaid Services, to the extent necessary to implement this article.

(2) To the extent necessary to continue to implement this article, the department shall submit, by September 1, 2010, to the federal Centers for Medicare and Medicaid Services proposed amendments to the Medi-Cal state plan.

(j) Each designated public hospital shall implement a comprehensive process to offer individuals who receive services at the hospital the opportunity to apply for the Medi-Cal program, the Healthy Families Program, or any other public health coverage program for which the individual may be eligible, and shall refer the individual to those programs, as appropriate.

(k) In any judicial challenge of the provisions of this article, nothing shall create an obligation on the part of the state to fund any payment from state funds due to the absence or shortfall of federal funding.

(*l*) Any reference in this article to the "Medicare cost report" shall be deemed a reference to the Medi-Cal cost report to the extent that report is approved by the federal Centers for Medicare and Medicaid Services for any of the uses described in this article.

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