

SENATE THIRD READING

SB 118 (Committee on Budget and Fiscal Review)

As Amended June 26, 2023

Majority vote. Budget Bill Appropriation Takes Effect Immediately

SUMMARY

This is a budget bill which is necessary to implement various provisions of the Budget Act of 2023.

Major Provisions

This budget trailer bill implements various provisions included in the 2023 Budget Act, affecting the budgets of the California Health and Human Services Agency, Covered California, and the Departments of Health Care Access and Information, Health Care Services, Managed Health Care, Public Health, and State Hospitals.

Specifically, this bill:

Mandatory Use of Standardized Forms

- 1) Requires the Department of Managed Health Care (DMHC) to develop standard templates for the disclosure form and evidence of coverage, to include, among other things, standard definitions, benefit descriptions, and other information determined by the department director to support the goal of providing fair disclosures of the provisions of a health care service plan.
- 2) Requires DMHC to consult with the Department of Insurance and interested stakeholders in developing the templates.
- 3) Requires health care service plans to use the standard templates beginning January 1, 2025.
- 4) Authorizes DMHC to develop standard templates for a schedule of benefits, an explanation of benefits, a cost-sharing summary, or any similar document, and authorizes DMHC to require health care service plans to use the standard templates.

Opioid Settlements Fund Transfer

- 5) Adds Mallinckrodt Pharmaceuticals to the requirement of the Controller to, upon order of the Director of Finance, transfer funds received in the Litigation Deposits Fund (LDF) allocated to the state for state opioid remediation from the 2022 opioid settlements to the Opioid Settlements Fund (OSF).
- 6) Requires funds received from the settlements outlined in statute or from future judgments, bankruptcies, or settlements that are not deposited in the LDF to be deposited into the OSF.
- 7) Requires the Controller to transfer funds received in the LDF from the 2023 opioid settlements with manufacturers Teva Pharmaceutical Industries Ltd. and Allergan, and pharmacies CVS, Walgreens, and Walmart, to the OSF.
- 8) Requires the Controller to transfer funds received in the LDF from any future judgments, bankruptcies, or settlements pursuant to future Budget Act appropriation to the OSF.

- 9) *Medical provider Interim Payment Loan Authority.* Increases the General Fund loan amount to up to ten percent of the amount appropriated from the General Fund to Medi-Cal for benefit costs from the most recent fiscal year, from the current amount of \$2 billion, in order to make payments to Medi-Cal providers during a fiscal year for which a budget has not yet been enacted or there is a deficiency in the Medi-Cal budget.

988 Suicide and Crisis Line

- 10) Specifies that mental health and substance use disorder treatment includes behavioral health crisis services that are provided by a 988 center, mobile crisis team or other provider of behavioral health crisis services.
- 11) Prohibits a health care service plan or health insurer from requiring prior authorization for behavioral health crisis stabilization services and care, but authorizes prior authorization for medically necessary mental health or substance use disorder services following stabilization from a behavioral health crisis addressed by services provided through the 988 system.
- 12) Requires a health care service plan or health insurer that is contacted by a 988 center, mobile crisis team, or other provider of behavioral health crisis services to, within 30 minutes of initial contact, either authorize post-stabilization care or inform the provider that it will arrange for the prompt transfer of the enrollee's care to another provider.
- 13) Requires the plan or insurer to reimburse a provider for post-stabilization care in specified circumstances, including if the plan or insurer did not respond within 30 minutes to authorize care or arrange for transfer.
- 14) Requires plans and insurers to prominently display on their websites their authorization phone numbers for non-contracting providers, and requires DMHC to post these phone numbers on its website.
- 15) Revises the statutory definition of "988" as the 3-digit telephone number designated by the Federal Communications Commission for the purpose of connecting individuals experiencing a behavioral health crisis with the national suicide prevention and mental health hotline system in accordance with specified federal law, and removes "crisis receiving services" from the definition of "behavioral health crisis services."
- 16) Requires the California Health and Human Services Agency to create, by December 31, 2023, a set of recommendations to support a 5-year implementation plan for a comprehensive 988 system.
- 17) Extends the deadline for the 988 advisory group recommendations to December 31, 2024; requires the advisory group to meet once per quarter until December 31, 2024; prohibits the group from disbanding before January 1, 2025; and revises the information required in the recommendations.
- 18) Removes the requirement on the Agency to report annually to the Legislature on the status of 988 implementation. Requires the Agency to instead post implementation updates on its website until December 31, 2029.

- 19) Allows the 988 surcharge revenue to be used to pay state departments for their costs in administering the 988 Suicide and Crisis Lifeline before disbursement of the revenue to the Office of Emergency Services for purposes of the 988 Act.
- 20) Requires the 988 State Suicide and Behavioral Health Crisis Services Fund to consist of any other appropriations made to it by the Legislature.
- 21) Authorizes the Legislature to consider additional uses for the revenue generated by the 988 surcharge based on recommendations made by the Agency and 988 advisory group.
- 22) Revises the priority uses for 988 surcharge revenues.
- 23) Requires the expenditure and outcomes report to include information regarding billing to, and reimbursement by, health care service plans or insurers, beginning January 1, 2030, and measures of system performance, beginning July 1, 2025.

Covered California Health Care Affordability Reserve Fund

- 24) Requires moneys collected from the Individual Shared Responsibility Penalty to be deposited into the Health Care Affordability Reserve Fund beginning July 1, 2023, and on every July 1 thereafter.
- 25) Authorizes a loan from the Health Care Affordability Reserve Fund to the General Fund upon order of the Department of Finance.
- 26) Removes the authority of the Department of Finance to approve or deny Covered California spending plans with funding appropriated through the annual budget act.

Radiologic Health Branch Licensing and Certification

- 27) Revises and recasts provisions relating to the discipline of a radiologic technologist, or a person competent to perform nuclear medicine technology, by, among other things, expanding the list of conduct for which they may be disciplined, including the addition of unprofessional conduct and making or giving a false statement or information in conjunction with the application for establishment of competence.
- 28) Expands the act to apply to any type of radiology, not just mammography, thereby stating that a person who violates, or aids or abets the violation of, provisions relating to radiological technologists is guilty of a misdemeanor, punishable by a fine not to exceed \$5,000 per day, per offense or by imprisonment in the county jail not to exceed 180 days, or by both fine and imprisonment.
- 29) *Removal of Federal Health Facilities Citation Account Limit.* Deletes the \$130,000 limit on the amount of funds from the Federal Health Facilities Citation Penalties Account that can be used, upon appropriation by the Legislature, for the improvement of quality of care and quality of life for long-term health care facility residents.

Emergency Medical Services Authority (EMSA) Director and Chief Medical Officer

- 30) Removes the statutory requirement that the director of EMSA be a licensed physician with substantial experience in the practice of emergency medicine.

- 31) Requires EMSA to have a chief medical officer that is appointed by the Governor, who is a physician and surgeon licensed in California who has substantial experience in the practice of emergency medicine or emergency response in California.
- 32) *Physician Orders for Life Sustaining Treatment (POLST) eRegistry*. Deletes the requirement that EMSA incorporate the Advance Health Care Directive Registry into the POLST eRegistry.

Strengthening Oversight of Substance Use Disorder Licensing and Certification

- 33) Repeals the voluntary certification procedure for alcohol and other drug treatment recovery services, and instead requires those programs to be certified.
- 34) Prohibits a program from offering alcohol and other drug treatment recovery services without certification, and imposes civil penalties on programs that violate these provisions.
- 35) Establishes procedures for: certification, inspections of certified programs, and for revocation of certification from noncompliant programs.
- 36) *Virtual Services for Driving Under the Influence (DUI) Programs*. Requires DHCS to develop regulations by January 1, 2026 governing the provision of alcohol or drug recovery services, within a driving-under-the-influence program, in virtual settings. Authorizes DHCS to implement this by all-county letters, plan letters, information notices or similar instructions, until regulations are promulgated.

CalRx Cleanup – Pharmaceutical Procurement

- 37) Extends the authority of the California Health and Human Services Agency (Agency) to enter into exclusive or nonexclusive contracts on a bid or negotiated basis, for purposes of the California Affordable Drug Manufacturing Act of 2020, indefinitely.
- 38) Requires Agency to enter into partnerships for the procurement of general prescription drugs, and authorizes Agency to hire contractors to oversee and project-manage these partnerships.
- 39) *Reproductive Health Service Corps*. Adds pharmacists to the list of reproductive health care professionals defined as "reproductive health care professionals" for purposes of the California Reproductive Health Service Corps within the Department of Health Care Access and Information.

Managed Care Organization Provider Tax Expenditures

- 40) Requires the reimbursement rates for primary care services, obstetric care services, doula services, and certain outpatient mental health services to be the greater of 87.5% of the lowest maximum allowance established by the federal Medicare Program for the same or similar services or the level of reimbursement, on the effective date of any necessary federal approvals and no sooner than January 1, 2024.
- 41) Requires DHCS to annually review and revise the reimbursement rates, and to develop and implement a methodology for establishing rates for these services.

- 42) Requires each Medi-Cal managed care plan to reimburse a network provider providing these services at least the amount the network provider would be paid for those services in the Medi-Cal fee-for-service delivery system.
- 43) Requires DHCS to submit a plan for targeted increases to Medi-Cal payments or other investments, in relation to certain agreed-upon domains, to the Legislature as part of the 2024-25 Governor's Budget. Assumes these payments would be supported by the MCO tax revenue or other state funds, including funds transferred to the Medi-Cal Provider Payment Reserve Fund and the Healthcare Treatment Fund.
- 44) Creates the Medi-Cal Provider Payment Reserve Fund, and requires DHCS to use this funding for targeted increases to Medi-Cal payments or other investments that advance access, quality, and equity for Medi-Cal beneficiaries and promote provider participation in the Medi-Cal program.
- 45) Requires DHCS to provide an annual report to all health plans accounting for the funds deposited in, and expended from, the Medi-Cal Provider Payment Reserve Fund.
- 46) Authorizes the transfer of \$150 million from the Medi-Cal Provider Payment Reserve Fund to the Distressed Hospital Loan Program Fund in 2023-24.
- 47) Authorizes transfers of \$75 million each calendar year to the University of California to expand graduate medical education programs.
- 48) Authorizes the transfer of \$50 million in 2023-24 to the Small and Rural Hospital Relief Fund to support the Small and Rural Hospital Relief Program for seismic assessment and construction.
- 49) Makes these provisions contingent on the enactment of AB or SB 119 which authorizes the new MCO tax.

General Fund Loan for Hospitals

- 50) Authorizes a loan from the General Fund up to \$150 million for the Distressed Hospital Loan Program, and requires repayment by June 30, 2024.
- 51) Authorizes a loan from the General Fund up to \$50 million for the Small and Rural Hospital Relief Program, and requires repayment by June 30, 2024.
- 52) *Penal Code Chaptering Cleanup.* Makes technical changes to Section 1370 of the Penal Code that were necessitated by changes to these provisions that were enacted by Senate Bill 1223 of the 2021-22 session, but inadvertently removed by a budget trailer bill amending the same section of law.
- 53) *Criminal History Data Sharing.* Authorizes the Department of Justice to furnish state summary criminal history data to the Department of State Hospitals only for specified research and reporting purposes.
- 54) *Fentanyl Program Grant Reporting Requirements.* Moves this program from the California Health and Human Services Agency to the California Department of Public Health (CDPH),

and requires CDPH submit an interim report on the progress of the program by January 1, 2026, and a final report by January 1, 2029.

Enhanced LPS Act Data and Reporting (SB 929)

- 55) Requires designated and approved mental health facilities to collect and provide specified data related to community mental health services to the county behavioral health director in the county in which they operate, and authorizes a county to establish policies and procedures for this purpose
- 56) Requires data provided by each county behavioral health director to the Department of Health Care Services (DHCS) to include accurate and complete data.
- 57) Authorizes DHCS to assess a civil money penalty against a county that fails to submit data on a timely basis or as otherwise required.
- 58) Establishes an informal appeals process for the civil money penalty and requires DHCS to make a determination on the appeal within 60 calendar days of receipt of the appeal. Authorizes a designated and approved facility or county to request a formal hearing.
- 59) Establishes the Lanterman-Petris-Short Act Data and Reporting Oversight Fund, a continuously appropriated fund, to be administered by DHCS. Requires civil money penalties assessed and collected to be deposited into the fund to be used for specified purposes, and authorizes the Controller to use moneys in the fund for cash-flow loans to the General Fund.
- 60) *Post Eligibility Treatment of Income*. Defines "post-eligibility treatment of income" as the determination of long-term care patient liability for each month the person is in long-term care or as an institutionalized spouse.
- 61) *Asset Test Elimination Cleanup*. Makes various conforming changes to various provisions related to the elimination of the "asset test" as part of the determination of eligibility for Medi-Cal enrollment.

Newborn Hospital Gateway

- 62) Requires all qualified Medi-Cal providers participating in presumptive eligibility programs to use the Newborn Hospital Gateway system to report a Medi-Cal eligible newborn born in their facilities, within 72 hours after birth, or one business day after discharge, whichever is sooner. Imposes a related requirement on Medi-Cal providers under the Medi-Cal Access Program.
- 63) Requires that the gateway be accessed through existing presumptive eligibility portals.
- 64) Deletes required conditions of sufficient moneys and staff and the 12-month timeline from current law on the Newborn Hospital Gateway and Gateway Fund.
- 65) Makes these changes operative on July 1, 2024, or the effective date of implementation for the Children's Presumptive Eligibility Program portal, whichever is later.
- 66) Authorizes providers to submit newborn enrollments through the electronic application on behalf of patients without a patient's signature.

- 67) *Drug Medi-Cal Claiming Timelines*. Requires claims for reimbursement of Drug Medi-Cal services to be submitted within 12 months from the date of service, as compared to the current requirement that claims are submitted within 6 months.
- 68) *Acute Inpatient Intensive Rehabilitation Services*. Eliminates the Medi-Cal requirement that inpatient intensive rehabilitation hospital services provide for an initial evaluation for assessment of medical condition, functional limitations, possible need for surgery, attitude toward rehabilitation, functional goals and plans for discharge.

Whole Child Model and Mandatory Managed Care Enrollment of Foster Care Children

- 69) Expands the authorization to establish a Whole Child Model program to additional specified counties, no sooner than January 1, 2025.
- 70) Extends the operation of the Whole Child Model advisory group until December 31, 2026.
- 71) Requires DHCS, by January 1, 2025, to take certain oversight actions, such as developing utilization and quality measures that relate to California Children's Services (CCS) specialty care and providing analysis regarding trends on CCS enrollment for Whole Child Model counties.
- 72) Requires a managed care plan participating in the Whole Child Model to ensure that a CCS-eligible child has a primary point of contact who shall be responsible for the child's care coordination, and requires a Medi-Cal managed care plan serving children with CCS-eligible conditions to support the referral pathways in non-Whole Child Model counties.
- 73) Mandates enrollment in Medi-Cal managed care for children and youth in foster care who reside in a county operating a Single Plan model of managed care, effective January 1, 2025, and prescribes certain requirements on Medi-Cal managed care plans and DHCS for the transition of this population to managed care, related to continuity of care and continued timely access to care.
- 74) *Codifying Modern Medi-Cal Estimate Practices*. Removes specified requirements on the development and organization of the Medi-Cal Estimate, beginning July 1, 2023, and requires that the Estimate separately identify expenditures for county and other local assistance administration and a narrative description of how those forecasts were prepared.
- 75) *Long-Term Care Facilities Rate Year Shift*. Requires DHCS, beginning January 1, 2024, to adopt a rate year based on the calendar year for intermediate care facilities for the developmentally disabled and facilities providing continuous skilled nursing care to developmentally disabled individuals, nursing facilities, licensed intermediate care facilities, freestanding pediatric subacute care units, and skilled nursing facilities.

Doula Services Implementation Evaluation

- 76) Delays the required timeline for DHCS to convene a workgroup to examine the implementation of the doula benefit in Medi-Cal, from April 2022-December 2023 to April 2023-June 2025.

- 77) Delays the deadline for DHCS to publish a report relating to Medi-Cal recipients utilizing doula services from July 1, 2024 to July 1, 2025, and delays the repeal date of these provisions to January 1, 2026.
- 78) *Medical Interpreters Pilot Project*. Extends the timeline on the requirement on DHCS to establish a pilot project to evaluate disparities in care related to the availability of medical interpretation, and the expenditure of \$5 million (appropriated in the 2019 Budget Act) from June 30, 2024 to June 30, 2025, thereby making an appropriation.
- 79) *Designated State Health Programs Federal Financial Claiming*. Requires DHCS to maintain Medi-Cal reimbursement rates for primary care, obstetric care, and behavioral health services, and to increase reimbursement rates for those service codes as necessary to meet federally imposed minimum requirements as a condition of claiming federal financial participation for designated state health programs.
- 80) *Delay ICF-DD and Subacute Carve-Ins*. Delays the required transition to managed care, from July 1, 2023 to January 1, 2024, for institutional long-term care services.

CalAIM Behavioral Health Payment Reform

- 81) Creates the Medi-Cal County Behavioral Health Fund for the deposit of the nonfederal moneys collected by DHCS pursuant to the implementation of behavioral health payment reform under CalAIM. Requires moneys in the fund to be continuously appropriated to DHCS for purposes of implementing payment reform.
- 82) Stipulates that for counties that elect to participate in the offset and transfer of funds, moneys would be offset and transferred by the Controller in the fund from the Behavioral Health Subaccount in the Support Services Account in the Local Revenue Fund 2011, the Mental Health Subaccount in the Sales Tax Account in the Local Revenue Fund, and the Mental health Services Fund.
- 83) Requires DHCS to provide schedules in accordance with specified procedural steps and timelines.
- 84) Makes legislative findings that these provisions are consistent with, and further the intent of, the Mental Health Services Act.

Delay of Presumptive Foster Care Mental Health Transfers

- 85) Delays, from July 1, 2023 to July 1, 2024, the requirement on the county of original jurisdiction to retain responsibility and the limitation on the presumptive transfer provisions related to the presumptive transfer of responsibility for providing or arranging for specialty mental health services to a foster youth from the county of original jurisdiction to the county in which the foster youth resides.
- 86) Extends the period during which a county agency is responsible for making determinations about presumptive transfer waivers.
- 87) Delays the deadline for any necessary federal approval requests to July 1, 2025.

88) *Health Care Workforce Investments Delays*. Modifies and reverts certain proposed delays to 2022 health care workforce investments by including the following new appropriations in the 2023 Budget Act with \$100 million General Fund (GF) and \$182.4 million Mental Health Services Fund (MHSF):

- a) Social Work Initiative -- \$51.9 million (MHSF)
- b) Addiction Psychiatric/Medicine Fellowships -- \$48.5 million (MHSF)
- c) University/College Behavioral Health Workforce Grants -- \$52 million (MHSF)
- d) Masters in Social Work Slots at Public Universities/Colleges -- \$30 million (MHSF)
- e) Nursing Initiative Grants -- \$70 million (GF)
- f) Community Health Workers Initiative Grants -- \$15 million (GF)
- g) Song-Brown Program Nurses -- \$15 million (GF)

89) *Trailer Bill Boilerplate*. Declares that this bill provides for appropriations related to the Budget Bill and has been identified as related to the budget in the Budget Bill, and shall take effect immediately.

COMMENTS

This bill is a budget trailer bill that implements provisions of the 2023-24 budget package affecting health-related departments. Specifically, this bill establishes an expenditure plan for new MCO tax revenue, requires all future individual mandate penalty revenue be transferred to Covered California for affordability programs, expands the Whole Child Model to a limited number of counties, revises various provisions in AB 988 (2022), creates a chief medical officer within the Emergency Medical Services Authority, establishes mandatory certification for alcohol and drug treatment providers, and includes many additional provisions related to appropriations in the 2023 Budget Act.

According to the Author

Arguments in Support

None on file.

Arguments in Opposition

None on file.

FISCAL COMMENTS

This bill implements programs and policies associated with the following appropriations in the 2023 Budget Act:

- 1) 988 Suicide and Crisis: \$13.2 million Special Funds and Federal Funds

- 2) Covered California Health Care Affordability Reserve Fund: \$82.5 million for cost sharing, \$600 million loan to the General Fund, and reversion of \$304 million to the General Fund.
- 3) Managed Care Organization Provider Tax: \$19.4 billion in revenue over the life of the tax, \$3.4 billion in General Fund backfill in 2023-24, and approximately \$437 million in 2023-24 expenditures.
- 4) CalAIM Behavioral Health Payment Reform: \$250 million General Fund
- 5) Health Care Workforce Investments: \$100 million General Fund and \$182.4 million Mental Health Services Fund

VOTES

SENATE FLOOR: 29-8-3

YES: Allen, Alvarado-Gil, Archuleta, Atkins, Becker, Blakespear, Bradford, Caballero, Cortese, Dodd, Durazo, Eggman, Glazer, Gonzalez, Hurtado, Laird, Limón, McGuire, Menjivar, Min, Newman, Padilla, Portantino, Roth, Skinner, Smallwood-Cuevas, Umberg, Wahab, Wiener
NO: Dahle, Grove, Jones, Nguyen, Niello, Ochoa Bogh, Seyarto, Wilk
ABS, ABST OR NV: Ashby, Rubio, Stern

UPDATED

VERSION: June 26, 2023

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