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WELFARE AND INSTITUTIONS CODE - WIC

DIVISION 9. PUBLIC SOCIAL SERVICES [10000 - 18999.98] (Division 9 added by Stats. 1965, Ch. 1784.)

PART 3. AID AND MEDICAL ASSISTANCE [11000 - 15771] (Part 3 added by Stats. 1965, Ch. 1784.)

CHAPTER 7. Basic Health Care [14000 - 14199.87] (Chapter 7 added by Stats. 1965, 2nd Ex. Sess., Ch. 4.)

ARTICLE 7. Clinic Workforce Stabilization Retention Payment Program [14199.70 - 14199.76] (Article 7 added by Stats. 2022, Ch. 738, Sec. 19.)

14199.70. The Legislature finds and declares all of the following:

- (a) Qualified clinics, as defined in this article, are fundamental to the California health care safety net, as their mission is to provide primary and preventive care to low-income and underserved populations.
- (b) Stability in the California qualified clinic workforce will further the Legislature's efforts to manage the COVID-19 pandemic and address other public health issues that face Californians.
- (c) Retention payments will help retain qualified health care workers, in particular registered nurses, licensed vocational nurses, licensed clinical social workers, licensed mental health workers, medical assistants, and advanced practice professionals.

(Added by Stats. 2022, Ch. 738, Sec. 19. (AB 204) Effective September 29, 2022.)

14199.71. For purposes of this article, the following definitions apply:

- (a) "Date of record" means a date determined by the department on which eligible employees are deemed to qualify for a retention payment, which shall be no later than 90 calendar days after the effective date of the act that added this article.
- (b) "Department" means the State Department of Health Care Services.
- (c) "Eligible employee" means a person who is employed by an eligible qualified clinic as of the date of record and is not a manager or supervisor, as defined in this article.
- (d) "HCAI" means the Department of Health Care Access and Information.
- (e) "Manager or supervisor" means a qualified clinic employee who meets all of the following criteria:
 - (1) Whose duties and responsibilities involve the management of the enterprise in which they are employed or of a customarily recognized department or subdivision thereof.
 - (2) Who customarily and regularly directs the work of two or more other employees of the enterprise in which they are employed or of a customarily recognized department or subdivision of that enterprise.
 - (3) Who has the authority to hire or fire other employees, or their suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight.
 - (4) Who customarily and regularly exercises discretion and independent judgment.
 - (5) Who is primarily engaged in duties that meet the test of the exemption. The activities constituting exempt work and nonexempt work shall be construed in the same manner as those items are construed in the following regulations under the Fair Labor Standards Act effective as of the date of this section: Sections 541.102, 541.104-111, and 541.115-116 of Title 29 of the Code of Federal Regulations. Exempt work shall include, for example, all work that is directly and closely related to exempt work and work that is properly viewed as a means for carrying out exempt functions. The work actually performed by the employee during the course of the workweek shall, first and foremost, be examined and the amount of time the employee spends on that work, together with the employer's realistic expectations and the realistic requirements of the job, shall be considered in determining whether the employee satisfies this requirement.

(6) Who must earn a monthly salary equivalent to no less than two times the state minimum wage for full-time employment. "Full-time employment" is defined in subdivision (c) of Section 515 of the Labor Code as 40 hours per week.

(f) "Qualified clinic" means, and is inclusive of, FQHCs, FQHC look-alikes, free clinics, Indian health clinics, intermittent clinics, and rural health clinics, as defined in this subdivision. A qualified clinic shall be located in the State of California, with the exception of Tribal FQHCs and Indian health clinics, as specified in the definitions of FQHC and Indian health clinic set forth in this subdivision.

(1) "Federally qualified health center" or "FQHC" means any community or public federally qualified health center, including Tribal FQHCs, as defined in Section 1396d(l)(2)(B) of Title 42 of the United States Code, as well as FQHC look-alikes. This definition also covers Tribal FQHCs on tribal land adjacent to California in a neighboring state that provides services to American Indians and their families who reside in California.

(2) "FQHC look-alike" means an organization that does not receive an FQHC award, but is designated by the United States Health Resources and Services Administration as meeting FQHC program requirements, as set forth in Sections 1395x(aa)(4)(B) and 1396d(l)(2)(B) of Title 42 of the United States Code. For the purposes of this article, an FQHC look-alike is considered an FQHC and all references to FQHCs apply with equal force to FQHC look-alikes.

(3) "Free clinic" means a facility meeting the definition set forth in subparagraph (B) of paragraph (1) of subdivision (a) of Section 1204 of the Health and Safety Code.

(4) "Indian health clinic" means a health clinic that provides services to American Indians and their families who reside in California pursuant to the Indian Health Program, as set forth in Chapter 4 (commencing with Section 124575) of Part 4 of Division 106 of the Health and Safety Code, and Chapter 3.1 (commencing with Section 1500) of Division 1 of Title 17 of the California Code of Regulations. This definition also covers Indian health clinics on tribal land adjacent to California in a neighboring state that provides services to American Indians and their families who reside in California.

(5) "Intermittent clinic" means a facility meeting the definition set forth in subdivision (h) of Section 1206 of the Health and Safety Code that has been added to the provider master file pursuant to Section 14043.15 under the license of a clinic defined in paragraphs (1) to (4), inclusive.

(6) "Rural health clinic" or "RHC" means a facility meeting the definition set forth in Section 1396d(l)(1) of Title 42 of the United States Code.

(Added by Stats. 2022, Ch. 738, Sec. 19. (AB 204) Effective September 29, 2022.)

14199.72. (a) Upon appropriation by the Legislature of funds for this purpose, the department shall establish a clinic workforce stabilization retention payment program to provide funds to eligible qualified clinics to make retention payments to their eligible employees for the public purposes specified in Section 14199.70.

(b) The department shall determine the conditions and data reporting requirements for qualified clinics to be eligible to receive funds. Within 90 days of the effective date of the act that added this article, the department shall notify all qualified clinics of those conditions and requirements, as well as the relevant portions of this article, including, but not limited to, the date of record set by the department, the information qualified clinics are required to submit pursuant to subdivision (c), the methodology for calculation of funds to be distributed pursuant to subdivision (d), how to pay retention payments pursuant to subdivision (e), and the consequences of noncompliance pursuant to Section 14199.74.

(c) (1) Each qualified clinic that intends to request funding shall submit the following information to the department no later than 30 days after the date of record:

(A) The name and mailing address of each eligible employee.

(B) The employee's professional license, certification, or registration, if applicable.

(C) Any other information as required by the department for purposes of implementing this article.

(2) The possession of a professional license, certification, or registration is not required for an employee to be eligible for a payment. All eligible employees, as defined in subdivision (c) of Section 14199.71, are eligible to receive payments.

(3) The information required by this section shall include an attestation, made under penalty of perjury, that the qualified clinic employee did not receive funds pursuant to the Hospital and Skilled Nursing Facility COVID-19 Retention Pay program set forth in Part 4.6 (commencing with Section 1490) of Division 2 of the Labor Code.

(d) The department shall distribute funds to each eligible qualified clinic based on the total number of eligible employees reported pursuant to subdivision (c). The amount of the payment shall be up to one thousand dollars (\$1,000) per eligible employee, subject

to available funding, and reduced on a pro rata basis if the requests exceed the amount of funds available. The department may distribute these funds to eligible qualified clinics using the existing Medi-Cal Checkwrite system.

(e) Within 60 days of receipt of funds from the department, a qualified clinic shall pay eligible employees a retention payment in the amount of up to one thousand dollars (\$1,000) if no pro rata reduction is made pursuant to subdivision (d), or the pro rata reduced amount if a pro rata reduction is made pursuant to subdivision (d). An eligible employee who leaves employment between the date of record and the date a qualified clinic pays retention payments shall not be eligible for retention payments. Each qualified clinic that receives funds shall attest, in a form and manner specified by the department, and under penalty of perjury, that all funding received pursuant to this section, with the exception of any funding requested for eligible employees who left employment after the date of record, was provided to eligible employees within 60 days of receipt from the department. Each qualified clinic that receives funds shall immediately return to the department any funding received pursuant to this section that is not distributed within the timeline set forth in this subdivision, including funds that the department provided for eligible employees who left employment after the date of record.

(f) The department shall post on its internet website the amount each clinic site received, and the total number of eligible employees reported by each clinic pursuant to subdivision (c).

(g) A qualified clinic shall not use retention payment funding to supplant other payments from the qualified clinic to eligible employees.

(Amended by Stats. 2024, Ch. 40, Sec. 72. (SB 159) Effective June 29, 2024.)

14199.73. (a) (1) Except as required by federal law, any payment made pursuant to this article shall be exempt from any adjustments or deductions made to Medi-Cal payments to qualified clinics, including, but not limited to, provider withholds or provider payment reductions.

(2) Payments made pursuant to this article to qualified clinics shall not be considered payments for patient care or medical services.

(3) The HCAI, in consultation with appropriate stakeholders, shall release guidance to instruct qualified clinics how to report this revenue through the established clinical annual utilization reports, as required under Section 1216 of the Health and Safety Code.

(b) The department may enter into exclusive or nonexclusive contracts, or amend existing contracts, on a bid or negotiated basis for purposes of implementing this article. A contract entered into or amended pursuant to this subdivision shall be exempt from Chapter 6 (commencing with Section 14825) of Part 5.5 of Division 3 of Title 2 of the Government Code, Section 19130 of the Government Code, Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code, and from the State Administrative and State Contracting manuals, and shall be exempt from the review or approval of any division of the Department of General Services.

(c) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department may implement, interpret, or make specific this article, in whole or in part, by means of information notices or other similar instructions, without taking any further regulatory action.

(d) This article is a state law within the meaning of Section 1621(d) of Title 8 of the United States Code.

(e) This article shall be implemented only to the extent that the department determines that federal financial participation under the Medi-Cal program is not jeopardized.

(f) Funds distributed to qualified clinics and payments made by those qualified clinics pursuant to this article shall not be factored into any reconciliation process or prospective payment system (PPS) rate calculation, including, but not limited to, the reconciliation process detailed in Section 14132.100 of this code and subdivision (bb) of Section 1396a of Title 42 of the United States Code, to the maximum extent permissible by law.

(Added by Stats. 2022, Ch. 738, Sec. 19. (AB 204) Effective September 29, 2022.)

14199.74. (a) In the event of a dispute as to the status of an employee as an eligible employee, the retention payment amount, or a qualified clinic's failure to make a retention payment, an eligible employee or a labor organization that represents the employee may write to the qualified clinic and request a review of the employee's eligibility status, retention payment amount, or the qualified clinic's failure to make a retention payment. The qualified clinic shall have 30 days to review the request, disclose to the employee the amount received from the department subject to the methodology described in subdivision (e) of Section 14199.72, and cure any alleged deficiency. In the event the qualified clinic cures a deficiency alleged by an employee, the employee shall not be entitled to any further damages or other relief.

(b) If the qualified clinic does not conclude the review described in subdivision (a) within 30 days of receipt of the review request, or does not cure the alleged deficiency within 30 days of receipt of the review request, the employee may file a complaint with the Labor Commissioner as provided in Section 98 of the Labor Code, or the employee may file an action in court to recover the deficiency. If the court finds that the qualified clinic is liable for failing to make a required retention payment, or to designate an

employee for a retention payment, the qualified clinic shall be ordered to make full payment of the unpaid amount, plus interest at the rate of interest specified in subdivision (b) of Section 3289 of the Civil Code, which shall accrue from the date that the retention payment funds were transmitted to the qualified clinic by the department as provided in Section 14199.72, or from the date the qualified clinic should have designated the employee for the retention payment. A claim before the small claims court is not subject to joinder pursuant to Section 378 of the Code of Civil Procedure.

(c) Notwithstanding any other law, the department shall not be liable for any payment, interest, damages, or attorney's fees and costs awarded to an employee pursuant to this section, and shall not be required to indemnify a qualified clinic for any liability the qualified clinic incurs pursuant to this section.

(Added by Stats. 2022, Ch. 738, Sec. 19. (AB 204) Effective September 29, 2022.)

14199.75. (a) In serving as a conduit for payments under this article, qualified clinics are carrying out a state program. This article does not create a private right of action in any civil litigation against qualified clinics regarding the administration of the retention payment program and in the receipt and transmittal of retention payment program funds except as set forth in Section 14199.74.

(b) This article does not create a private right of action in any civil litigation or administrative proceeding against the state or the department or any other state agency or department.

(c) Notwithstanding any other law, retention payments paid out pursuant to Section 14199.72 are not wages as defined in Section 200 of the Labor Code.

(d) Except as provided in Sections 1493 and 1494 of the Labor Code, and notwithstanding any other law, qualified clinics, the state, and the department and any other state agency or department shall not be liable for damages awarded under Section 3294 of the Civil Code or Sections 2698 to 2699.5, inclusive, of the Labor Code, or other damages imposed primarily for the sake of example and by way of punishing the defendant, in any civil litigation related to the payments described in this article.

(Added by Stats. 2022, Ch. 738, Sec. 19. (AB 204) Effective September 29, 2022.)

14199.76. The provisions of this article are severable. If any provision of this article or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(Added by Stats. 2022, Ch. 738, Sec. 19. (AB 204) Effective September 29, 2022.)