



SB-1300 Medi-Cal: emergency medical transport providers: quality assurance fee. (2015-2016)

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ENROLLED AUGUST 29, 2016

PASSED IN SENATE AUGUST 25, 2016

PASSED IN ASSEMBLY AUGUST 23, 2016

AMENDED IN ASSEMBLY AUGUST 19, 2016

AMENDED IN ASSEMBLY AUGUST 15, 2016

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AMENDED IN SENATE MAY 31, 2016

AMENDED IN SENATE APRIL 26, 2016

AMENDED IN SENATE APRIL 05, 2016

CALIFORNIA LEGISLATURE— 2015–2016 REGULAR SESSION

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, 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 emergency medical 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 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 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, 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: 2/3 Appropriation: yes Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

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

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

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

(c) It is the intent of the Legislature to increase the Medi-Cal emergency medical transport reimbursement in Medi-Cal fee-for-service and Medi-Cal managed care by increasing the fee-for-service payment schedule for emergency medical transports to support quality improvement efforts by emergency medical transport providers, including, but not limited to, the provision of advanced life support services, as defined in Section 1797.52 of 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 state and federal sources for the Medi-Cal program for a state fiscal year.
- (g) "Emergency medical transport" means the act of transporting an individual from any point of origin to the nearest medical facility capable of meeting the emergency medical needs of the patient by an ambulance licensed, operated, and equipped in accordance with applicable state or local statutes, ordinances, or regulations that are billed with billing codes A0429 BLS Emergency, A0427 ALS Emergency, and A0433 ALS2, and any equivalent, predecessor, or successor billing codes as may be determined by the director. "Emergency medical transports" shall not include transportation of beneficiaries by passenger car, taxicabs, litter vans, wheelchair vans, or other forms of public or private conveyances, nor shall it include transportation by an air ambulance provider. An "emergency medical transport" does not occur when, following evaluation of a patient, a transport is not provided.
- (h) "Gross receipts" means gross payments received as patient care revenue for emergency medical transports, determined on a cash basis of accounting. "Gross receipts" shall include all payments received as patient care revenue for emergency medical transports, including payments for billing codes A0429 BLS Emergency, A0427 ALS Emergency, and A0433 ALS2, and any equivalent, predecessor, or successor billing codes as may be determined by the director, and any other ancillary billing codes associated with emergency medical transport as may be determined by the director. "Gross receipts" shall not include supplemental amounts received pursuant to Section 14105.94.
- (i) "Emergency medical transport provider" means any provider of emergency medical transports.
- (j) "Emergency medical transport provider subject to the fee" means all emergency medical transport providers that bill and receive patient care revenue from the provision of emergency medical transports, except emergency medical transport providers that are exempt pursuant to subdivision (c) of Section 14129.6.
- (k) "Medi-Cal managed care health plan" means a "managed health care plan" as that term is defined in subdivision (ab) of Section 14169.51.
- 14129.1.** (a) On or before November 15, 2016, 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 each quarter from July 1, 2015, to October 31, 2016, inclusive, in a manner and format prescribed by the department.
- (b) Commencing with the fiscal quarter beginning on 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.

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

(A) For state fiscal year 2017–18, the annual quality assurance fee rate shall be calculated by multiplying the projected total annual gross receipts for all emergency medical transport providers subject to the fee by 5.1 percent, which resulting product shall be divided by the projected total annual emergency medical transports by all emergency medical transport providers subject to the fee for the state fiscal year.

(B) For state fiscal years 2018–19 and thereafter, the annual quality assurance fee rate shall be calculated by a ratio, the numerator of which shall be the sum of the product of the projected aggregate fee schedule amount and the effective state medical assistance percentage, and the amount described in subparagraph (A) of paragraph (2) of subdivision (f), and the denominator of which shall be 90 percent of the projected total annual emergency medical transports by all emergency medical transport providers subject to the fee for the state fiscal year.

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

(3) In no case shall the fees calculated pursuant to this subdivision and collected pursuant to this article exceed the amounts allowable under federal law. If, on or before June 15 of each year, the director makes a determination that the fees collected pursuant to this subdivision exceed the amounts allowable under federal law, the director may reduce the increased fee-for-service payment schedule described in Section 14129.3 only to the extent necessary to reduce the fees calculated pursuant to this subdivision to comply with the amount allowable under federal law.

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

(c) (1) Each emergency medical transport provider subject to the fee shall remit to the department an amount equal to the annual quality assurance fee rate for the 2017–18 state fiscal year multiplied by the number of transports reported or that should have been reported by the emergency medical transport provider pursuant to subdivision (b) of Section 14129.1 in the quarter commencing April 1, 2017, based on a schedule established by the director. The schedule established by the director for the fee payment described in this paragraph shall require remittance of the fee payment according to the following guidelines:

(A) The director shall require an emergency medical transport provider that rendered 35,000 or more Medi-Cal fee-for-service emergency medical transports during the 2016 calendar year to remit the fee payment described in this paragraph on or after June 20, 2017.

(B) The director shall require an emergency medical transport provider that rendered fewer than 35,000 Medi-Cal fee-for-service emergency medical transports during the 2016 calendar year to remit 50 percent or less of the fee payment described in this paragraph on or after July 1, 2017.

(C) The director shall require an emergency medical transport provider that rendered fewer than 35,000 Medi-Cal fee-for-service emergency medical transports during the 2016 calendar year to remit any remaining fee payment amount described in this paragraph on or after August 15, 2017.

(2) Commencing with the state fiscal quarter beginning on October 1, 2017, and each state fiscal quarter thereafter, on or before the first day of each state fiscal quarter, each emergency medical transport provider subject to the fee shall remit to the department an amount equal to the annual quality assurance fee rate for the applicable state fiscal year multiplied by the

number of transports reported or that should have been reported by the emergency medical transport provider pursuant to subdivision (b) of Section 14129.1 in the immediately preceding quarter.

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

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

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

(e) The department shall accept an emergency medical transport provider's payment even if the payment is submitted in a rate year 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 the following amounts:

(i) For the 2016–17 fiscal year, one million three thousand dollars (\$1,003,000), exclusive of any federal matching funds.

(ii) For the 2017–18 fiscal year and each fiscal year thereafter, three hundred seventy-four thousand dollars (\$374,000), 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 increase to the fee-for-service payment schedule under this section shall be calculated on or before June 15, 2017, and shall remain the same for later fiscal years. The increase to the fee-for-service payment schedule under this section shall apply only to those billing codes identified in, or any equivalent, predecessor, or successor billing codes as may be determined by the director pursuant to, subdivision (g) of Section 14129. 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 available fee amount projected by the department on or before June 15, 2017, for the state fiscal year 2017–18, divided by the total 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 projected by the department on or before June 15, 2017, 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.

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

14129.5. (a) The director shall administer this article.

(b) The director may adopt regulations as are necessary to implement this article. These regulations may 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 first adoption of regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. The regulations shall include, but need not be limited to, any regulations necessary for any of the following purposes:

- (1) The administration of this article, including the proper imposition of the quality assurance fee and process for its collection, reporting, and refunds. The costs associated with the administration of this article are not to exceed the amounts reasonably necessary to administer this article.
- (2) The development of any forms necessary to obtain required information from providers subject to the quality assurance fee.
- (3) The provision of details, definitions, formulas, and other requirements.

(c) As an alternative to subdivision (b), and notwithstanding 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), the director may implement this article, in whole or in part, by means of a provider bulletin, or other similar instructions, without taking regulatory action, provided that no such bulletin or other similar instructions shall remain in effect after June 30, 2018. It is the intent of the Legislature that the regulations adopted pursuant to subdivision (b) be adopted on or before June 30, 2018.

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

14129.6. (a) The department shall request approval from the federal Centers for Medicare and Medicaid Services for the use of fees collected pursuant to this article for the purpose of receiving 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, all of the following conditions are met:

- (1) The federal Centers for Medicare and Medicaid Services does not determine that the quality assurance fee revenues may not be used for the purposes set forth in this article.
- (2) The state receives federal approval for the increased fee-for-service payment schedule increases described in subdivision (a) of Section 14129.3.
- (3) The state continues its maintenance of effort for the level of state funding of emergency medical transports reimbursement for the 2017–18 rate year, and for every subsequent rate year, in an amount not less than the amount that the state would have paid for the same number of emergency medical transports under the rate methodology that was in effect on July 31, 2016.

(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 subdivision (b) of Section 8 of Article XVI of the California Constitution.
 - (B) “Allocated local proceeds of taxes,” as used in subdivision (b) of Section 8 of Article XVI of the California Constitution.
- (5) The state does not continue its maintenance of effort for the level of state funding of emergency medical transports reimbursement for the 2017–18 rate year, or for any subsequent rate year, in an amount not less than the amount that the state would have paid for the same number of emergency medical transports under the rate methodology in effect on July 31, 2016.

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

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

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

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

In order to make the necessary changes to increase Medi-Cal payments to emergency ambulance providers and to improve access, at the earliest possible time, to allow this act to be operative as soon as approval from the federal Centers for Medicare and Medicaid Services is obtained by the State Department of Health Care Services, it is necessary that this act take effect immediately.