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AB-115 Medi-Cal: managed care organization provider tax. (2019-2020)

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Assembly Bill No. 115

CHAPTER 348

An act to repeal and add Article 6.8 (commencing with Section 14199.60) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, relating to Medi-Cal, and making an appropriation therefor, to take effect immediately, bill related to the budget.

[Approved by Governor September 27, 2019. Filed with Secretary of State September 27, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 115, Committee on Budget. Medi-Cal: managed care organization provider tax.

(1) Existing law establishes the Medi-Cal program, administered by the State Department of Health Care Services, under which health care services are provided to qualified low-income persons. The Medi-Cal program is, in part, governed and funded by federal Medicaid program provisions. Under existing law, one of the methods by which Medi-Cal services are provided is pursuant to contracts with various types of managed care plans. Existing law, until July 1, 2019, imposed a managed care organization provider tax, administered and assessed by the department, on licensed health care service plans, managed care plans contracted with the department to provide Medi-Cal services, and alternate health care service plans (AHCSP), as defined. The tax included the establishment of applicable taxing tiers and per enrollee amounts for each fiscal year, and all revenues, less refunds, derived from the tax were deposited into the State Treasury to the credit of the Health and Human Services Special Fund in the State Treasury, and continuously appropriated to the department for purposes of funding the nonfederal share of Medi-Cal managed care rates for health care services furnished to specified persons.

Existing law declares the intent of the Legislature to enact a managed care organization provider tax in California, and requires the collection of the tax and the associated revenue contingent upon receipt of approval from the federal Centers for Medicare and Medicaid Services.

This bill would establish a managed care organization provider tax, with substantially similar provisions, that would become effective and operative on the effective date of the federal approval necessary for receipt of federal financial participation, as specified. The bill would specify the applicable tax amounts for each taxing tier for the 2019–20, 2020–21, and 2021–22, fiscal years, and the first 6 months of the 2022–23 fiscal year. The bill would establish the Health Care Services Special Fund. All revenues, less refunds, derived from the taxes provided for in the bill would be deposited in the State Treasury to the credit of the fund and continuously appropriated, without regard to fiscal year, to the department for purposes of funding the nonfederal share of Medi-Cal managed care rates for health care services furnished to children, adults, seniors and persons with disabilities, and persons dually eligible for Medi-Cal and Medicare. By creating a continuously appropriated fund, the bill would make an appropriation.

This bill would make these provisions inoperative on January 1, 2023, or under other circumstances specified in the bill, and would repeal it as of January 1, 2024.

(2) 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.

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

Vote: 2/3 Appropriation: yes Fiscal Committee: yes Local Program: no

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

SECTION 1. Article 6.8 (commencing with Section 14199.60) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code is repealed.

SEC. 2. Article 6.8 (commencing with Section 14199.60) is added to Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:

Article 6.8. Managed Care Organization Provider Tax

14199.60. It is the intent of the Legislature that the department implement a managed care organization provider tax effective July 1, 2019, to provide ongoing funding for health care and prevention, minimize to the extent possible any need for new reductions to the program, and meet both of the following goals:

(a) Generate an amount of nonfederal funds for the Medi-Cal program equivalent to the funds generated by the tax imposed pursuant to Article 6.7 (commencing with Section 14199.50).

(b) Comply with federal Medicaid requirements applicable to permissible health care related taxes, including, but not limited to, Section 433.68 of Title 42 of the Code of Federal Regulations.

14199.61. The following definitions shall apply for the purposes of this article:

(a) "Base data source" means the quarterly financial statement filings submitted by health plans to the Department of Managed Health Care retrieved by the department as of March 1, 2019, and supplemented by, as necessary, Medi-Cal enrollment data for the base year as maintained by the department and retrieved as of March 1, 2019.

(b) "Base year" means the 12-month period of January 1, 2018, through December 31, 2018.

(c) "Countable enrollee" means an individual enrolled in a health plan, as defined in subdivision (f), during a month of the base year according to the base data source. "Countable enrollee" does not include an individual enrolled in a Medicare plan, a plan-to-plan enrollee, as defined in subdivision (m), or an individual enrolled in a health plan pursuant to the Federal Employees Health Benefits Act of 1959 (Public Law 86-382) to the extent the imposition of the tax under this article is preempted pursuant to Section 8909(f) of Title 5 of the United States Code.

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

(e) "Director" means the Director of Health Care Services.

(f) "Health care service plan" or "health plan" means a health care service plan, other than a plan that provides only specialized or discount services, that is licensed by the Department of Managed Health Care under the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) or a managed care plan contracted with the State Department of Health Care Services to provide full-scope Medi-Cal services.

(g) "Medi-Cal enrollee" means an individual enrolled in a health plan, as defined in subdivision (f), who is a Medi-Cal beneficiary for whom the department directly pays the health plan a capitated payment.

(h) "Medi-Cal per enrollee tax amount" means the amount of tax assessed per countable Medi-Cal enrollee within a Medi-Cal taxing tier.

(i) "Medi-Cal taxing tier" means a range of cumulative enrollment of countable Medi-Cal enrollees for the base year.

(j) "Other enrollee" means an individual enrolled in a health plan, as defined in subdivision (f), who is not a Medi-Cal beneficiary.

(k) "Other per enrollee tax amount" means the amount of tax assessed per countable other enrollee within an "other taxing tier."

(l) "Other taxing tier" means a range of cumulative enrollment of countable other enrollees for the base year.

(m) "Plan-to-plan enrollee" means an individual who receives their health care services through a health plan pursuant to a subcontract from another health plan.

14199.62. (a) The Health Care Services Special Fund is hereby created in the State Treasury.

(b) All revenues, less refunds, derived from the taxes provided for in this article shall be deposited in the State Treasury to the credit of the Health Care Services Special Fund.

(c) Notwithstanding Section 16305.7 of the Government Code, any interest and dividends earned on moneys in the Health Care Services Special Fund shall be retained in the fund and used solely for the purposes specified in subdivision (d).

(d) Notwithstanding Section 13340 of the Government Code, the funds deposited in the Health Care Services Special Fund pursuant to this article shall be continuously appropriated, without regard to fiscal year, to the department for purposes of funding the nonfederal share of Medi-Cal managed care rates for health care services furnished to children, adults, seniors and persons with disabilities, and persons dually eligible for Medi-Cal and Medicare.

(e) The department shall provide an annual report to all health plans accounting for the funds deposited in and expended from the Health Care Services Special Fund, in a time and manner as deemed appropriate by the director. The report shall identify the taxes imposed on each health plan pursuant to this article, and shall provide an itemized accounting of expenditures from the fund.

(f) Effective June 30, 2020, the Health and Human Services Special Fund in the State Treasury, created pursuant to Section 14199.52, is hereby abolished. All moneys in the fund shall be transferred to the Health Care Services Special Fund created pursuant to subdivision (a). Any remaining balance, assets, liabilities, and encumbrances of the Health and Human Services Special Fund as of June 30, 2020, shall be transferred to, and become part of, the Health Care Services Special Fund.

(g) Notwithstanding any other law, the Controller may use the funds in the Health Care Services Special Fund for cashflow loans to the General Fund as provided in Sections 16310 and 16381 of the Government Code.

14199.63. (a) The department shall determine for each health plan using the base data source all of the following:

- (1) Total cumulative enrollment for the base year.
- (2) Total Medicare cumulative enrollment for the base year.
- (3) Total Medi-Cal cumulative enrollment for the base year.
- (4) Total plan-to-plan cumulative enrollment for the base year.
- (5) Total cumulative enrollment through the Federal Employees Health Benefits Act of 1959 (Public Law 86-382) for the base year.
- (6) Total other cumulative enrollment for the base year that is not otherwise counted in paragraphs (2) to (5), inclusive.

(b) Notwithstanding any provision in this article, the director may correct any identified material or significant error in the data, including, but not limited to, the overall cumulative enrollment, Medicare cumulative enrollment, Medi-Cal cumulative enrollment, plan-to-plan cumulative enrollment, cumulative enrollment through the Federal Employees Health Benefits Act of 1959 (Public Law 86-382), and other cumulative enrollment. The director's determination whether to exercise discretion under this section and any determination made by the director under this section shall not be subject to judicial review, except that a health plan may bring a writ of mandate under Section 1085 of the Code of Civil Procedure to rectify an abuse of discretion by the department in correcting that health plan's data when that correction results in a greater tax amount for that health plan pursuant to Section 14199.65.

14199.64. (a) A managed care organization provider tax shall be imposed on each health plan. The tax shall be imposed for the following fiscal years or periods:

- (1) 2019–20 fiscal year.
- (2) 2020–21 fiscal year.
- (3) 2021–22 fiscal year.
- (4) The first six months of the 2022–23 fiscal year, July 1, 2022, to December 31, 2022, inclusive.

(b) The department shall compute the annual tax for each health plan subject to the tax during each applicable state fiscal year or period pursuant to Section 14199.65.

(c) The department shall collect the annual tax for each health plan in four installments and shall determine the amount due for each installment in the applicable state fiscal year or period by dividing the annual tax for that state fiscal year by four, except for the 2022–23 fiscal period, for which the department shall collect the applicable amount in two installments.

(d) The department shall not collect the tax imposed pursuant to this article until the department receives approval from the federal Centers for Medicare and Medicaid Services that this tax is a permissible health care related tax in accordance with Section 433.68 of Title 42 of the Code of Federal Regulations and is eligible for federal financial participation.

(1) By October 1, 2019, or within 10 business days following the date the department receives all necessary federal approvals for the tax pursuant to this article, whichever is later, the director shall certify in writing that federal approval has been received, and the department shall post the certification on its internet website and send a copy of the certification to the Secretary of State, the Secretary of the Senate, the Chief Clerk of the Assembly, and the Legislative Counsel.

(2) By October 14, 2019, or within 10 business days following the date the department receives all necessary federal approvals for the tax pursuant to this article, whichever is later, the department shall send a notice to each health plan subject to the tax that shall contain the following information:

(A) The annual tax due for each fiscal year or period.

(B) The dates on which the installment tax payments are due for each fiscal year or period.

(3) A health plan shall pay the annual tax in installments as calculated pursuant to Section 14199.65, based on a schedule developed by the department. The department shall establish the date that each tax payment is due, provided that the first tax payment shall be due no earlier than 20 days following the date the department sends the notice pursuant to paragraph (2), and the tax payments shall be paid at least one month apart, but no more than one-quarter apart.

(4) A health plan shall pay the taxes that are due, if any, in the amounts and at the times set forth in the notice unless superseded by a subsequent notice issued by the department.

(e) The tax assessed pursuant to this article shall be paid by each health plan subject to the tax to the department for deposit in the Health Care Services Special Fund created pursuant to Section 14199.62.

(f) (1) Interest shall be assessed on an applicable health plan for any amount of the managed care organization provider taxes that are not paid on the date due at a rate of 10 percent per annum. Interest shall begin to accrue the day after the date the tax payment was due and shall be deposited in the Health Care Services Special Fund created pursuant to Section 14199.62.

(2) If a tax payment is more than 60 days overdue, a penalty equal to the total accrued interest charge described in paragraph (1) shall also be assessed on the applicable health plan and due for each month for which the tax payment is not received after 60 days.

(g) (1) Subject to paragraph (2), the director may waive a portion or all of either the interest or penalties, or both, assessed under this article in the event that the director determines, in their sole discretion, that the health plan has demonstrated that imposition of the full amount of the tax pursuant to the timelines applicable under this article has a high likelihood of creating an undue financial hardship for the health plan or creates a significant financial difficulty in providing needed services to Medi-Cal beneficiaries.

(2) Waiver of some or all of the interest or penalties pursuant to this subdivision shall be conditioned on the health plan's agreement to make tax payments on an alternative schedule developed by the department that takes into account the financial situation of the health plan and the potential impact on the delivery of services to Medi-Cal beneficiaries.

(h) In the event of a merger, acquisition, establishment, or any other similar transaction that results in the transfer of health plan responsibility for all countable enrollees under this article from a health plan to another health plan or similar entity, and that occurs at any time during which this article is operative, the resultant health plan or similar entity shall be responsible for paying the full tax amount as provided in this article that would have been the responsibility of the health plan to which that full tax amount was assessed upon the effective date of any such transaction. If a merger, acquisition, establishment, or any other similar transaction results in the transfer of health plan responsibility for only some of a health plan's countable enrollees under this article but not all countable enrollees, the full tax amount as provided in this article shall remain the responsibility of that health plan to which that full tax amount was assessed.

14199.65. (a) For each fiscal year or period, the Medi-Cal taxing tiers shall be as follows:

(1) Medi-Cal taxing tier I shall consist of all countable Medi-Cal enrollees in a health plan from zero to 4,000,000, inclusive.

(2) Medi-Cal taxing tier II shall consist of all countable Medi-Cal enrollees in a health plan greater than 4,000,000.

(b) For each fiscal year or period, the other taxing tiers shall be as follows:

(1) Other taxing tier I shall consist of all countable other enrollees in a health plan from zero to 4,000,000, inclusive.

(2) Other taxing tier II shall consist of all countable other enrollees in a health plan from 4,000,001 to 8,000,000, inclusive.

(3) Other taxing tier III shall consist of all countable other enrollees in a health plan greater than 8,000,000.

(c) For the 2019–20 fiscal year, the Medi-Cal per enrollee tax amount for each Medi-Cal taxing tier shall be as follows:

(1) The Medi-Cal per enrollee tax for Medi-Cal taxing tier I shall be forty dollars (\$40).

(2) The Medi-Cal per enrollee tax for Medi-Cal taxing tier II shall be zero dollars (\$0).

(d) For the 2019–20 fiscal year, the other per enrollee tax amount for each other taxing tier shall be as follows:

(1) The other per enrollee tax for the other taxing tier I shall be zero dollars (\$0).

(2) The other per enrollee tax for the other taxing tier II shall be one dollar (\$1).

(3) The other per enrollee tax for the other taxing tier III shall be zero dollars (\$0).

(e) For the 2020–21 fiscal year, the Medi-Cal per enrollee tax amount for each Medi-Cal taxing tier shall be as follows:

(1) The Medi-Cal per enrollee tax for Medi-Cal taxing tier I shall be forty-five dollars (\$45).

(2) The Medi-Cal per enrollee tax for Medi-Cal taxing tier II shall be zero dollars (\$0).

(f) For the 2020–21 fiscal year, the other per enrollee tax amount for each other taxing tier shall be as follows:

(1) The other per enrollee tax for the other taxing tier I shall be zero dollars (\$0).

(2) The other per enrollee tax for the other taxing tier II shall be one dollar (\$1).

(3) The other per enrollee tax for the other taxing tier III shall be zero dollars (\$0).

(g) For the 2021–22 fiscal year, the Medi-Cal per enrollee tax amount for each Medi-Cal taxing tier shall be as follows:

(1) The Medi-Cal per enrollee tax for Medi-Cal taxing tier I shall be fifty dollars (\$50).

(2) The Medi-Cal per enrollee tax for Medi-Cal taxing tier II shall be zero dollars (\$0).

(h) For the 2021–22 fiscal year, the other per enrollee tax amount for each other taxing tier shall be as follows:

(1) The other per enrollee tax for the other taxing tier I shall be zero dollars (\$0).

(2) The other per enrollee tax for the other taxing tier II shall be one dollar and fifty cents (\$1.50).

(3) The other per enrollee tax for the other taxing tier III shall be zero dollars (\$0).

(i) For the 2022–23 fiscal period, the Medi-Cal per enrollee tax amount for each Medi-Cal taxing tier shall be as follows:

(1) The Medi-Cal per enrollee tax for Medi-Cal taxing tier I shall be fifty-five dollars (\$55).

(2) The Medi-Cal per enrollee tax for Medi-Cal taxing tier II shall be zero dollars (\$0).

(j) For the 2022–23 fiscal period, the other per enrollee tax amount for each other taxing tier shall be as follows:

(1) The other per enrollee tax for the other taxing tier I shall be zero dollars (\$0).

(2) The other per enrollee tax for the other taxing tier II shall be one dollar and fifty cents (\$1.50).

(3) The other per enrollee tax for the other taxing tier III shall be zero dollars (\$0).

(k) For the first six months of the 2022–23 fiscal year, the tax amount for each health plan shall be the result of calculating the total annual tax amount using the base data source and the taxing tiers as described in subdivisions (i) and (j), then dividing by

two.

(l) (1) The department may modify or make adjustments to any methodology, tax amount, taxing tier, or other provision specified in this article to the extent it deems necessary to meet the requirements of federal law or regulations, to obtain or maintain federal approval, or to ensure federal financial participation is available or is not otherwise jeopardized, provided the modification or adjustment does not otherwise conflict with the purposes of this article, or result in an increase in the aggregate tax amounts projected to be collected under this article that the department, in its sole discretion, determines is significant.

(2) If the department identifies that modification or adjustment is necessary in accordance with paragraph (1), the department shall consult with affected health plans, to the extent practicable, to implement that modification or adjustment.

(3) In the event of a modification or adjustment made pursuant to this subdivision, the department shall notify affected health plans, the Joint Legislative Budget Committee, the Senate Committees on Appropriations, Budget and Fiscal Review, and Health, and the Assembly Committees on Appropriations, Budget, and Health within 10 business days of that modification or adjustment.

(m) The department shall request approval from the federal Centers for Medicare and Medicaid Services as is necessary to implement this article. In making that request, the department may seek, as it deems necessary, a request for waiver of the broad-based requirement, waiver of the uniformity requirement, or both, pursuant to Section 433.68(e)(1) and (2) of Title 42 of the Code of Federal Regulations, or a request for waiver of any other provision of federal law or regulation necessary to implement this article.

(n) 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 this article by means of provider bulletins, all-plan letters, or other similar instructions, without taking regulatory action. The department shall provide notification to the Joint Legislative Budget Committee and to the Senate Committees on Appropriations, Budget and Fiscal Review, and Health, and the Assembly Committees on Appropriations, Budget, and Health within 10 business days after the above-described action is taken.

14199.66. (a) The tax assessed under this article shall become effective and operative on July 1, 2019, or the effective date, certified in writing by the director, of the federal approval necessary for receipt of federal financial participation, whichever occurs later. The director shall post the certification of federal approval on the department's internet website and send a copy of the certification to the Secretary of State, the Secretary of the Senate, the Chief Clerk of the Assembly, the Legislative Counsel, the State Board of Equalization, the Department of Insurance, and the Executive Officer of the Franchise Tax Board.

(b) This article shall cease to be operative the first day of the state fiscal year beginning on or after the date the director, in consultation with the Director of Finance, determines that the taxes have not met the intent as outlined in Section 14199.60, or the department has not obtained the federal approval necessary for receipt of federal financial participation. The director shall post the determination on the department's internet website and send a copy of the determination to the Secretary of State, the Secretary of the Senate, the Chief Clerk of the Assembly, the Legislative Counsel, the State Board of Equalization, the Department of Insurance, and the Executive Officer of the Franchise Tax Board.

(c) This article shall cease to be operative the first day of the state fiscal year beginning on or after the effective date of a final judicial determination made by any court of appellate jurisdiction or a final determination by the United States Department of Health and Human Services or the federal Centers for Medicare and Medicaid Services that the tax assessed pursuant to this article or Article 6.7 (commencing with Section 14199.50) cannot be implemented and any amount of the tax paid under this article or Article 6.7 (commencing with Section 14199.50) shall be refunded. The director shall post a notification of that final judicial determination on the department's internet website and provide this notification to the Secretary of State, the Secretary of the Senate, the Chief Clerk of the Assembly, the Legislative Counsel, the State Board of Equalization, the Department of Insurance, and the Executive Officer of the Franchise Tax Board.

(d) Notwithstanding this section, any tax and any applicable interest and penalties imposed under this article shall continue to be due and payable to the department until the tax and any applicable interest and penalties are fully paid.

(e) Upon execution of the declaration described in subdivision (b) or subdivision (c), the director shall implement a plan, in consultation with the Department of Finance, to end the program consistent with the purpose of the article, including the recoupment of payments made under this article if required by a final judicial determination made by any court of appellate jurisdiction or a final determination made by the United States Department of Health and Human Services or the federal Centers for Medicare and Medicaid Services.

14199.67. (a) This article shall become operative on July 1, 2019, or the date specified in subdivision (a) of Section 14199.66 for purposes of assessing the tax under this article, whichever occurs later.

(b) (1) This article shall become inoperative on January 1, 2023, or on a date as specified in subdivision (b) or (c) of Section 14199.66, whichever occurs first, and as of January 1, 2024, is repealed.

(2) Notwithstanding paragraph (1), any tax and any applicable interest and penalties imposed under this article shall continue to be due and payable to the department until the tax and any applicable interest and penalties are fully paid.

SEC. 3. This act is a bill providing for appropriations related to the Budget Bill within the meaning of subdivision (e) of Section 12 of Article IV of the California Constitution, has been identified as related to the budget in the Budget Bill, and shall take effect immediately.