

REPORT OF THE CHIEF LEGISLATIVE ANALYST

DATE: **March 31, 2016**

TO: Honorable Members of the Rules, Elections, Intergovernmental Relations, and Neighborhoods Committee

FROM: Sharon M. Tso *Martin F. O'Connor* Council File No.: 15-0002-S134
Chief Legislative Analyst Assignment No.: 16-02-0181

SUBJECT: Resolution (Ryu – Harris-Dawson) to SUPPORT the Medi-Cal Reimbursement Initiative

CLA RECOMMENDATION: Adopt Resolution (Ryu – Harris-Dawson) to include in the City's 2015-16 State Legislative Program SUPPORT for the Medi-Cal Reimbursement Initiative which has qualified for the November 8, 2016 statewide ballot and will make permanent existing law that requires hospitals to pay a fee to the State for the purpose of obtaining additional Medicaid/Medi-Cal matching funds while ensuring that such fees are used for their intended purpose.

SUMMARY

Resolution (Ryu – Harris-Dawson), introduced on February 26, 2016, states that the Medicaid program (known as Medi-Cal in California) helps pay for health care services for low-income patients and requires states to provide matching funds. The Resolution states that the Affordable Care Act provided options for states to expand Medicaid enrollment, and in California approximately one-third of the state's population are currently enrolled in Medi-Cal.

The Resolution states that rapid enrollment growth in Medi-Cal and insufficient reimbursement levels have challenged the ability of medical providers to provide high-quality and accessible care for Medi-Cal patients. As initiated by legislation in 2009 and subsequently continued by various legislative actions, California hospitals began paying a fee to enable the State to obtain additional federal matching funds. Existing legislation expires on December 31, 2016.

On the November 8, 2016, statewide ballot is an initiative which will eliminate the December 31, 2016 sunset date of existing legislation. The initiative will also include provisions to ensure that funds are restricted for use in the Medi-Cal program. The Resolution requests that the City support the Medi-Cal Reimbursement Initiative.

BACKGROUND

Medicaid is a federal program that provides hospital and medical insurance coverage to low-income patients and is known as Medi-Cal in California. Medicaid is jointly funded by the state and federal governments. States are required to contribute matching amounts of their own resources in order to receive federal funds.

In 2009, AB 1393 (Jones) established a new program that required California hospitals to pay a fee to help the State secure available federal Medicaid funds. Hospitals received approximately \$3 billion per year in additional federal funds as a result of the program. The program was renewed with subsequent legislation. The latest bill, SB 239 (Hernandez, Statutes of 2013), will sunset on December 31, 2016.

On August 1, 2014, the California Secretary of State announced that the “Medi-Cal Reimbursement Ballot Initiative” received the required number of signatures needed to qualify for the November 8, 2016 statewide ballot. The initiative, if approved, will eliminate the December 30, 2016 sunset clause of the existing hospital fee program, thereby making the program permanent. Under the initiative, hospital fee proceeds may only be used to support uncompensated care provided by hospitals to uninsured patients, hospital care for Medi-Cal patients, and for children’s health care.

The California Department of Finance and the State Legislative Analyst’s Office report that voter approval of the initiative will generate \$500 million in additional revenues for children’s health coverage in Fiscal Year 2016-17 and over \$1 billion annually by Fiscal Year 2019-20. The initiative will also generate increased revenues to support State and local public hospitals in the amount of \$90 million beginning in Fiscal Year 2016-17 to \$250 million annually by Fiscal Year 2019-20. These amounts are expected to increase by five to ten percent annually in future Fiscal Years.

The Department on Disability (DOD) supports the ballot initiative and states that people with disabilities are disproportionately reliant on Medi-Cal for medical services. DOD states that, if the initiative is not approved, nearly \$3 billion in federal matching funds may be discontinued in 2017 which would negatively affect the availability of non-emergency hospital care for people with disabilities.

The Department of Aging (Aging) states that that the initiative will not have a direct impact on services it provides, but may have an impact on older adults who receive Medi-Cal benefits. Aging notes that there are no provisions in the initiative that require hospitals to sustain or increase the number of Medi-Cal patients that are treated or to increase quality of care. Aging states that it will support the ballot measure if additional provisions are added to clarify the benefits to Medi-Cal recipients.

The ballot measure is consistent with existing City programs and services which ensure the continued health of older adults and people with disabilities.

DEPARTMENTS NOTIFIED

Disability
Aging

Brian Randal
Brian Randal
Analyst

Attachments: 1. Resolution (Ryu – Harris-Dawson)
 2. Text of proposed Ballot Initiative

RESOLUTION

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies proposed to or pending before a local, state or federal governmental body or agency must first have been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, the federal government established the Medicaid program in 1965 to help pay for health care services provided to low-income patients; and

WHEREAS, the Medicaid program is known as Medi-Cal in California and requires the State to contribute matching funds; and

WHEREAS, the Affordable Care Act provided options for states to expand Medi-Cal enrollment, and in California approximately one-third of residents (11 million people) are currently enrolled in Medi-Cal; and

WHEREAS, rapid enrollment growth in Medi-Cal and insufficient reimbursement levels have challenged the ability of medical providers to provide high-quality and timely access to care for Medi-Cal patients; and

WHEREAS, as initiated by AB 1383 (Jones), beginning in 2009 and subsequently continued by various legislative actions, California hospitals began paying a fee to enable the State to obtain additional federal matching funds; this legislation was renewed in subsequent years and expires on December 31, 2016; and

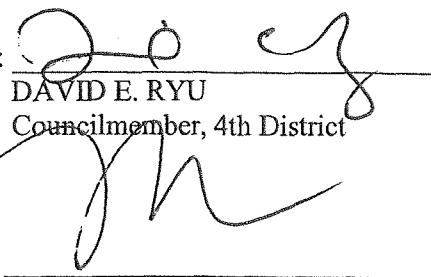
WHEREAS, California hospitals receive approximately \$3 billion in additional federal matching funds per year as a result of the implementation of the fee; however, there are concerns that the State has previously used a portion of these funds to address budget shortfalls in unrelated areas; and

WHEREAS, on the November 8, 2016 statewide ballot is the Medi-Cal Reimbursement Initiative which will eliminate the December 31, 2016 sunset date of SB 239 and will include provisions to ensure that funds are restricted for use in the Medi-Cal program; and

WHEREAS, approval of the ballot initiative will ensure that City residents who are enrolled in Medi-Cal, including people with disabilities, will be able to access non-emergency medical care.

NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes in its 2015-16 State Legislative Program SUPPORT for the "Medi-Cal Reimbursement Initiative" which has qualified for the November 8, 2016 statewide ballot and will make permanent existing law that requires hospitals pay a fee to the State for the purpose of obtaining additional Medicaid/Medi-Cal matching funds while ensuring that such fees are used for their intended purpose.

PRESENTED BY:


DAVID E. RYU
Councilmember, 4th District

SECONDED BY: _____

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INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

October 9, 2013

Initiative Coordinator
Office of the Attorney General
State of California
PO Box 994255
Sacramento, CA 94244-25550

Re: Request for Title and Summary for Proposed Initiative

Dear Ms. McFarland:

Pursuant to Article II, Section 10(d) of the California Constitution, I am submitting the attached proposed statewide ballot measure to your office and request that you prepare a circulating title and summary of the measure as provided by law. I have also included with this letter the required signed statement pursuant to California Elections Code sections 9001 and 9608, and a check in the amount of \$200. My address as registered to vote is shown on Attachment 'A' to this letter.

Thank you for your time and attention to this important matter. Should you have any questions or require additional information, please contact me.

Sincerely,



Thomas W. Hiltachk

TWH/cfd
Enclosures as stated.

SECTION 1. STATEMENT OF FINDINGS

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- A. The federal government established the Medicaid program to help pay for health care services provided to low-income patients, including the elderly, persons with disabilities, and children. In California this program is called Medi-Cal. In order for any state to receive federal Medicaid funds, the State has to contribute a matching amount of its own money.
- B. In 2009, a new program was created whereby California hospitals began paying a fee to help the State obtain available federal Medicaid funds, at no cost to California taxpayers. This program has helped pay for health care for low-income children and resulted in California hospitals receiving approximately \$2 billion per year in additional federal money to help hospitals to meet the needs of Medi-Cal patients.

SECTION 2. STATEMENT OF PURPOSE

To ensure that the fee paid by hospitals to the State for the purpose of maximizing the available federal matching funds is used for the intended purpose, the People hereby amend the Constitution to:

- A. Require voter approval of changes to the hospital fee program to ensure that the State uses these funds for the intended purpose of supporting hospital care to Medi-Cal patients and to help pay for health care for low-income children.

SECTION 3. AMENDMENT TO THE CONSTITUTION

Section 3.5 of Article XVI of the California Constitution is added to read:

Sec. 3.5(a) No statute amending or adding to the provisions of the Medi-Cal Hospital Reimbursement Improvement Act of 2013 shall become effective unless approved by the electors in the same manner as statutes amending initiative statutes pursuant to section 10(c) of Article II, except that the Legislature may, by statute passed in each house by roll call vote entered into the journal, two-thirds of the membership concurring, amend or add provisions that further the purposes of the Act.

(b) For purposes of this section:

(1) "Act" means the Medi-Cal Hospital Reimbursement Improvement Act of 2013 (enacted by Senate Bill 239 of the 2013-14 Regular Session of the Legislature, and any non-substantive amendments to the Act enacted by a later bill in the same Session of the Legislature).

(2) "Non-substantive amendments" shall only mean minor, technical, grammatical, or clarifying amendments.

(3) "Provisions that further the purposes of the Act" shall only mean:

(i) amendments or additions necessary to obtain or maintain federal approval of the implementation of the Act, including the fee imposed and related quality assurance payments to hospitals made pursuant to the Act;

(ii) amendments or additions to the methodology used for the development of the fee and quality assurance payments to hospitals made pursuant to the Act.

(c) Nothing in this section shall prohibit the Legislature from repealing the Act in its entirety by statute passed in each house by roll call vote entered into the journal, two-thirds of the membership concurring, except that the Legislature shall not be permitted to repeal the Act and replace it with a similar statute imposing a tax, fee, or assessment unless that similar statute is either: (i) a provision that furthers the purposes of the Act as defined herein; or (ii) is approved by the electors in the same manner as statutes amending initiative statutes pursuant to section 10(c) of Article II.

(d) The proceeds of the fee imposed by the Act and all interest earned on such proceeds shall not be considered revenues, General Fund revenues, General Fund proceeds of taxes, or allocated local proceeds of taxes, for purposes of Sections 8 and 8.5 of this Article or for the purposes of article XIIIIB. The appropriation of the proceeds in the Trust Fund referred to in the Act for hospital services to Medi-Cal beneficiaries or other beneficiaries in any other similar federal program shall not be subject to the prohibitions or restrictions in Sections 3 or 5 of this Article.

SECTION 4. Amendments to Medi-Cal Hospital Reimbursement Improvement Act of 2013

(language added is designated in underlined type and language deleted is designated in ~~strikeout~~ type)

Section 14169.72 of Article 5.230 of the Welfare and Institutions Code is amended to read:

~~§14169.72. This article shall become inoperative if any of the following occurs:~~

(a) 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 quality assurance fee established pursuant to this article, or Section 14169.54 or 14169.55, cannot be implemented. This subdivision shall not apply to any final judicial determination made by any court of appellate jurisdiction in a case brought by hospitals located outside the state.

(b) The federal Centers for Medicare and Medicaid Services denies approval for, or does not approve on or before the last day of a program period, the implementation of Section 14169.52, 14169.53, 14169.54, and 14169.55, and the department fails to modify Section 14169.52, 14169.53, 14169.54, and 14169.55 pursuant to subdivision (d) of Section 14169.53 in order to meet the requirements of federal law or to obtain federal approval.

(c) ~~The Legislature fails to appropriate moneys in the Hospital Quality Assurance Revenue Fund in the annual Budget Act, or fails to appropriate such moneys in a separate bill enacted within thirty (30) days following enactment of the annual Budget Act. 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 Hospital Quality Assurance Revenue Fund are either of the following:~~

~~(1) "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.~~

~~(2) "Allocated local proceeds of taxes," as used in subdivision (b) of Section 8 of Article XVI of the California Constitution.~~

(d) The department has sought but has not received federal financial participation for the supplemental payments and other costs required by this article for which federal financial participation has been sought.

(e) A lawsuit related to this article is filed against the state and a preliminary injunction or other order has been issued that results in a financial disadvantage to the state. For purposes of this subdivision, "financial disadvantage to the state" means either of the following:

(1) A loss of federal financial participation.

(2) A ~~net cost to the General Fund cost incurred due to the Act that is equal to or greater than one quarter of 1 percent of the General Fund expenditures authorized in the most recent annual Budget Act.~~

(f) The proceeds of the fee and any interest and dividends earned on deposits are not deposited into the Hospital Quality Assurance Revenue Fund or are not used as provided in section 14169.53

(g) The proceeds of the fee, the matching amount provided by the federal government, and interest and dividends earned on deposits in the Hospital Quality Assurance Revenue Fund are not used as provided in section 14169.68.

Section 14169.75 of Article 5.230 of the Welfare and Institutions Code is amended to read:

~~§14169.75. Notwithstanding subdivision (k) of section 14167.35, subdivisions (a), (i), and (j) of section 14167.35, creating the Hospital Quality Assurance Revenue Fund, are not repealed and shall remain operative as long as this article remains operative. Notwithstanding Section 14169.72, this article shall become inoperative on January 1, 2018. No hospital shall be required to pay the fee after that date unless the fee was owed during the period in which the article was operative, and no payments authorized under Section 14169.53 shall be made unless the payments were owed during the period in which the article was operative.~~

SECTION 5. GENERAL PROVISIONS

(a) If any provision of this measure, or any part thereof, is for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect, and to this end the provisions of this measure are severable.

(b) This measure is intended to be comprehensive. It is the intent of the People that in the event this measure or measures relating to the same subject shall appear on the same statewide election ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and all provisions of the other measure or measures shall be null and void.