

Date of Hearing: April 22, 2025

ASSEMBLY COMMITTEE ON HEALTH

Mia Bonta, Chair

AB 676 (Jeff Gonzalez) – As Amended April 9, 2025

SUBJECT: Medi-Cal: unrecovered payments: interest rate.

SUMMARY: Requires the Department of Health Care Services (DHCS) to waive the interest that would otherwise accrue when DHCS seeks to recover an overpayment made to a Medi-Cal provider, under specified circumstances. Specifically, **this bill:**

- 1) Requires DHCS to waive the interest, as part of a repayment agreement entered into with a Medi-Cal provider, if the overpayment occurred four or more years ago and, in DHCS's sole discretion, DHCS determines that all of the following apply:
 - a) The provider has demonstrated to DHCS a substantial impact of the repayment amounts on the fiscal solvency of the provider;
 - b) The provider has demonstrated to DHCS that the overpayment was caused by a policy change or DHCS error and was not caused by the provider; and,
 - c) Waiving the interest will not jeopardize the availability of federal funding.
- 2) Specifies DHCS's right to recover payments if a provider defaults on a payment or seeks bankruptcy protection.
- 3) Specifies that DHCS's determination whether or not to exercise its discretion is not subject to judicial review, except through a writ of mandate to rectify an abuse of discretion.
- 4) Authorizes DHCS to implement the bill through non-regulatory guidance, such as a provider bulletin.

EXISTING LAW:

- 1) Establishes the Medi-Cal program, administered by DHCS, to provide comprehensive health benefits to low-income individuals who meet specified eligibility criteria. [Welfare and Institutions Code (WIC) § 14000 *et seq.*]
- 2) Requires DHCS to audit providers for amounts paid for services provided to Medi-Cal beneficiaries. Requires DHCS to establish an administrative appeal process for providers to review grievances or complaints arising from the findings of an audit or examination. [WIC § 14170, § 14171]
- 3) Requires interest to apply against any unrecovered overpayment due to DHCS from a provider following an audit or examination, or any payment recovered by a provider who prevails in an audit appeal, and for the interest rate to be the higher of the following:
 - a) The rate equal to the monthly average received on investments in the state's Surplus Money Investment Fund (SMIF) during a specified timeframe; or,

- b) Simple interest at the rate of 7% per annum. [WIC § 14171]

FISCAL EFFECT: Unknown. This bill has not yet been analyzed by a fiscal committee.

COMMENTS:

- 1) **PURPOSE OF THIS BILL.** According to the author, hospitals and clinics across the state are facing budget shortages and those in rural areas are especially vulnerable. The author argues it is not fair nor is it in the best interest of our communities to require providers to pay additional money to the state due to no fault of their own. The author concludes that this bill is about equity, fairness, and ensuring healthcare access to those who need it most.
- 2) **BACKGROUND.** Current law specifies when DHCS pursues recovery of a Medi-Cal overpayment, DHCS collects the overpayment with interest. Similarly, a provider who prevails in an appeal is entitled to receive interest on any amount due from the state at the same rate. The current rate is equal to the monthly average received on investments in the SMIF, or simple interest at the rate of 7%, whichever is higher. A higher interest rate presumably incentivizes providers to be accurate and timely in billing and, when applicable, repayment.
 - a) **Surplus Money Investment Fund.** Monies of various funds deposited in the State Treasury are transferred for investment purposes in the SMIF. For all of the participating special funds, the State Treasurer invests any cash balances that exceed the special fund's immediate cash needs. The average rate received on investments fluctuates significantly.
 - b) **Medi-Cal Payment Recovery Activities.** The Overpayments Program is a section within DHCS's Third Party Liability and Recovery Division, which is responsible for enforcing fiscal compliance with Medi-Cal laws and regulations for Medi-Cal providers and beneficiaries. The program's primary function is to recover funds due to the Medi-Cal program. DHCS's Audits and Investigations Division, other auditing and legal agencies, and Medi-Cal fiscal intermediaries refer overpayment cases to the program. When a provider overpayment is identified, providers are sent notices of overpayments by the state's fiscal intermediary or demand-for-payment letters by the auditing organization. These letters also notify the provider of their appeal rights. Providers may request that the Overpayments Program work with them to develop a repayment agreement that allows repayment over a period of time, rather than paying the overpayment in full at once.

If the provider does not pay voluntarily, DHCS will withhold a provider's Medi-Cal claims payment until the debt is satisfied. DHCS also may take steps to initiate an offset of state income tax refunds, pursue civil actions in small claims court, or refer the case to the Attorney General's Office to secure a judgment against the beneficiary's assets and/or record a real property lien. The provider has 60 days from receiving the notice of overpayment to pay in full or establish a repayment agreement before DHCS begins to take these actions.
 - c) **Overpayment Interest Rate.** Through the 2012-13 Budget, the interest rate on overpayment was changed from the SMIF rate to either the SMIF rate or simple interest of 7% per year, whichever is higher. DHCS proposed budget trailer bill legislation in 2012 to make this change because extremely low SMIF rates at that time offered little incentive for providers to pay their obligations in a timely manner. This resulted in

additional cost pressures on the General Fund, given the state's borrowing rate and other factors. This bill would require DHCS to waive interest on certain past overpayments if certain factors are met.

- 3) **SUPPORT.** The California Chapter of the American College of Emergency Physicians writes in support of this bill, noting that a large portion of income to emergency physician groups comes from Medi-Cal and any fines or interest associated with disallowed payments can have a disproportionate impact on emergency department physicians.

4) **PREVIOUS LEGISLATION.**

- a) SB 1258 (Dahle) of 2024 was similar to this bill, except it would have *authorized* DHCS to waive interest based on DHCS's consideration of several factors, versus this bill's approach of *requiring* to waive the interest if certain criteria are met. SB 1258 was held on the suspense file of the Assembly Appropriations Committee.
- b) AB 515 (Mathis) of 2019 was similar to SB 1258. AB 515 was vetoed by Governor Newsom who stated in his veto message that the bill "fails to distinguish between overpayments due to provider fraud and abuse and those caused by Medi-Cal policy changes or DHCS error that are not the fault of a billing provider. In addition, it does not make the option for DHCS to waive interest subject to the availability of federal funding. . . I encourage the author to work with DHCS on future legislation that will specify the circumstances under which interest may be waived, and make those conditions subject to the availability of federal funding, in order to protect the State General Fund." This bill addresses the veto message by requiring interest be waived only if doing so will not jeopardize the availability of federal funding; it also limits the application to overpayments caused by a policy change or departmental error, versus on error or fraud on the part of the provider.
- c) AB 1467 (Committee on Budget), Chapter 23, Statutes of 2012, the 2012 health budget trailer bill, among other provisions, requires DHCS to assess interest against Medi-Cal provider overpayments at the SMIF rate or 7% per year, whichever is higher. AB 1467 also requires DHCS to pay interest at the same rate to a provider who prevails in an appeal of a payment disallowed by DHCS.

REGISTERED SUPPORT / OPPOSITION:

Support

California Chapter of the American College of Emergency Physicians
California Orthopedic Association

Opposition

None on file

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