

LEGISLATIVE UPDATE



Week of February 3, 2020

State Issues	
New Bill Introduction Deadline	The Legislature has three more weeks until the February 21 deadline to introduce new bills for the 2020 legislative session. As bills of interest are introduced, we will update our bill summary list. Meantime, attached is the status of the current bills of interest to the Catholic health care ministry.
Upcoming Legislative Informational Hearings	The Assembly Health Committee will hold an informational hearing on February 25 entitled "Cost Containment: Considerations for California." And on February 26, there will be a joint committee hearing of Senate Health and Senate Budget and Fiscal Review Subcommittee No. 3 on Health and Human Services on "Oversight of Managed Care Plan Responsibilities and Medi-Cal Healthier California for All Proposal." We will provide more information as the agenda and more details become available.
CMS Rejects MCO Tax Proposal	<p>Late last Friday, January 31, it was announced that the federal Center for Medicare and Medicaid Services (CMS) officially rejected California's request for a renewal of the Managed Care Organization (MCO) tax. This is the tax on health plans that when matched with federal funds brings approximately \$1.2 billion investment into our Medi-Cal system. The federal government has rules that govern these programs, which include that the tax has to be "broad-based" and do not hold any health plan harmless. Meaning the tax is equally applied to all health plans, and the benefit of the funding only applies to those providers of Medicaid services. According the memo from CMS, California's proposal does "effectively exempt from taxation" all managed care plans that do not serve Medicaid population, and they have concluded that the proposal includes a "hold harmless arrangement." It is on this latter finding that CMS has rejected California's proposal – <i>see attached letter to the Department of Health Care Services.</i></p> <p>According to the state Department of Finance, "The Administration will continue its ongoing discussions with federal Medicaid officials on this issue....Consistent with the federal government's prior approvals of similar financing waivers, we believe and expect that we can reach an agreement that allows this type of financing to continue." The MCO tax is not calculated into the state's current budget, so there are no immediate budgetary impacts on the rejection. However, if an agreement cannot be reached, the state will eventually take a \$1.2 billion hit.</p>
Inaugural Meeting of the Healthy California for All Commission	Last week the California Health and Human Services Agency (CHHS) held the first meeting of the Governor's Healthy California for All Commission designed to "provide the Governor and the Legislature with options and recommendations to advance progress toward achieving a health care delivery system in California that provides coverage and access through a unified financing system, including, but not limited to, a single-payer financing system, for all Californians." If you recall, the Legislature and Governor battled last summer on redefining the objective of this group. When he was first elected, Governor Newsom made it clear that he wanted the Commission to focus primarily on moving the state to a single payer delivery system, and that is what the Commission is now tasked to do.

<p>Inaugural Meeting of the Healthy California for All Commission <i>(continued)</i></p>	<p>CHHS' new Deputy Secretary for Policy and Planning, Dr. Alice Chen, opened the meeting outlining the Commission's purpose, principles, and charge. She also outlined the remainder of the meeting's agenda, which included a history of health reform in California, the current status of health care in California, and a rather extensive view of the policy considerations now before the Commission. Dr. Chen was asked by several of the Commissioners on the creation of working groups – to meet in between the full Commission meetings – in an effort to get more work done and more input from the Commissioners. She indicated they were considering that, but her team was not prepared to present a plan to the group yet. She promised to get back to Commissioners after the meeting. The Commission spent a great deal of time during the meeting debating and defining what was the scope of their work what were they charged to do.</p> <p>The Commission will prepare an initial report to the Governor and Legislature by July 2020, with a final report in February 2021. The first report is being characterized as an overview of the current system – updating all of the recent reports that have been published over the last few years. The second/final report should focus on the path forward to single payer. Information is available at: https://www.chhs.ca.gov/healthycforall/.</p>
<p>State Pushes for Trauma Screenings</p>	<p>The newly formed Office of the California Surgeon General, led by Dr. Nadine Burke-Harris, and the Department of Health Care Services have set a goal to reduce Adverse Childhood Experiences (ACEs) and treat the impacts of toxic stress through the ACEs Aware initiative.</p> <p>ACEs Aware is a first-in-the-nation effort to screen children and adults for ACEs in primary care, and they hope to treat the impacts of toxic stress with trauma-informed care. ACEs are stressful or traumatic events experienced in childhood that relate to abuse, neglect, and/or household dysfunction. Research shows that individuals who experienced ACEs are at greater risk of 9 of the 10 leading causes of death in the United States, including heart disease, stroke, cancer, and diabetes. The Surgeon General, with support from Governor Newsom, believes that identifying ACEs and other social determinants of health in children and adults, and providing targeted intervention, we can improve efficacy and efficiency of care, support individual and family health and well-being, and reduce long-term health costs.</p> <p>ACEs Aware also offers Medi-Cal providers training, clinical protocols, and payment for screening children and adults for ACEs. Through funding included in last year's budget, on January 1, 2020, eligible Medi-Cal providers began receiving a \$29 payment for conducting ACEs screenings for children and adults with Medi-Cal coverage. By July 1, 2020, Medi-Cal providers must take Becoming ACEs Aware in California training and self-attest to completing the training to receive Medi-Cal payments for ACEs screenings. Additionally, the ACEs Aware initiative has issued a Request for Proposal to fund organizations to help extend the reach and impact of this initiative to Medi-Cal providers and organizations that serve Medi-Cal beneficiaries. RFP responses are due on February 10, 2020. For more information, visit ACEsAware.org.</p>

For more information please contact Lori Dangberg at 1215 K Street, Suite 2000 ■ Sacramento, CA 95814
Direct line: 916.552.2633 or fax: 916.552.7652 ■ e-mail: ldangberg@thealliance.net

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-26-12
Baltimore, Maryland 21244-1850



JAN 30 2020

Ms. Mari Cantwell
Chief Deputy Director
Health Care Programs
California Department of Health Care Services
P.O. Box 997413
MS 0000
Sacramento, California 95899

Dear Ms. Cantwell:

This is in response to your request for a waiver of the broad-based and uniformity requirements in connection with a proposed tax on managed care organizations. The proposed tax would be imposed on a per member month basis at a rate that varies according to ranges of the cumulative number of member months covered by the managed care organization for the state fiscal year (SFY), whether the member months are paid by Medicaid or a non-Medicaid payer, and by SFY. The rates also vary from each year. The variable rate structure effectively exempts from taxation all 12 managed care organizations that do not have Medicaid member months and results in a tax liability for all managed care organizations that do have Medicaid member months. Upon careful review and consideration of the information provided by the State of California, I regret to inform you that CMS is unable to approve your request for waiver of the broad-based and uniformity requirements.

The state included with its waiver request a demonstration that appears to meet the statistical linear regression test in 42 CFR 433.68(e)(2) necessary to obtain a waiver for non-uniform taxes. However, 42 CFR 433.72(b)(3) states that for CMS to approve a waiver request the state must also demonstrate that tax program does not contain a hold harmless provision specified in 42 CFR 433.68(f).

42 CFR 433.68(f)(2) and (3), which implement sections 1903(w)(4)(B) and (C) of the Social Security Act (the Act), specify that there is in effect a hold harmless provision if either of the following applies:

- All or any portion of the Medicaid payment to the taxpayer varies based only on the tax amount, including where Medicaid payment is conditional on receipt of the tax amount.
- The State (or other unit of government) imposing the tax provides for any direct or indirect payment, offset, or waiver such that the provision of that payment, offset, or waiver directly or indirectly guarantees to hold taxpayers harmless for all or any portion of the tax amount.

The Medicaid statute governing health care-related taxes is designed to permit health care-related taxes only to the extent that they are not connected to the receipt, or non-receipt, of Medicaid payments. As proposed, California would effectively exempt from taxation all managed care organizations that do not have Medicaid member months. Such managed care organizations provide for the delivery of health benefits and additional services through contracted arrangements without expecting or accepting any Medicaid payments. The proposed tax structure means that there is a correlation between the Medicaid payment and the tax liability; if the managed care organizations receive a Medicaid payment, they incur tax liability. Conversely, if they do not receive Medicaid payments, they do not incur a tax liability. The exclusion of non-Medicaid participating managed care organizations also can be viewed as recognition that the tax on other managed care organizations that do participate in Medicaid is designed to be returned to those facilities through Medicaid payments. Therefore, because the proposed tax appears to involve a hold harmless arrangement, CMS is unable to approve the requested waiver.

Should the state collect the tax as proposed, section 1903(w)(1)(A)(ii) of the Act and 42 CFR 433.70 require that CMS deduct from the state's Medicaid expenditures claimed on the Form CMS-64, prior to calculating federal financial participation (FFP), the total amount of tax revenue collected.

If you have any questions or wish to discuss further, please contact Mr. Fran McCullough at francis.mccullough@cms.hhs.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Calder Lynch", with a long horizontal flourish extending to the right.

Calder Lynch
Acting Deputy Administrator and Director

Alliance of Catholic Health Care Legislative Summary and Status 2/6/2020

Access / Health Care Reform

[AB 4](#) **(Arambula D) Medi-Cal: eligibility.**

Location: 7/10/2019-S. 2 YEAR

Summary: Current law requires that individuals under 19 years of age enrolled in restricted-scope Medi-Cal at the time the Director of Health Care Services makes a determination that systems have been programmed for implementation of these provisions to be enrolled in the full scope of Medi-Cal benefits, if otherwise eligible, pursuant to an eligibility and enrollment plan, which includes outreach strategies. Current law makes the effective date of enrollment for those individuals the same day that systems are operational to begin processing new applications pursuant to the director's determination, and requires the department to seek any necessary federal approvals to obtain federal financial participation for purposes of implementing the requirements. Current law requires that benefits for services under these provisions be provided with state-only funds only if federal financial participation is not available for those services. This bill would extend eligibility for full-scope Medi-Cal benefits to individuals of all ages, if otherwise eligible for those benefits, but for their immigration status, and would delete provisions delaying eligibility and enrollment until the director makes the determination as specified.

Position

Support

[SB 29](#) **(Durazo D) Medi-Cal: eligibility.**

Location: 1/3/2020-A. THIRD READING

Calendar: 2/6/2020 #5 ASSEMBLY THIRD READING FILE - SENATE BILLS

Summary: Would, subject to an appropriation by the Legislature, and effective July 1, 2020, extend eligibility for full-scope Medi-Cal benefits to individuals who are 65 years of age or older, and who are otherwise eligible for those benefits but for their immigration status.

Position

Support

[SB 65](#) **(Pan D) Health care coverage: financial assistance.**

Location: 1/23/2020-A. APPR.

Summary: Current law creates the California Health Benefit Exchange (the Exchange), also known as Covered California, for the purpose of facilitating the enrollment of qualified individuals and qualified small employers in qualified health plans as required under the PPACA. Until January 1, 2023, current law requires the Exchange, among other duties, to administer an individual market assistance program to provide assistance, including premium assistance subsidies, to program participants with household incomes at or below 600% of the federal poverty level. This bill would reduce premiums to zero for program participants with household incomes at or below 138% of the federal poverty level, and would specify the premium assistance subsidy amount for program participants with household incomes of 139% to 600%, inclusive, of the federal poverty level.

Position

Support

[SB 66](#) **(Atkins D) Medi-Cal: federally qualified health center and rural health clinic services.**

Location: 9/15/2019-A. 2 YEAR

Summary: Current law provides that federally qualified health center (FQHC) services and rural health clinic (RHC) services, as defined, are covered benefits under the Medi-Cal program, to be reimbursed, to the extent that federal financial participation is obtained, to providers on a per-visit basis. "Visit" is defined as a face-to-face encounter between a patient of an FQHC or RHC and specified health care professionals, including a physician and marriage and family therapist. Under existing law, "physician," for these purposes, includes, but is not limited to, a physician and surgeon, an osteopath, and a podiatrist. This bill would authorize reimbursement for a maximum of 2 visits taking place on the same day at a single location if after the first visit the patient suffers illness or injury requiring additional diagnosis or treatment, or if the patient has a medical visit and a mental health visit or a dental visit, as defined.

Position

Support

[SB 175](#) **(Pan D) Health care coverage.**

Location: 1/27/2020-A. DESK

Summary: Current law requires a health care service plan that issues, sells, renews, or offers plan

contracts for health care coverage in the state to comply with the requirements of the PPACA, and any rules or regulations issued under the PPACA, that generally prohibit a health plan offering group or individual coverage from imposing lifetime or annual limits on the dollar value of benefits for a participant or beneficiary. Current law requires a plan to comply with those provisions to the extent required by federal law. This bill would delete the requirement that a plan comply with the prohibition on lifetime or annual limits to the extent required by federal law, and would instead prohibit an individual or group health care service plan contract from establishing lifetime or annual limits on the dollar value of benefits for an enrollee, thereby indefinitely extending the prohibitions on lifetime or annual limits, except as specified.

Position
Support

Behavioral Health

[AB 43](#) **(Gloria D) Mental health.**

Location: 7/8/2019-S. APPR. SUSPENSE FILE

Summary: Current law authorizes the Mental Health Services Act (MHSA) to be amended by a 2/3 vote of each house of the Legislature if the amendments are consistent with, and further the intent of, the act. Current law authorizes the Legislature to add provisions to the act to clarify procedures and terms of the act by majority vote. This bill would clarify that the planning process for innovative programs is to be completed in collaboration with stakeholders and is to comply with open meetings laws.

Position
Watch

[AB 563](#) **(Quirk-Silva D) Mental health: funding.**

Location: 1/31/2020-A. DEAD

Summary: Would appropriate \$16,000,000 from the General Fund to the State Department of Health Care Services to distribute to the North Orange County Public Safety Task Force for the development of a 2-year pilot program. The bill would require 1/2 of the moneys to be distributed on January 1, 2020, and 1/2 to be distributed on January 1, 2021, and would require the moneys to be used to provide a range of programs, services, and activities designed to assist individuals and families experiencing mental health crises. The bill would require the task force to submit a report to the Legislature by July 1, 2021, and again by July 1, 2022, documenting the findings and outcomes of the pilot program.

Position
Watch

[AB 1572](#) **(Chen R) Mental health services: gravely disabled.**

Location: 1/31/2020-A. DEAD

Summary: Current law, for the purposes of involuntary commitment and conservatorship, defines "gravely disabled." This bill would change the definition of "gravely disabled" for these purposes to read, in part, a condition in which a person, as a result of a mental health disorder, is incapable of making informed decisions about, or providing for, the person's own basic personal needs for food, clothing, shelter, or medical care without significant supervision and assistance from another person and, as a result of being incapable of making these informed decisions, the person is at risk of substantial bodily harm, dangerous worsening of a concomitant serious physical illness, significant psychiatric deterioration, or mismanagement of essential needs that could result in bodily harm.

Position
Watch

[SB 596](#) **(Stern D) In-home supportive services: additional higher energy allowance.**

Location: 1/29/2020-A. DESK

Summary: Would require a county human services agency to, using existing materials, inform each applicant for benefits under the IHSS program that the applicant may be eligible to receive that higher energy allowance and any advanced notifications that may be provided by a public utility when the public utility plans to deenergize portions of the electrical distribution system or in an emergency. By creating additional duties for counties, this bill would impose a state-mandated local program.

Position
Watch

[SB 640](#) **(Moorlach R) Mental health services: gravely disabled persons.**

Location: 2/3/2020-S. DEAD

Summary: The Lanterman-Petris-Short Act provides for the involuntary commitment and treatment of a person who is a danger to themselves or others or who is gravely disabled. Current law also provides for a conservator of the person or estate to be appointed for a person who is gravely disabled.

Existing law, for the purposes of involuntary commitment and conservatorship, defines "gravely disabled," among other things, as a condition in which a person, as a result of a mental health disorder, is unable to provide for the person's basic personal needs for food, clothing, or shelter. This bill would authorize a county to instead use a definition of "gravely disabled" for these purposes that would read, in part, a condition in which a person, as a result of a mental health disorder, is incapable of making informed decisions about, or providing for, the person's own basic personal needs for food, clothing, or shelter without significant supervision and assistance from another person and, as a result of being incapable of making these informed decisions, the person is at risk of substantial bodily harm, dangerous worsening of a concomitant serious physical illness, significant psychiatric deterioration, or mismanagement of the person's essential needs that could result in bodily harm.

Position
Watch

Hospital Operations and Finance

[AB 910](#) (Wood D) Medi-Cal: dispute resolution.

Location: 1/30/2020-S. RLS.

Summary: Would require a county mental health plan and Medi-Cal managed care plan that are unable to resolve a dispute to submit a request for resolution to the State Department of Health Care Services. The bill would require the department to issue a written decision to the plans within 30 calendar days from receipt of the request by either the county mental health plan or the Medi-Cal plan. The bill would also prohibit the dispute from delaying the provision of medically necessary services, as specified.

Position
Watch

[AB 1404](#) (Santiago D) Nonprofit sponsors: reporting obligations.

Location: 9/15/2019-S. 2 YEAR

Summary: The Nonprofit Corporation Law regulates the organization and operation of nonprofit public benefit corporations, nonprofit mutual benefit corporations, and nonprofit religious corporations, including, but not limited to, health care service plans. That law requires a nonprofit public benefit corporation to furnish annually to its members a report that includes the assets and liabilities of the corporation, revenue or receipts of the corporation, and the expenses or disbursements of the corporation. This bill would require a nonprofit sponsor to make specified annual disclosures publicly available by posting those disclosures on the nonprofit sponsor's public internet website in the same location where it posts copies of its annual report.

Position
Watch

[AB 1544](#) (Gipson D) Community Paramedicine or Triage to Alternate Destination Act.

Location: 9/15/2019-S. 2 YEAR

Summary: Would establish within the Emergency Medical Services System and the Prehospital Emergency Medical Care Personnel Act until January 1, 2030, the Community Paramedicine or Triage to Alternate Destination Act of 2019. The bill would authorize a local EMS agency to develop a community paramedicine or triage to alternate destination program, as defined, to provide specified community paramedicine services. The bill would require the authority to develop regulations to establish minimum standards for a program and would further require the Commission on Emergency Medical Services to review and approve those regulations.

Position
Watch

[AB 1611](#) (Chiu D) Emergency hospital services: costs.

Location: 7/10/2019-S. 2 YEAR

Summary: Would require a health care service plan contract or insurance policy issued, amended, or renewed on or after January 1, 2020, to provide that if an enrollee or insured receives covered services from a noncontracting hospital, the enrollee or insured is prohibited from paying more than the same cost sharing that the enrollee or insured would pay for the same covered services received from a contracting hospital. The bill would require a health care service plan or insurer to pay a noncontracting hospital for emergency services rendered to an enrollee or insured pursuant to a specified formula, would require a noncontracting hospital to bill, collect, and make refunds in a specified manner, and would provide a dispute resolution procedure if any party is dissatisfied with payment.

Position
Oppose Unless

Amend

[SB 758](#) (Portantino D) Hospitals: seismic safety.

Location: 9/15/2019-A. 2 YEAR

Summary: The Alfred E. Alquist Hospital Facilities Seismic Safety Act of 1983 requires, before January 1, 2020, the owner of an acute care inpatient hospital whose building does not substantially comply with described seismic safety regulations or standards to submit to the office an attestation that the board of directors of that hospital is aware that the hospital building is required to meet a specified deadline for substantial compliance with those regulations and standards. This bill would require, on or before January 1, 2021, the owner of an acute care inpatient hospital to update the above-described submission by reporting the services provided in each building of the acute care inpatient hospital.

Position

Support

Social Determinants of Health

[AB 816](#) (Quirk-Silva D) California Flexible Housing Subsidy Pool Program.

Location: 1/31/2020-A. DEAD

Summary: Would establish the California Flexible Housing Subsidy Pool Program within the Department of Housing and Community Development for the purpose of making grants available to applicants, defined to include a city, county, city and county, or continuum of care, for eligible activities including, among other things, rental assistance, operating subsidies in new and existing affordable or supportive housing units, and specified outreach services. The bill would continuously appropriate \$450,000,000 from the General Fund every fiscal year to the department for purposes of the program, and set forth how these funds must be allocated.

Position

Watch

Workforce

[AB 329](#) (Rodriguez D) Hospitals: assaults and batteries.

Location: 7/10/2019-S. 2 YEAR

Summary: Would make an assault committed on the property of a public or private hospital punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding \$2,000, or by both that fine and imprisonment. By expanding the scope of a crime, this bill would impose a state-mandated local program.

Position

Support

[AB 890](#) (Wood D) Nurse practitioners: scope of practice: practice without standardized procedures.

Location: 1/28/2020-S. RLS.

Summary: Would, until January 1, 2026, establish the Advanced Practice Registered Nursing Board within the Department of Consumer Affairs, which would consist of 9 members. The bill would require the board, by regulation, to define minimum standards for a nurse practitioner to transition to practice without the routine presence of a physician and surgeon. The bill would authorize a nurse practitioner who meets certain education, experience, and certification requirements to perform, in certain settings or organizations, specified functions without standardized procedures, including ordering, performing, and interpreting diagnostic procedures, certifying disability, and prescribing, administering, dispensing, and furnishing controlled

Position

Support

Total Measures: 18

Total Tracking Forms: 18