

**MEDI-CAL INFORMATION ONLY**  
**May 2016**  
**FISCAL YEARS 2015-16 & 2016-17**

**INTRODUCTION**

The Medi-Cal Benefit Estimate can be segregated into three main components: (1) the Fee-for-Service (FFS) base expenditures, (2) the base policy changes, and (3) regular policy changes. The FFS base estimate is the anticipated level of FFS program expenditures assuming that there will be no changes in program direction and is derived from a 36 month historical trend analysis of actual expenditure patterns. The base policy changes anticipate the Managed Care, Medicare Payments, and non-FFS Medi-Cal program base expenditures. The regular policy changes are the estimated fiscal impacts of any program changes which are either anticipated to occur at some point in the future, or have occurred so recently that they are not yet fully reflected in the base expenditures. The combination of these three estimate components produces the final Medi-Cal Benefit Estimate.

**FEE-FOR-SERVICE BASE ESTIMATES**

The FFS base expenditure projections for the Medi-Cal estimate are developed using regression equations based upon the most recent 36 months of actual data. Independent regressions are run on user, units/user and dollars/unit for each of 18 aid categories within 11 different service categories. The general functional form of the regression equations is as follows:

$$\begin{aligned} \text{USERS} &= f(\text{TND}, \text{S.QV}, \text{O.QV}, \text{Eligibles}) \\ \text{CLAIMS/USER} &= f(\text{TND}, \text{S.QV}, \text{O.QV}) \\ \text{\$/CLAIM} &= f(\text{TND}, \text{S.QV}, \text{O.QV}) \end{aligned}$$

WHERE:	USERS	= Monthly Unduplicated users by service and aid category.
	CLAIMS/USER	= Total monthly claims or units divided by total monthly unduplicated users by service and aid category.
	\\$/CLAIM	= Total monthly dollars divided by total monthly claims or units by service and aid category.
	TND	= Linear trend variable.
	S.QV	= Seasonally adjusting qualitative variable.
	O.QV	= Other qualitative variable (as appropriate) to reflect exogenous shifts in the expenditure function (e.g. rate increases, price indices, etc.)

Eligibles = Actual and projected monthly eligibles for each respective aid category incorporating various lag calculations for aid category within the service category.

Following the estimation of coefficients for these variables during the period of historical data, the independent variables are extended into the projection period and multiplied by the appropriate coefficients. The monthly values for users, units/user and dollars/unit are then multiplied together to arrive at the monthly dollar estimates and summed to annual totals by service and aid category.

## FEE-FOR-SERVICE SERVICE CATEGORIES

Medi-Cal categorizes providers into Provider Types. For estimating purposes, the Medi-Cal Estimate groups these provider types into 11 Service Categories. This information is provided below.

Note: The Fee-For-Service delivery system includes the cost of care for those eligibles in the FFS delivery system, it also includes costs for items excluded in the Managed Care delivery model capitation.

### Physicians

- Physicians
- Physician Group

### Other Medical

- |  |   |
|--|---|
| <ul style="list-style-type: none"> <li>• Audiologist</li> <li>• Certified Nurse Midwife</li> <li>• Chiropractor</li> <li>• Certified Pediatric/Family Nurse Practitioner</li> <li>• Clinical Laboratory</li> <li>• Group Pediatric/Family Nurse Practitioner</li> <li>• Nurse Anesthetist</li> <li>• Occupational Therapist</li> <li>• Optometrist</li> <li>• Optometric Group</li> <li>• Physical Therapist</li> <li>• Podiatrist</li> <li>• Psychologist</li> <li>• Certified Acupuncturist</li> <li>• Rural Health Clinic &amp; FQHC</li> <li>• Employer/Employee Clinic</li> <li>• Speech Therapist</li> </ul> | <ul style="list-style-type: none"> <li>• Free Clinic</li> <li>• Community Clinic</li> <li>• Chronic Dialysis Clinic</li> <li>• Multispecialty Clinic</li> <li>• Surgical Clinic</li> <li>• Exempt From Licensure Clinic</li> <li>• Rehabilitation Clinics</li> <li>• County Clinic Not Associate With A Hospital</li> <li>• Birthing Centers-Primary Care Clinic</li> <li>• Clinic-Otherwise Undesignated</li> <li>• Outpatient Heroin Detox Center</li> <li>• Alternative Birthing Center</li> <li>• Respiratory Care Practitioner</li> <li>• Health Access Program (Formerly Family PACT)</li> <li>• Group Respiratory Care Practitioner</li> <li>• Indian Health Services (MOU)</li> <li>• Licensed Midwife</li> </ul> |
|--|---|

County and Community Outpatient

- County Hospital Outpatient
- Community Hospital Outpatient

Pharmacy

- Pharmacies or Pharmacists

County Inpatient

- County Hospital Inpatient
- Consists of Designated Public Hospitals. The Designated Public Hospitals are paid based on an interim per diem rate utilizing Certified Public Expenditures. DPH payments are 100% federal funds and the DPH pays the State's match. More information is available at the Department's website ([www.dhcs.ca.gov](http://www.dhcs.ca.gov)).

Community Inpatient

- Community Hospital Inpatient
- Consists of Non-Designated Public Hospitals, Private Hospitals, and some Designated Public Hospitals. The Non-Designated Public Hospitals and Private Hospitals are paid using a Diagnosis Related Group payment methodology. The Designated Public Hospitals are paid based on an interim per diem rate utilizing Certified Public Expenditures. DPH payments are 100% federal funds and the DPH pays the State's match. More information is available at the Department's website ([www.dhcs.ca.gov](http://www.dhcs.ca.gov)).

Nursing Facilities

- Long Term Care Nursing Facility
  - Long Term Care Intermediate Care Facility (NF-A)
  - Pediatric Subacute Care – Long Term Care
  - These three provider types include Nursing Facility - Level A (NF-A), Nursing Facility – Level B (NF-B), Distinct Part Skilled Nursing Facilities of General Acute Care Hospitals (DP/NF-
- Bs), Distinct Part Adult Subacute Units for General Acute Care Hospitals (DP/SA), Rural Swing Beds, Institution for Mental Diseases, Acute and Transitional Inpatient Care Administrative Days (Administrative Days Level 1)

ICF-DD

- Long Term Care Intermediate Care Facility/Developmentally Disabled

Medical Transportation

- Ground Medical Transportation
- Air Ambulance Transportation

Other Services

- Adult Day Health Care Center
- Assistive Device & Sick Room Supply Dealers
- Blood Banks
- Fabricating Optical Laboratory
- Optometric Supplies
- Hearing Aid Dispensers
- Home Health Agency -Home & Comm. Based Services
- Optometric Supplies (from Dispensing Opticians, Optometrists, Optometric Group)
- Orthotists
- Optometric Supplies
- Portable X-Ray
- Prosthetists
- Genetic Disease Testing
- Medicare Crossover Provider Only
- Certified Hospice Service
- Local Education Agency
- EPSDT Supplemental Services Provider
- HCBS Congregate Living Health Facility
- HCBS Personal Care Agency
- RVN Individual Nurse Provider
- HCBS Professional Corporation
- AIDS Waiver Provider
- Multipurpose Senior Services Program
- CCS/GHPP Non-Institutional
- Independent Diagnostic Center (Medicare Crossover Provider Only)
- ALWPP Residential Care Facility for the Elderly
- ALWPP Care Coordinator
- HCBS Private Non-Profit Proprietary Agency
- Clinical Nurse Specialist (Medicare Crossover Provider Only)

Home Health

- Home Health Agency (except Home & Community Based Services)

## AFFORDABLE CARE ACT

Effective January 1, 2014, the ACA establishes a new income eligibility standard for Medi-Cal based upon a Modified Adjusted Gross Income (MAGI) of 133% of the federal poverty level (FPL) for pregnant women, children up to age 19, and parent/caretaker relatives. In addition, the former practice of using various income disregards to adjust family income was replaced with a single 5% income disregard. The ACA simplifies the enrollment process and eliminates the asset test for MAGI eligible. Existing income eligibility rules for aged, blind, and disabled persons did not change.

The new standard allows current recipients of Medi-Cal to continue to enroll in the program and grants the option for states to expand eligibility to a new group of individuals: primarily adults, age 19-64, without a disability and who do not have minor children.

The ACA also imposes a tax upon those without health coverage, which will likely encourage many individuals who are currently eligible, but not enrolled in Medi-Cal to enroll in the program. Since January 2014, the Department has experienced significant growth in Medi-Cal enrollment as result of the ACA.

For those newly eligible adults in the expansion group, the ACA provides California with enhanced FFP at the following rates:

- 100% FFP from calendar years 2014 to 2016,
- 95% FFP in 2017,
- 94% FFP in 2018,
- 93% FFP in 2019,
- 90% FFP in 2020 and beyond.

For those who are currently eligible, but not enrolled in Medi-Cal, enhanced FFP will not be available. Beginning in October 2015, the ACA ~~will-increased~~ the Children's Health Insurance Program (CHIP) FMAP provided to California by 23 percent, to 88 percent FFP, up from 65 percent.

In response to the federal ACA mandate and State legislative direction, the Department chose the HHS Secretary-approved plan option, which allows the Department to seek approval for the same full scope Medi-Cal benefits received by existing beneficiaries. This option requires the selection of a private market reference plan to define the Essential Health Benefits (EHB) offered in the Alternative Benefit Plan (ABP).

The Standard Blue Cross/Blue Shield PPO (FEHB) Plan was selected as the EHB reference plan, as it allows the Department to provide an ABP package that most closely reflects existing State Plan benefits and thereby avoids disparity between the benefits received by new and existing beneficiaries.

## HOME AND COMMUNITY BASED SERVICES

### Long-Term Care Alternatives

Medi-Cal includes various Long-Term Services and Supports (LTSS) that allow medically needy, frail seniors, and persons with disabilities to avoid unnecessary institutionalization. The Department administers these alternatives either as State Plan benefits or through various types of waivers.

### State Plan Benefits

#### In-Home Supportive Services (IHSS)

IHSS helps eligible individuals pay for services so that they can remain safely in their own homes. To be eligible, individuals must meet at least one of the following:

- 65 years of age or older,
- Disabled,
- Blind, or
- Have a medical certification of chronic, disabling condition that causes functional impairment expected to last 12 consecutive months or longer or result in death within 12 months and unable to remain safely at home without the services.

Children with disabilities are also eligible for IHSS. IHSS provides housecleaning, meal preparation, laundry, grocery shopping, personal care services (such as bowel and bladder care, bathing, grooming and paramedical services), accompaniment to medical appointments, and protective supervision for individuals with a mental impairment(s).

The four IHSS programs are:

1. Personal Care Services Program (PCSP)  
This program provides personal care services including but not limited to non-medical personal services, paramedical services, domestic services, and protective supervision.
2. IHSS Plus Option (IPO)  
This program provides personal care services but also allows the recipient of services to select a family member as a provider.
3. Community First Choice Option (CFCO)  
This program provides personal care services to those who would otherwise be institutionalized in a nursing facility.
4. Residual (beneficiaries are not full-scope Medi-Cal; State-only program with no FFP)

## HOME AND COMMUNITY BASED SERVICES

### Targeted Case Management (TCM)

The TCM Program provides specialized case management services to Medi-Cal eligible individuals who are developmentally disabled. These clients can gain access to needed medical, social, educational, and other services. TCM services include:

- Needs assessment
- Development of an individualized service plan
- Linkage and consultation
- Assistance with accessing services
- Crisis assistance planning
- Periodic review

### 1915(i) HCBS State Plan Services

**The 1915(i) State Plan Services program provides home and community-based services (HCBS) to persons with developmental disabilities (DD) who are Regional Center consumers but do not meet nursing facility level of care criteria required for enrollment in the HCBS Waiver of Persons with DD. As of February 1, 2016, Behavioral Health Treatment (BHT) services for 1915(i) participants under the age of 21 will be a state plan benefit and paid through the managed care delivery system or fee-for-service for members not eligible to enroll into managed care. The 1915(i) state plan amendment is approved from October 1, 2011 through September 30, 2016. The Department has initiated the 1915(i) renewal process which is projected to be renewed on October 1, 2016.**

### **Waivers**

Medi-Cal operates and administers various HCBS waivers that provide medically needy, frail seniors and persons with disabilities with services that allow them to live in their own homes or community-based settings instead of being cared for in facilities. These waivers require the program to meet federal cost-neutrality requirements so that the total cost of providing waiver services plus medically necessary State Plan services are less than the total cost incurred at the otherwise appropriate facility plus State Plan costs. The following waivers require state cost neutrality: Acquired Immune Deficiency Syndrome (AIDS), Assisted Living (ALW), In-Home Operations (IHO), Nursing Facility/Acute Hospital (**NF/AH**) Waivers, Multipurpose Senior Services Program (MSSP), HCBS Waiver for Persons with (DD), **Self-Directed Program (SDP) for Persons with Developmental Disabilities**, San Francisco Community Living Support Benefit (CLSB), and Pediatric Palliative Care (PPC). A beneficiary may be enrolled in only one waiver at a time. If a beneficiary is eligible for services from more than one waiver, the beneficiary may choose the waiver that is best suited to his or her needs.

### Assisted Living Waiver (ALW)

The ALW pays for assisted services and supports, care coordination, and community transition in 14 counties (Sacramento, San Joaquin, Los Angeles, Riverside, Sonoma, Fresno, San Bernardino, Alameda, Contra Costa, San Diego, Kern, San Mateo, Santa Clara and Orange.)

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Waiver participants can elect to receive services in either a Residential Care Facility for the Elderly (RCFE), an Adult Residential Facility (ARF) or through a home health agency while residing in publicly subsidized housing. Approved capacity of unduplicated recipients for this waiver is 3,700. CMS approved a renewal of the ALW on August 28, 2014 effective from March 1, 2014 through February 28, 2019.

### Community-Based Adult Services (CBAS)

AB 97 (Chapter 3, Statutes of 2011) eliminated Adult Day Health Care (ADHC) services from the Medi-Cal program. A lawsuit was filed challenging elimination of ADHC (*Darling et al. v. Douglas et al.*), resulting in a settlement agreement between DHCS and the plaintiffs. The settlement agreement eliminated the ADHC program effective March 31, 2012, and replaced it with a new program called CBAS. CBAS provides necessary medical and social services to individuals with intensive health care needs. CBAS became a managed care benefit effective April 1, 2012, through an amendment to the "Bridge to Reform" 1115 Medicaid waiver; the CBAS portion continues through the life of the 1115 Demonstration. Eligible participants who meet the more stringent CBAS eligibility standards receive CBAS in approved CBAS centers. CBAS has been provided to all eligible participants since April 1, 2012. There is no cap on enrollment into this waiver service.

### In-Home Operations (IHO) Waiver

The IHO waiver serves either: 1) participants previously enrolled in the Nursing Facility A/B Level of Care (LOC) Waiver who have continuously been enrolled in a DHCS administered HCBS waiver since prior to January 1, 2002, and require direct care services provided primarily by a licensed nurse, or 2) those who have been receiving continuous care in a hospital for 36 months or greater and have physician-ordered direct care services that are greater than those available in the Nursing Facility/Acute Hospital Waiver for the participant's assessed LOC. CMS approved the IHO waiver renewal from January 1, 2015 through December 31, 2019. -

### Nursing Facility/Acute Hospital – Transition and Diversion Waiver

~~\*Effective December 1, 2012, the Developmentally Disabled/Continuous Nursing Care (DD/CNC) Waiver was merged with the Nursing Facility/Acute Hospital (NF/AH) Waiver, based on CMS approval. The newly merged waiver was renamed the Nursing Facility/Acute Hospital (NF/AH) – Transition and Diversion Waiver. Under the NF/AH – Transition and Diversion Waiver, current DD/CNC participants will continue receiving their existing services and the DD/CNC providers will continue to be reimbursed at the pre-existing DD/CNC daily per diem rates.\*~~

The NF/AH – Transition and Diversion Waiver provides Medi-Cal beneficiaries with long-term medical conditions, who meet the acute hospital, adult or pediatric subacute, nursing facility, distinct-part nursing facility (NF) Level of Care, with the option of returning to and/or remaining in his/her home or home-like setting in the community in lieu of hospitalization.

The waiver is approved from January 1, 2012 through December 31, 2016. **The Department is proposing to amend the NF/AH Waiver beginning January 1, 2016 through December 31,**

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### 2016 to account for recent changes in the Fair Labor Standards Act requiring compensation for personal care services overtime.

#### NF/AH Waiver Amendment and Renewal

The NF/AH waiver offers services in the home or ~~in the~~ community to Medi-Cal beneficiaries who would **likely** otherwise receive care in a skilled nursing facility. Eligibility ~~into~~ **for** the NF/AH is based on skilled nursing levels of care. The level of care per waiver participant is determined by the Medi-Cal beneficiary's ~~medical need and substantiated by a physician via a completed Plan of Treatment and a home evaluation conducted by the Department's Long-Term Care Division (LTCD) employed program~~ ~~nurse~~. **The Federal Fair Labor Standards Act (FLSA) regulations requiring compensation for overtime worked by personal care workers was implemented in California February 1, 2016. Full implementation of FLSA, under Senate Bill 855, will begin May 1, 2016 for all providers in IHSS and the NF/AH waiver for Waiver Personal Care Services (WPCS) programs. This will result in some participants needing to exceed their individual cost limit with no change in authorized hours.** The waiver is held to the principle of federal cost neutrality thus services are arranged based on an annual cost limitation per participant. In order to maintain cost neutrality, the overall total costs for the Waiver and Medi-Cal State Plan services cannot exceed the costs of facilities offering equivalent ~~levels~~ of care. The **Currently, the** cost neutrality limit requirements are applied individually to each NF/AH Waiver participant therefore limiting access to critically needed services and risking unnecessary institutionalization on a case by case basis. **The additional overtime costs under the new FLSA overtime requirements may cause some participants to exceed their individual cost limit. Safeguards established within the waiver require the Department to dis-enroll participants who exceed their individual cost limits. The waiver also is currently capped at 3,952 slots per year, thus, a wait list has been created.**

**The waiver amendment and renewal will shift from an individual cost limit to a weighted average level of care while maintaining aggregate cost neutrality and ensure that participants are able to get all needed services despite the individual cost limit and new federal rules on overtime. It will also expand the number of waiver slots available.**

The ~~waiver~~ **amendment** will be renewed on **propose a retroactive effective date of** ~~January~~ **1, 2017** ~~2016~~. The Department is engaging in a stakeholder process, beginning October 2014 ~~2015~~, before finalizing ~~the details of the renewal,~~ **however, it is expected to be effective no sooner than January 1, 2017.** Therefore, the fiscal impact is indeterminate at this time.

#### San Francisco Community Living Support Benefit (CLSB) Waiver

The CLSB Waiver implements AB 2968 (Chapter 830, Statutes of 2006) which allows the San Francisco Department of Public Health (SFDPH) to assist eligible individuals to move into available community settings and to exercise increased control and independence over their lives. ~~Persons eligible for the CLSB Waiver of San Francisco:~~

- Be at least age 21 years or over.

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- Be determined to meet nursing facility level of care as defined in relevant sections of the California Code of Regulations.
- Be either homeless and at imminent risk of entering a nursing facility, or, reside in a nursing facility and want to be discharged to a community setting.
- Have one or more medical co-morbidities.
- Be capable of residing in a housing setting with the availability of waiver services that are based on a Community Care Plan.

CLSB Waiver community settings are limited to State-approved housing, which includes community care facilities licensed by the California Department of Social Services, Community Care Licensing, and Direct Access to Housing (DAH) sites operated by SFDPH.

CLSB Waiver services consist of Care Coordination, Enhanced Care Coordination, Community Living Support Benefit in licensed settings and DAH sites, Behavior Assessment and Planning, Environmental Accessibility Adaptations in DAH sites, and Home-Delivered Meals in DAH sites.

The SFDPH has not achieved targeted enrollment due to lack of housing in community care facilities and DAH sites. As a result, CMS approved a waiver amendment on September 23, 2013, which adjusted enrollment estimates. The waiver is approved from July 1, 2012, through June 30, 2017.

### Acquired Immune Deficiency Syndrome (AIDS) Medi-Cal Waiver

Local agencies, under contract with the California Department of Public Health, Office of AIDS, provide home and community-based services as an alternative to nursing facility care or hospitalization.

Services provided include:

- Administrative Expenses
- Attendant care
- Case management
- Financial supplements for foster care
- Home-delivered meals
- Homemaker services
- In-home skilled nursing care
- Minor physical adaptations to the home
- Non-emergency medical transportation
- Nutritional counseling
- Nutritional supplements
- Psychotherapy

Clients eligible for the program must be Medi-Cal recipients whose health status qualifies them for nursing facility care or hospitalization, in an "Aid Code" with full benefits and not enrolled in the Program of All-Inclusive Care for the Elderly (PACE); have a written diagnosis of HIV disease or AIDS adults who are certified by the nurse case manager to be at the nursing facility

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level of care and score 60 or less using the Cognitive and Functional Ability Scale assessment tool, children under 13 years of age who are certified by the nurse case manager as HIV/AIDS symptomatic; and individuals with a health status that is consistent with in-home services and who have a home setting that is safe for both the client and service providers.

Approved capacity of unduplicated recipients for this waiver is 4,490 in 2014, 4,570 in 2015 and 4,660 in 2016. The waiver is approved from January 1, 2012 through December 31, 2016. The Department\* ~~plans to initiate~~ **initiated** the waiver renewal process ~~in FY \*2015-16~~ **and the waiver was submitted to CMS for renewal with a proposed effective date of January 1, 2017.**

### Multipurpose Senior Services Program (MSSP) Waiver

The California Department of Aging currently contracts with local agencies statewide to provide social and health care management for frail elderly clients who are at risk of placement in a nursing facility but who wish to remain in the community. The MSSP arranges for and monitors the use of community services to prevent or delay premature institutional placement of these individuals. Clients eligible for the program must be 65 years of age or older, live within an MSSP site service area, be able to be served within MSSP's cost limitations, be appropriate for care management services, be currently eligible for Medi-Cal, and can be certified for placement in a nursing facility. Services provided by MSSP include: adult day care / support center, housing assistance, household and personal care assistance, protective supervision, care management, respite, transportation, meal services, social services, and communication services. Under the approved waiver, beginning July 1, 2014 through June 30, 2019, capacity of unduplicated recipients is as follows:

- Waiver Year 1: 12,000
- Waiver Year 2: 12,000
- Waiver Year 3: 12,000
- Waiver Year 4: ~~\*8,812\*~~  
**5,624**
- Waiver Year 5: 5,624

The decrease in Waiver capacity is a result of the Coordinated Care Initiative (CCI), which will phase out the MSSP Waiver by **no later than** December 31, 2017 and integrate as a managed care benefit in the seven CCI counties.

### Home and Community-Based Waiver for Persons with Developmental Disabilities

The DD Waiver provides home and community-based services to persons with developmental disabilities who are Regional Center consumers as an alternative to care provided in a facility that meets the Federal requirement of an intermediate care facility for the mentally retarded; in California, Intermediate Care Facility/Developmentally Disabled-type facilities, or a State Developmental Center. Approved capacity of unduplicated recipients for this waiver is 110,000 in 2013, 115,000 in 2014 and 120,000 in 2015. The waiver is approved from March 29, 2012 through March 28, 2017. **As of March 29, 2017, Behavioral Health Treatment (BHT) services for Waiver participants under the age of 21 will be a state plan benefit and paid through the managed care delivery system or fee-for-service for members not eligible to enroll into managed care.**

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### Home and Community-Based Self-Directed Program Waiver for Persons with Developmental Disabilities

The SDP waiver provides home and community-based services to persons with developmental disabilities that are able to self-direct and are Regional Center consumers. The SDP waiver is an alternative to care provided in a facility that meets the federal requirement of an Intermediate Care Facility/Developmentally Disabled-type facility, or a State Developmental Center. The estimated capacity of unduplicated recipients for the SDP is 1,000 for waiver year 1, and 2,500 for waiver years 2 and 3. The SDP will transition DD waiver participants, who can self-direct their care, at no additional cost to the General Fund. This waiver is pending CMS approval.

As of March 29, 2017, Behavioral Health Treatment (BHT) services for Waiver participants under the age of 21 will be a state plan benefit and paid through the managed care delivery system or fee-for-service for members not eligible to enroll into managed care.

The SDP is expected to begin July 1, 2016 as a five year waiver, ending June 30, 2021.

### Pediatric Palliative Care (PPC) Waiver

The PPC provides children hospice-like services, in addition to State Plan services during the course of an illness, even if the child does not have a life expectancy of six months or less. The objective is to minimize the use of institutions, especially hospitals, and improve the quality of life for the participant and family unit (siblings, parent/legal guardian, and others living in the residence). The pilot Waiver was approved for April 1, 2009, through March 31, 2012. CMS has approved renewal of the Pediatric Palliative Care Waiver for a period of five additional years effective April 1, 2012, through March 31, 2017. Approved capacity of unduplicated recipients for this waiver is 1,800. The PPC Waiver is expected to be renewed prior to the March 31, 2017 expiration.

### **Managed Care Programs**

#### Program of All Inclusive Care for the Elderly (PACE)

PACE is a federally defined, comprehensive, and capitated managed care model program that delivers fully integrated services. PACE covered services include all medical long-term services and supports, dental, vision and other specialty services, allowing enrolled beneficiaries who would otherwise be in an intermediate care facility or in a skilled nursing facility to maintain independence in their homes and communities. Participants must be 55 years or older and determined by the Department to meet the Medi-Cal regulatory criteria for nursing facility placement. PACE participants receive their services from a nearby PACE Center where clinical services, therapies, and social interaction take place. ~~\*The Department has statutory authority to contract with up to 15 PACE organizations.\*~~

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### SCAN Health Plan

SCAN is a Medicare Advantage Special Needs Plan that contracts with the Department to provide services for the dual eligible Medicare/Medi-Cal population subset residing in Los Angeles, San Bernardino, and Riverside counties. SCAN provides all services in the Medi-Cal State Plan; including home and community based services to SCAN members who are assessed at the Nursing Facility Level of Care and nursing home custodial care, following the member in the nursing facility. The eligibility criteria for SCAN specifies that a member be at least 65 years of age, have Medicare A and B, have full scope Medi-Cal with no share of cost and live in SCAN's approved service areas of Los Angeles, Riverside, or San Bernardino counties. SCAN does not enroll individuals with End Stage Renal Disease. ~~\*The Department negotiates this contract on an annual basis.\*~~

### **Special Grant**

#### California Community Transitions/Money Follows the Person (CCT/MFP) Rebalancing Demonstration Grant

In January 2007, the Centers for Medicare & Medicaid Services awarded the Department a grant for the Money Follows the Person Rebalancing Demonstration Grant, called California Community Transitions. This grant is authorized under section 6071 of the federal Deficit Reduction Act of 2005 and extended by the Patient Protection and Affordable Care Act. Grant funds may be requested from January 1, 2007, through September 30, ~~\*2018\*~~ **2020**. ~~\*The Department is pursuing the continuation of grant funds through September 30, 2020.\*~~ The grant requires the Department to develop and implement strategies for transitioning Medi-Cal ~~\*beneficiaries\*~~ **members** who have resided continuously in health care facilities ~~\*for three\*~~ **90 days** or longer back to a federally-qualified residence.

## **1115 WAIVER-MH/UCD, & BTR, & MEDI-CAL 2020**

The Medi-Cal Hospital/Uninsured Care Section 1115(a) Medicaid Demonstration (MH/UCD) ended on October 31, 2010, and the California Bridge to Reform Section 1115(a) Medicaid Demonstration (BTR) **ended on December 31, 2015. The Medi-Cal 2020 Section 1115(a) Medicaid Demonstration (Medi-Cal 2020)** was approved effective ~~\*November 1, 2010~~ **January 1, 2016**, for five years. ~~This Demonstration extends and modifies the previous MH/UCD. Many of the features of the previous Demonstration have been continued with modifications as noted in the individual assumptions. There is no new funding for the South LA Preservation Fund and the Distressed Hospital Fund. Other significant changes\*in the Demonstration are:~~

- ~~• \*Expansion of the state-only programs that may be federalized up to a maximum of \$400 million in each year of the waiver;~~
- ~~• Creation of a Delivery System Reform Incentive Pool (DSRIP) fund to support public hospital efforts in enhancing quality of care and health of patients;~~
- ~~• Expansion of the current Health Care Coverage Initiative (HCCI) by creating a separate Medicaid Coverage Expansion (MCE) program using new funding for those eligibles that have family income at or below 133% of the Federal Poverty Level\*~~

~~\*The BTR was scheduled to end on October 31, 2015. The Department announced a conceptual agreement with CMS on October 31, 2015 that outlined the major components of the Waiver renewal, along with a temporary extension to December 31, 2015 of the existing BTR waiver while the official Special Terms and Conditions (STCs) were completed.~~

~~The total initial federal funding in the renewal is \$6.218 billion, with the potential for additional federal funding in the global payment program to be determined after the first year.~~

~~The conceptual agreement includes the following core elements: \*~~

- ~~• \*Global Payment Program (GPP) for services to the uninsured in designated public hospital systems (DPH). The GPP converts existing Disproportionate Share Hospital (DSH) and Safety Net Care Pool (SNCP) uncompensated care funding — which is hospital-focused and cost-based — to a system focused on value and improved care delivery. The funding of the GPP will include five years of the DSH funding that otherwise would have been allocated to Designated Public Hospitals (DPHs) along with \$236 million in initial federal funding for one year of the SNCP component. SNCP component funding for years two through five would be subject to an independent assessment of uncompensated care.\*~~
- ~~• \*Delivery system transformation and alignment incentive program for DPHs and district/municipal hospitals (DMPH), known as PRIME (Public Hospital Redesign and Incentives in Medi-Cal). The federal funding of PRIME for the DPHs is a total of \$3.2655 billion over the five years of the Waiver, which includes \$700 million for each of the first three years, \$630 million in year four, and \$535.5 million in year five. The federal funding for the DMPHs is a total of \$466.5 million over the five years of the Waiver, which includes \$100 million for each of the first three years, \$90 million in year four, and \$76.5 million in year five.\*~~

## **1115 WAIVER-MH/UCD, & BTR, & MEDI-CAL 2020**

- ~~\*Dental Transformation Incentive program. The funding of this program is \$750 million in total funding over five years.\*~~
- ~~\*Whole Person Care Pilot (WPC) program, which would be a county-based, voluntary program to target providing more integrated care for high-risk, vulnerable populations. The funding of this program would be up to \$1.5 billion in federal funds over five years.\*~~
- ~~\*Independent assessment of access to care and network adequacy for Medi-Cal managed care beneficiaries.\*~~
- ~~\*Independent studies of uncompensated care and hospital financing.\*~~

**Medi-Cal 2020 builds on the successes of the state's Bridge to Reform waiver in 2010, a critical piece of the state's implementation of the Affordable Care Act. The Medi-Cal 2020 waiver opens the door to innovative changes in the way Medi-Cal provides services to its members, all with the goals of improving efficiency, access, and quality of care.**

**This final Medi-Cal 2020 renewal reflects the overall construct announced at the end of October. It includes initial federal funding over the five years of \$6.2 billion, with the potential for additional federal funding in the Global Payment Program (GPP) after the initial year of the waiver.**

**Some of the key programmatic elements of Medi-Cal 2020 are:**

- **Public Hospital Redesign and Incentives in Medi-Cal (PRIME) – This program builds on the success of the state's Delivery System Reform Incentive Program (DSRIP), which was the first such transformation effort in the nation. Under PRIME, Designated Public Hospital (DPH) systems and District Municipal Public Hospitals (DMPHs) will be required to achieve greater outcomes in areas such as physical and behavioral health integration and outpatient primary and specialty care delivery. Additionally, PRIME requires DPHs to transition managed care payments to alternative payment methodologies, moving them further toward value-based payment structures over the course of the waiver. PRIME offers incentives for meeting certain performance measures for quality and efficiency. Over the course of the five years, federal funding for PRIME for DPHs is \$3.27 billion, and for DMPHs is \$466.5 million.**
- **Global Payment Program (GPP) – A new program aimed at improving the way care is delivered to California's remaining uninsured. GPP transforms traditional hospital funding for DPHs from a system that focuses on hospital-based services and cost-based reimbursement into a value-based payment structure. Under the GPP, DPHs are incentivized to provide ambulatory primary and preventive care to the remaining uninsured through a value-based payment structure that rewards the provision of care in more appropriate settings. This new and innovative approach to restructuring these traditional hospital-focused funds allows California to better target funding for the remaining uninsured and incentivize delivery system change – focusing on the provision of primary and preventive**

### **1115 WAIVER-MH/UCD, & BTR, & MEDI-CAL 2020**

**care, and shifting away from avoidable emergency room and hospital utilization. The federal funding for GPP will be a combination of the DSH funding for participating DPHs and \$236 million in federal funding for the first year from the prior SNCP. The non-DSH funding for years two through five will be determined following an independent assessment of uncompensated care due to be completed in the spring of 2016.**

- **Dental Transformation Initiative (DTI) – For the first time, California’s Waiver also includes opportunities for improvements in the Medi-Cal Dental Program. The DTI provides incentive payments to Medi-Cal dental providers who meet certain requirements and benchmarks in critical focus areas such as preventive services and continuity of care. Over the course of the waiver, up to \$750 million in total funding is available under DTI. The non-federal share for DTI will be funded through State General Fund savings achieved through limited continuation of Designated State Health Program (DSHP) funding.**
- **Whole Person Care (WPC) Pilots – Another innovative component of Medi-Cal 2020 will allow for county-based pilots to target high-risk populations. The overarching goal of the WPC pilots is the integration of systems that provide physical health, behavioral health, and social services to improve members’ overall health and well-being, with the goals of improved beneficiary health and well-being through more efficient and effective use of resources. WPC Pilots may also choose to expand access to supportive housing options for these high-risk populations. The waiver renewal authorized up to \$1.5 billion in federal funding over the five years; WPC Pilot lead entities will provide the non-federal share.**
- **In addition to these programs, Medi-Cal 2020 continues authorities for the Medi-Cal managed care program, Community-Based Adult Services, the Coordinated Care Initiative (including CalMediConnect), and the Drug Medi-Cal Organized Delivery System.**

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## MANAGED CARE

### Medi-Cal Managed Care Rates

Base Rates are developed through encounter and claims data available for each plan for the most recent 12 months and plans' self-reported utilization and encounters by category of service (i.e., Inpatient, ER, Pharmacy, PCP, Specialist, FQHC, etc.) for each rate category for the same period. Medi-Cal eligibility and paid claims data are used to identify all births occurring in each county and health plan. The expenditures associated with labor and delivery services are then removed from the base expenditure data. The delivery events and associated maternity costs are carved out of the Family/Adult, and Seniors and Persons with Disabilities (SPDs) Medi-Cal Only aid categories to establish a budget neutral county specific maternity supplemental payment.

Trend studies are performed and policy changes are incorporated into the rates. Medi-Cal specific financial statements are gathered for each plan for the last five quarters. Administrative loads are developed based upon a Two-Plan program average. Plan specific rates are established based upon all of the aforementioned steps.

A financial experience model is developed by trending plan specific financial data to the mid-point of the prospective rate year. The financial experience is then compared to the rate results established through the rate development model. If the result is reasonable, the rates are established from the rate development model. If the result is not reasonable, additional research is performed and the rates are adjusted based upon the research and actuarial judgment.

The maternity supplemental payments are in addition to the health plan's monthly capitation payment and are paid based on the plan's reporting of a delivery event. Maternity supplemental payment amounts are done in a budget neutral manner so that the cost of the expected deliveries does not exceed the total dollars removed from the Adult/Family and Disabled Medi-Cal Only capitation rates.

Prior to July 1, 2014, rates for the Family category of aid (COA) were paid as one blended rate. Effective July 1, 2014, the department has split the Family COA in 2 groups: "Child (Under 19)" and "Family/Adult (19 and Over)".

Capitation rates are risk adjusted to better reflect the match of a plan's expected costs to the plan's risk. Capitation rates are risk adjusted in the Family/Adult and Aged /Disabled/Medi-Cal Only Categories of Aid (COAs).

Risk Adjustment and County Averaging is prepared with plan specific pharmacy data (with NDC Codes) gathered for Managed Care and FFS enrollment data for the most recent 12 month period. A cut-off date is established for the enrollment look-back. If a beneficiary is enrolled for at least 6 out of 12 months, (not necessarily consecutive) then the beneficiary will be counted in the plan's risk scoring calculation.

Medicaid RX from UC San Diego is the Risk Adjustment Software used. Medicaid RX classifies risk by 11 age bands, gender, and 45 disease categories. Each member in the Family/Adult or

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## MANAGED CARE

SPD Medi-Cal only rate category, in a specific plan, that meets the eligibility criteria, is assigned a risk score. Member scores are aggregated to develop two risk scores for each plan operating in a county; a risk score for the Family/Adult rate and one for the SPD Medi-Cal only rate. A county specific rate is then developed for the Family/Adult rate and the SPD Medi-Cal only rate. The basis for the county specific rate is the aggregate of the plan specific rates developed and each plan's enrollment for a weighted average county rate. For the 2015-16 rates, 60% of this county specific rate was taken and multiplied by each plan's respective risk score and 40% of each plan's plan specific rate was retained and added to the 60% risk adjusted rate to establish a risk adjusted plan specific rate. The risk adjustment policy will be examined in future years and adjusted if determined necessary.

For County Organized Health Systems, rates continue to be based on the plans' reported expenditures trended in the same manner as for the Two Plan and GMC models.

### **Fee-for-Service Expenditures for Managed Care Beneficiaries**

Managed care contracts require health plans to provide specific services to Medi-Cal enrolled beneficiaries. Medi-Cal services that are not delegated to contracting health plans remain the responsibility of the Medi-Cal FFS program. When a beneficiary who is enrolled in a Medi-Cal managed care plan is rendered a Medi-Cal service that has been explicitly excluded from their plan's respective managed care contract, providers must seek payment through the FFS Medi-Cal program. The services rendered in the above scenario are commonly referred to as "carved out" services. "Carved-out" services and their associated expenditures are excluded from the capitation payments and are reflected in the Medi-Cal FFS paid claims data.

In addition to managed care carve-outs, the Department is required to provide additional reimbursement through the FFS Medi-Cal program to FQHC/RHC providers who have rendered care to beneficiaries enrolled in managed care plans. These providers are reimbursed for the difference between their prospective payment system rate and the amount they receive from managed care health plans. These FFS expenditures are referred to as "wrap-around" payments.

FQHC "wrap-around" payments and California Children's Services "carve-out" expenditures account for roughly 70% of all FFS expenditures generated by Medi-Cal beneficiaries enrolled in managed care plans.

For further information, see policy change FFS Costs for Managed Care Enrollees.

### **2015-16 and 2016-17 Rates**

Overall, the rates represent a 2.3% increase in FY 2015-16 over the previous fiscal year rates (based on a fiscal year comparison). Rates for FY 2016-17 represent a 2.5% increase over the 2015-16 fiscal year rates.

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## PROVIDER RATES

### **Reimbursement Methodology and the Quality Assurance Fee for AB 1629 Facilities**

AB 1629 requires the Department to develop a cost-based, facility-specific reimbursement rate methodology for freestanding skilled (level B) nursing facilities, including subacute units which are part of a freestanding skilled nursing facility. Rates are updated annually and are established based on the most recent audited cost report data. AB 1629 also imposed a Quality Assurance Fee (QAF) on these facilities and added requirements for discharge planning and assistance with community transitions.

The rate methodology developed by the Department computes facility-specific, cost-based per diem payments for SNFs based on five cost categories, which are subject to limits. Limits are set based on expenditures within geographic peer groups. Also, costs specific to one category may not be shifted to another cost category.

Labor: This category has two components: direct resident care labor costs and indirect care labor costs.

- Direct resident care labor costs include salaries, wages and benefits related to routine nursing services defined as nursing, social services and personal activities. Costs are limited to the 90th percentile of each facility's peer group.
- Indirect care labor includes costs related to staff support in the delivery of patient care including, but not limited to, housekeeping, laundry and linen, dietary, medical records, in-service education, and plant operations and maintenance. Costs are limited to the 90th percentile of each facility's peer group.

Indirect care non-labor: This category includes costs related to services that support the delivery of resident care including the non-labor portion of nursing, housekeeping, laundry and linen, dietary, in-service education, pharmacy consulting costs and fees, plant operations and maintenance costs. Costs are limited to the 75th percentile of each facility's peer group.

Administrative: This category includes costs related to allowable administrative and general expenses of operating a facility including: administrator, business office, home office costs that are not directly charged and property insurance. This category excludes costs for caregiver training, liability insurance, facility license fees and medical records. Costs are limited to the 50th percentile.

Fair rental value system (FRVS): This category is used to reimburse property costs. The FRVS is used in lieu of actual costs and/or lease payments on land, buildings, fixed equipment and major movable equipment used in providing resident care. The FRVS formula recognizes age and condition of the facility. Facilities receive increased reimbursement when improvements are made.

Direct pass-through: This category includes the direct pass-through of proportional Medi-Cal costs for property taxes, facility license fees, caregiver training costs, and new state and federal mandates including the facility's portion of the QAF.

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## PROVIDER RATES

### **Quality and Accountability Supplemental Payment Program**

SB 853 (Chapter 717, Statutes of 2010) requires the Department to implement a Quality and Accountability Supplemental Payment (QASP) Program for SNFs by August 1, 2010. The QASP Program will enable SNF reimbursement to be tied to demonstrated quality of care improvements for SNF residents. AB 1489 (Chapter 631, Statutes of 2012) delayed the payments and required the Department to make the payments by April 30, 2014.

AB 119 (Chapter 17, Statutes of 2015) extends the AB 1629 facility-specific rate methodology, QAF, and QASP program through July 31, 2020. Further, beginning rate year 2015-16, the annual weighted average rate increase is 3.62%, and the QASP will continue at FY 2014-15 levels, rather than setting aside a portion of the annual rate increase. Additionally, beginning FY 2015-16, the legislation requires the Department to incorporate direct care staff retention as a performance measure into the QASP Program.

### **Reimbursement Methodology for Other Long-Term Care Facilities (non-AB 1629)**

The reimbursement methodology is based on a prospective flat-rate system, with facilities divided into peer groups by licensure, level of care, bed size and geographic area in some cases. Rates for each category are determined based on data obtained from each facility's annual or fiscal period closing cost report. Audits conducted by the Department result in adjustments to the cost reports on an individual or peer-group basis. Adjusted costs are segregated into four categories:

Fixed Costs (Typically 10.5 percent of total costs). Fixed costs are relatively constant from year to year, and therefore are not updated. Fixed costs include interest on loans, depreciation, leasehold improvements and rent.

Property Taxes (Typically 0.5 percent of total costs). Property taxes are updated 2% annually, as allowed under Proposition 13.

Labor Costs (Typically 65 percent of total costs). Labor costs, i.e., wages, salaries, and benefits, are by far the majority of operating costs in a nursing home. The inflation factor for labor is calculated by DHCS based on reported labor costs.

All Other Costs (Typically 24 percent of total costs). The remaining costs, "all other" costs, are updated by the California Consumer Price Index.

### **Methodology by Type of LTC Facility**

Projected costs for each specific facility are peer grouped by licensure, level of care, and/or geographic area/bed size.

Intermediate Care Facilities (Freestanding Nursing Facilities-Level A, NF-A) are peer-grouped by location. Reimbursements are equal to the median of each peer group.

## PROVIDER RATES

Distinct Part (Hospital-Based) Nursing Facilities-Level B (DP/NF-B) are grouped in one statewide peer group. DP/NF-Bs are paid their projected costs up to the median of their peer group. When computing the median, facilities with less than 20 percent Medi-Cal utilization are excluded.

Intermediate Care Facilities for the Developmentally Disabled, Developmentally Disabled-Habilitative, and Developmentally Disabled-Nursing (ICF/DD, ICF/DD-H, ICF/DD-N) are peer grouped by level of care and bed size. Effective June 2014, providers of services to developmentally disabled clients have rates set as follows: Each rate year, individual provider costs are rebased using cost data applicable for the rate year. Each ICF/DD, ICF/DD-H or ICF/DD-N will receive the lower of its projected costs plus 5% or the 65<sup>th</sup> percentile established in 2008-2009, with none receiving a rate lower than 90% of the 2008-2009 65<sup>th</sup> percentile.

**Effective August 1, 2016, ABX2 1 (Chapter 3, Statutes of 2016) will require the Department to reimburse ICF/DD, ICF/DD-H, and ICF/DD-N providers the rate in effect in the 2008-09 rate year, increased by 3.7%.**

Subacute Care Facilities are grouped into two statewide peer groups: hospital-based providers and freestanding nursing facility providers. Subacute care providers are reimbursed their projected costs up to the median of their peer group.

Pediatric Subacute Care Units/Facilities are grouped into two peer groups: hospital-based nursing facility providers and freestanding nursing facility providers. There are different rates for ventilator and non-ventilator patients. Reimbursement is based on a model since historical cost data were not previously available.

## INFORMATION ONLY

## REVENUES

1. Revenues

The State is expected to receive the following revenues from quality assurance fees (accrual basis):

FY 2014-15: \$	27,409,000	ICF-DD Quality Assurance Fee
\$	522,095,000	Skilled Nursing Facility Quality Assurance Fee (AB 1629)
\$	9,219,000	ICF-DD Transportation/Day Care Quality Assurance Fee
\$	1,862,000	Freestanding Pediatric Subacute Quality Assurance Fee
\$	1,407,405,000	MCO Tax
\$	3,991,796,000	Hospital Quality Assurance Revenue Fund (Item 4260-611-3158)
\$	<del>8,750,000</del> <b>7,440,000</b>	Emergency Medical Air Transportation Fund (EMATA)
\$	<del>5,968,536,000</del> <b>5,967,226,000</b>	Total
FY 2015-16: \$	26,705,000	ICF-DD Quality Assurance Fee
\$	540,994,000	Skilled Nursing Facility Quality Assurance Fee (AB 1629)
\$	<del>9,244,000</del> <b>9,393,000</b>	ICF-DD Transportation/Day Care Quality Assurance Fee
\$	1,862,000	Freestanding Pediatric Subacute Quality Assurance Fee
\$	<del>1,744,753,000</del> <b>1,609,742,000</b>	MCO Tax
\$	4,600,535,000	Hospital Quality Assurance Revenue Fund (Item 4260-611-3158)
\$	10,000,000	Emergency Medical Air Transportation (EMATA) Fund
\$	<del>6,934,093,000</del> <b>6,799,231,000</b>	Total
FY 2016-17: \$	26,993,000	ICF-DD Quality Assurance Fee
\$	560,578,000	Skilled Nursing Facility Quality Assurance Fee (AB 1629)
\$	<del>9,244,000</del> <b>9,393,000</b>	ICF-DD Transportation/Day Care Quality Assurance Fee
\$	1,862,000	Freestanding Pediatric Subacute Quality Assurance Fee
\$	<del>1,583,986,000</del> <b>2,380,298,000</b>	MCO Tax
\$	2,575,289,000	Hospital Quality Assurance Revenue Fund (Item 4260-611-3158)
\$	10,000,000	Emergency Medical Air Transportation (EMATA) Fund
\$	<del>4,767,952,000</del> <b>5,564,413,000</b>	Total

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Effective August 1, 2009, the Department expanded the amount of revenue upon which the quality assurance fee for AB 1629 facilities is assessed, to include Medicare.

The FY 2011-12 ICF/DD Transportation/Day Care QA fee includes a one-time retroactive collection of \$22.5 million in QA fees for FY 2007-08 through FY 2010-11. In addition to the retroactive QA fees, the QA fee includes an estimated \$6.1 million for FY 2011-12. The ICF/DD Transportation/Day Care QA fee is expected to remain consistent in future years.

Effective January 1, 2012, pursuant to ABX1 19 (Chapter 4, Statutes of 2011), the Department will implement a QA fee from Freestanding Pediatric Subacute Care facilities, pending CMS approval.

SB 78 (Chapter 33, Statutes of 2013) provides for a statewide tax on the total operating revenue of Medi-Cal Managed Care Plans. Although this tax is effective through June 2016, it has been deemed out of compliance with federal regulations and will be replaced with a new tax beginning July 1, 2016. Proposed legislation provides that the new tax will apply to the Medi-Cal revenue of most managed care plans in the state, with some exemptions. The new tax structure will meet federal requirements while achieving the same GF savings as the previous tax and also providing sufficient funding to restore the 7% reduction in the In-Home Supportive Services Program.

AB 1383 (Chapter 627, Statutes of 2009) authorized the implementation of a quality assurance fee on applicable general acute care hospitals. The fee is deposited into the Hospital Quality Assurance Revenue Fund (Item 4260-601-3158). This fund is used to provide supplemental payments to private and non-designated public hospitals, grants to designated public hospitals, and enhanced payments to managed health care and mental health plans. The fund is also used to pay for health care coverage for children, staff and related administrative expenses required to implement the QAF program. SB 90 (Chapter 19, Statutes of 2011) extended the hospital QAF through June 30, 2011. SB 90 also ties changes in hospital seismic safety standards to the enactment of a new hospital QAF that results in revenue for FY 2011-12 children's services of at least \$320 million.

SB 335 (Chapter 286, Statutes of 2011) authorized the implementation of a new Hospital Quality Assurance Fee (QAF) program for the period of July 1, 2011 to December 31, 2013. This new program authorizes the collection of a quality assurance fee from non-exempt hospitals. The fee is deposited into the Hospital Quality Assurance Revenue and is used to provide supplemental payments to private hospitals, grants to designated public hospitals and non-designated public hospitals, increased capitation payments to managed health care plans, and increased payments to mental health plans. The fund is also used to pay for health care coverage for children and for staff and related administrative expenses required to implement the QAF program.

SB 239 (Chapter 657, Statutes of 2013) extended the Hospital QAF program from January 1, 2014, through December 31, 2016. This extension authorizes the collection of a quality assurance fee from non-exempt hospitals. The fee is deposited into the Hospital Quality Assurance Revenue and is used to provide supplemental payments to private hospitals, grants to designated public hospitals and non-designated public hospitals, and increased

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capitation payments to managed health care plans. The fund is also used to pay for health care coverage for children and for staff and related administrative expenses required to implement the QAF program.

The California Department of Public Health (CDPH) lowered Licensing and Certification (L&C) fees for long-term care providers for FY 2010-11. The aggregate amount of the reductions allowed the QA fee amounts collected from the freestanding NF-Bs and ICF/DDs (including Habilitative and Nursing) to increase by an equal amount. Currently, the QA fee amounts are calculated to be net of the L&C fees in order to be within the federally designated cap, which provides for the maximum amount of QA fees that can be collected. For FY 2011-12, CDPH increased L&C fees which resulted in a reduction in the collection of the QA fee by an equal amount to the L&C fee increase for free-standing NF-Bs, Freestanding Pediatric Subacute Facilities and ICF/DDs (including Habilitative and Nursing).

Effective January 1, 2011, AB 2173 (Chapter 547, Statutes of 2010) imposes an additional penalty of \$4 for convictions involving vehicle violations.

AB 119 (Chapter 17, Statutes of 2015) extends the AB 1629 facility-specific rate methodology, QAF, and QASP program through July 31, 2020. Further, beginning rate year 2015-16, the annual weighted average rate increase is 3.62%, and the QASP will continue at FY 2014-15 levels, rather than setting aside a portion of the annual rate increase. Additionally, beginning FY 2015-16, the legislation requires the Department to incorporate direct care staff retention as a performance measure into the QASP Program.

## ELIGIBILITY

### 1. County Administration Base

The Department is in the process of finalizing a Request for Offer (RFO) for approval to hire a contractor to begin evaluating county processes and time-studies associated with the new budgeting methodology. The Department anticipates the workgroup to begin meeting in FY 2015-16.

### 2. Qualifying Individual Program

The Balanced Budget Act of 1997 provided 100% federal funding, effective January 1, 1998, to pay for Medicare premiums for two new groups of Qualifying Individuals (QI). QI-1s have their Part B premiums paid and QI-2s receive an annual reimbursement for a portion of the premium. The QI programs were scheduled to sunset December 31, 2002, but only the QI-2 program did sunset December 31, 2002. HR 3971, enacted as Public Law 109-91, extended the program through September 30, 2007. The sunset date was extended to March 31, 2015, by HR 4302, the Protecting Access to Medicare Act of 2014. The Medicare Access and CHIP Reauthorization Act of 2015 provides a permanent allotment of the QI-1 program.

### 3. Transitional Medi-Cal Program

As part of Welfare Reform in 1996 (PRWORA of 1996, P.L. 104-193), the Transitional Medi-Cal Program (TMC) became a one-year federal mandatory program for parents and children

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who are terminated from the Section 1931(b) program due to increased earnings and/or hours from employment. Prior to this current twelve month program, TMC was limited to four months for those discontinued from the Aid to Families with Dependent Children program due to earnings. Since 1996, it has had sunset dates that Congress has continually extended. The current sunset date has been extended March 31, 2015, by HR 4302, the Protecting Access to Medicare Act of 2014.

### 4. Impact of SB 708 on Long-Term Care for Aliens

Section 4 of SB 708 (Chapter 148, Statutes of 1999) reauthorizes state-only funded long-term care for eligible aliens currently receiving the benefit (including aliens who are not lawfully present). Further, it places a limit on the provision of state-only long-term care services to aliens who are not entitled to full-scope benefits and who are not legally present. This limit is at 110% of the FY 1999-00 estimate of eligibles, unless the legislature authorizes additional funds. SB 708 does not eliminate the uncodified language that the *Crespin* decision relied upon to make the current program available to eligible new applicants. Because the number of undocumented immigrants receiving State-only long-term care has not increased above the number in the 1999-00 base year, no fiscal impact is expected due to the spending limit.

### 5. Electronic Asset Verification Program

Due to the requirements imposed by HR 2642 of 2008, the Department is required to implement electronic verification of assets for all Aged, Blind or Disabled (ABD) applicants/beneficiaries through electronic requests to financial institutions. The Department will enter into a contract with a financial vendor that will enable the counties to receive asset information for the ABD population. The financial vendor will provide counties with data from financial institutions that could indicate assets and property not reported by the applicant or beneficiary. The counties will have the responsibility to require the applicant or beneficiary to provide additional supporting documentation before an eligibility determination is made. There will be undetermined costs for a third party contract as well as reimbursements to financial institutions. Although savings from asset and eligibility verification are currently indeterminate, savings/cost avoidance will be achieved when supplemental data increases the accuracy of eligibility determinations for the ABD population. The implementation date of this program is currently unknown.

### 6. Lanterman Developmental Center Closure

On April 1, 2010, the California Department of Developmental Services (CDDS) submitted a plan to the Legislature for the closure of Lanterman Developmental Center. CDDS is working with consumers, families, and the regional centers to transition residents to community living arrangements. If eligible for Medi-Cal, residents moving into the community will be enrolled in a Medi-Cal managed care health plan or will receive services through the fee-for-service (FFS) system. All residents were transitioned out of Lanterman Development Center by December 31, 2014.

**INFORMATION ONLY****7. Medi-Cal Inpatient Services for Inmates**

AB 720 (Chapter 646, Statutes of 2013) requires the suspension of Medi-Cal benefits for all Medi-Cal eligible inmates, regardless of age. This new state law authorizes county boards of supervisors, in consultation with the county sheriff, to designate an entity or entities to act on behalf of county inmates and assist county jail inmates to apply for a health insurance affordability program.

**8. Refugee Resettlement Program**

The federal Refugee Resettlement Program provides medical services to refugees during their first eight months in the United States. In California, these medical services are provided through the Medi-Cal delivery system and funded with 100% federal funds through a federal grant. The California Department of Public Health administers the Refugee Resettlement Program federal grant. With the Affordable Care Act, a majority of refugees are expected to be eligible for Medi-Cal and will no longer receive their medical services through the Refugee Resettlement Program. The Department expects the number of eligibles receiving their medical services under the Refugee Resettlement Program to be negligible. All medical costs associated with the Refugee Resettlement Program will be funded 100% through the federal grant.

**9. Proposal for Glendale Adventist Medical Center**

The Department of State Hospitals (DSH) is pursuing a contract with Glendale Adventist Medical Center, for up to a 40-bed program in a secure facility located in a non-DSH hospital at a daily rate of \$300 per bed. This equates to an estimated cost of \$109,500 per bed, per year. The program will be licensed as a Skilled Nursing Facility (SNF) and will serve SNF patients transferred primarily from DSH-Metropolitan. The patients eligible for this transfer would be committed as either: Not Guilty by Reason of Insanity (NGI), Mentally Disordered Offenders (MDO), or Lanterman-Petris-Short (LPS) patients in need of treatment on a SNF unit. DSH-Metropolitan is currently able to transfer up to 40 patients to Glendale and backfill those beds with low-security forensic patients who are able to receive treatment outside of the Secure Treatment Area (STA) and who are in need of SNF care. This will, in turn, free additional beds in the STA and allow DSH to admit additional forensic patients.

**AFFORDABLE CARE ACT****1. Realignment**

Under the Affordable Care Act, county costs and responsibilities for indigent care are expected to decrease as uninsured individuals obtain health coverage. The State, in turn will bear increased responsibility for providing care to these newly eligible individuals through the Medi-Cal expansion. The budget sets forth two mechanisms for determining county health care savings that, once determined, will be redirected to fund local human services programs. The 12 public hospital counties and the 12 non-public/non-County Medical Services Program counties have selected one of two mechanisms. Option 1 is a formula that measures health care costs and revenues for the public hospital county Medi-Cal and uninsured population and non-public/non-CMSP county indigent population.

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Option 2 is redirection of 60% of a county's health realignment allocation plus 60% of the maintenance of effort. Assembly Bill (AB) 85 (Chapter 24, Statutes of 2013) as amended by Senate Bill 98 (Chapter 358, Statutes of 2013) lays out the methodology for the formula in Option 1, and requires the department to perform the calculation. AB 85 also sets targets, and a process to meet the targets, for the number of newly eligible Medi-Cal enrollees who will be default assigned to County Public Hospital health systems as their managed care plan primary care provider. Public hospital health systems will be paid at least cost for their new Medi-Cal population.

The redirected amounts will be calculated by the Department, but will not be included in the Department's budget. Savings are estimated to be \$741.9 million for FY 2015-16 and ~~\*\$564.5\*~~ **\$629.76** million for FY 2016-17. Final reconciliation for FY 2013-14 is estimated to cost ~~\*\$151.7\*~~ **\$177.4** million to be paid in FY 2016-17.

### 2. Disproportionate Share Hospital Reduction

The ACA reduction in the Disproportionate Share Hospital (DSH) allotments was to have gone into effect on October 1, 2013; instead, HR 2 (2015) was enacted on April 16, 2015, which delays the start of the reductions until October 1, 2017. The ACA nationwide reduction of State DSH allotments will begin to occur in FY 2017-18. The reduction for each state will be determined by CMS.

For federal fiscal year 2018, an aggregate of \$2 billion in reduction for all states has been determined, but state specific reductions have not been released by CMS.

### 3. Optional Expansion Medical Loss Ratio (MLR) Audit Requirement

**The Department will audit Optional Expansion MLR calculations of managed care plans for two periods. The first period covers 18 months from January 1, 2014 to June 30, 2015. The second period covers 12 months from July 1, 2015 to June 30, 2016. The MLR used for the Optional Expansion population requires managed care plans to return excess capitation payments up to 85 percent of allowed costs. No action is taken if the MLR is between 85 to 95 percent. If the managed care plan's allowed costs exceed 95 percent of net capitation payments, the Department must pay the plan the difference to bring the MLR down to 95 percent.**

**These audits are expected to result in a recoupment of Optional Expansion capitation payments over multiple years after FY 2016-17. Managed care plans must pay recoupment amounts back to the Department 90 days after the issuance of the audit report. The Department will pay back 100 percent of the recouped funds to the federal government, as the Optional Expansion rates were 100 percent federal funds. Audits will be initiated no sooner than June 30, 2016.**

## INFORMATION ONLY

### BENEFITS

#### 1. State-Only Anti-Rejection Medicine Benefit Extension

Assembly Bill 2352 (Chapter 676, Statutes of 2010) requires Medi-Cal beneficiaries to remain eligible for State-Only Medi-Cal coverage for anti-rejection medication for up to two years following an organ transplant unless, during that time, the beneficiary becomes eligible for Medicare or private health insurance that would cover the medication. Currently, some patients qualify for Medi-Cal under a federal rule allowing coverage for anti-rejection medication for one year post organ transplant. After this eligibility ends, the Department will no longer receive FFP. Therefore, the costs for extending this benefit will be 100% General Fund. The fiscal impact is indeterminate.

### HOME & COMMUNITY BASED-SERVICES

#### 1. AB 398—Traumatic Brain Injury

The Traumatic Brain Injury Pilot Project was authorized by AB 1410 (Chapter 676, Statutes of 2007). AB 1410 was updated and replaced by AB 398 (Chapter 439, Statutes of 2009) which directed the Department to work in conjunction with the Department of Rehabilitation to develop a waiver or SPA that would allow the Department to provide HCBS to at least 100 persons with Traumatic Brain Injury. The legislation contained language stating the project would only be operable upon appropriation of funds. There is currently no appropriation to initiate and sustain this pilot project. In conjunction with DOR, the Department has explored serving this population through other HCBS waivers.

### BREAST AND CERVICAL CANCER TREATMENT

### PHARMACY

#### 1. State Supplemental Drug Rebates – Managed Care

State supplemental rebates for drugs are negotiated by the Department with drug manufacturers to provide rebates in addition to the mandatory federal rebates already collected. SB 870 (Chapter 40, Statute of 2014) authorizes the Department to include utilization data from MCOs to determine and collect state supplemental rebates for prescription drugs added to the Medi-Cal Statewide Contract Drug List pursuant to Welfare & Institutions Code section 14105.33. Examples of prescription drugs subject to MCO state supplemental rebates may include drugs to treat diseases such as, but not limited to, cancer, HIV/AIDS, hemophilia and hepatitis C. The Department is pursuing contracts for these rebates.

#### 2. Outpatient Prescription Drug Rule

**On February 1, 2016, CMS published the Final Rule for Covered Outpatient Drugs, effective April 1, 2016. The Final Rule requires states to 1) reimburse pharmacies based on the Actual Acquisition Cost (AAC) of outpatient drugs; and 2) establish a**

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**dispensing fee. In order to comply with the Final Rule by April 1, 2017, the Department must complete a survey on pharmacy acquisition costs and a study for the dispensing fee. The Department will need to make State Plan Amendment (SPA) and legislative changes to adjust the existing pharmacy reimbursement and dispensing fee methodology. The Department anticipates a fiscal impact from this change, however, the net impact is currently unknown.**

### DRUG MEDI-CAL

#### 1. Naltrexone Treatment Services

Naltrexone Treatment provides outpatient Naltrexone services to detoxified persons with opioid dependency and substance use disorder diagnoses. Naltrexone blocks the euphoric effects of opioids and helps prevent relapse to opioid use. Naltrexone services are not provided to pregnant women. While these benefits are available, beneficiaries are currently not utilizing the service.

#### 2. SUD Services Modification for Narcotic Treatment Program

Effective January 1, 2014, SPA #13-038 modified SUD services by removing the 200 minute per month cap on individual counseling services for Narcotic Treatment Programs. This policy allows medical necessity to be the basis for the amount of counseling needed by the patient. Individuals are evaluated and assessed prior to receiving treatment, hence the clinician would make the assessment of how many minutes of therapy a client needs.

#### 3. SUD Services Modification for DMC Treatment Programs

Effective January 1, 2015, SPA #15-012 modified SUD services by expanding the group counseling size limits for DMC. This policy allows flexibility to ensure patients have access to groups.

This change affects the following programs:

- Narcotic Treatment Program (NTP)
- Intensive Outpatient Treatment Services (IOT)
- Outpatient Drug Free Treatment Services (ODF)

### MENTAL HEALTH

#### 1. IMD Ancillary Services

**Ancillary services provided to Medi-Cal beneficiaries who are ages 21 through 64 residing in IMDs are not eligible for federal reimbursement. Identifiers are currently not available in the Medi-Cal Eligibility Data System (MEDS) to indicate whether a Medi-Cal beneficiary is residing in an IMD. Consequently, the Department's Fiscal Intermediary (FI) may not deny any claims that are ineligible for reimbursement. The Department uses data from the mental health Client and Services Information (CSI)**

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**system to retrospectively identify the dates individuals were residents of an IMD for repayment of the FF, as required by CMS. This information is not known at the time the claims were processed and paid by the FI. The Department matches the data from the CSI system to the claims data to determine which claims were inappropriately reimbursed while the individual was a resident of an IMD.**

**While the Department intends to develop eligibility and claiming processes to stop inappropriate claiming and reimbursement for ancillary services, the current inappropriately paid services must be repaid to CMS.**

**Due to the County of Colusa Court of Appeals decision on July 9, 2014, the counties will not reimburse the State for IMD ancillary costs. The State is now financially responsible for ancillary outpatient services provided to eligible individuals who are residing in an IMD.**

**As the Department continues to work on a mechanism to stop inappropriate claiming and reimbursement for ancillary services, a fiscal impact of IMD ancillary costs are indeterminate at this time.**

**1115 WAIVER—MH/UCD & BTR****MANAGED CARE****1. CCS Redesign**

To improve access to health care for the Children and Youth with Special Health Care Needs (CYSHCN) and to eliminate the fragmentation that exists in the current CSS health care delivery system, the department initiated a CCS Redesign project with stakeholder input.

To move incrementally toward a better integrated and coordinated system of care for CCS, the Department has developed a multi-year framework for a “Whole Child” model that builds on existing successful models and delivery systems. This balanced approach will assure maintenance of core CCS provider standards and network of pediatric specialty and subspecialty care providers, by implementing a gradual change in CCS service delivery with an extended phase-in and stringent readiness and monitoring requirements that will ensure continuity of care and continued access to high-quality specialty care. The “Whole Child” model provides an organized delivery system of care for comprehensive, coordinated services through enhanced partnerships among Medi-Cal managed care plans, children’s hospitals, specialty care providers, and counties.

Starting in January 2017, subject to successful readiness review by the department, the first phase will incorporate CCS into the integrated care systems of most County-Organized Health Systems (COHS). COHS are county developed and operated Medi-Cal managed care plans with strong community ties. CCS is already integrated into three COHS in six counties, through the CCS “carve-in,” so three of the COHS plans already have experience with key elements of this model. In addition the Health Plan of San Mateo has already

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implemented most elements of this model. With the Whole-Child model, the COHS health plans will provide and coordinate all primary and specialty care, similar to the Health Plan of San Mateo model. These plans will be required to demonstrate support from various stakeholders that may include the respective county CCS program, local providers and hospitals, and local families of children with CCS eligible conditions or local advocacy groups representing those families.

The “Whole Child” model may also be implemented in up to four counties in the Two-Plan Medi-Cal managed care model. The extension of the “Whole Child” model to these counties will begin no earlier than July 2017, and will be subject to a successful readiness review by the Department.

### PROVIDER RATES

#### SUPPLEMENTAL PAYMENTS

1. Hospital Inpatient Rate Freeze

The hospital inpatient rate freeze imposed by SB 853, the Health Trailer Bill of 2010, was annulled by SB 90. Any payment reductions because of the rate freeze will be refunded to hospitals.

2. Capital Project Debt Reimbursement

In February 2014, Los Angeles County requested reimbursement of a \$322 million bond project for the Construction, Renovation and Reimbursement Program (CRRP). The project was completed in April 2014. The Department is currently working with Los Angeles County to determine eligibility for this project under the CRRP program.

3. Local Educational Agency Medi-Cal Billing Option Program (LEA BOP) Expansion

**The Medi-Cal LEA BOP provides federal financial participation (FFP) reimbursement to school districts, county offices of education, community colleges, and university campuses for certain health-related services provided by qualified medical practitioners to students receiving special education services and who are Medi-Cal eligible.**

**In September 2015, the Medi-Cal LEA BOP submitted State Plan Amendment (SPA) 15-021 to the Centers for Medicare and Medicaid Services (CMS) for approval to add new assessment/treatment services, new practitioner types, and the lifting of the “free care” requirement, effective July 1, 2015.**

**Once approved, the Department assumes that LEAs would choose to bill retroactively for new services, practitioners and “free care”, provided they meet specific documentation requirements. In order for the SPA to be implemented, the new services and practitioners, as well the “free care” policy, must be administered into the program and published in the LEA Provider Manual, and Xerox must develop and apply an updated rate table and utilization controls. At this time, the Department**

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**does not have an estimate of when SPA 15-021 will be approved and implemented. The estimated fiscal impact for SPA 15-021 is currently unknown, however, there will be no GF impact.**

**OTHER: AUDITS AND LAWSUITS**1. SB 1103 Litigation

- OAHA Administrative Appeals and Superior and Appellate Court Actions

In 2005, approximately 100 California hospitals sued the Department to challenge the validity of a Medi-Cal reimbursement rate limit for in-patient services provided by non-contract hospitals that was enacted by Senate Bill 1103. During the pendency of this litigation, more than 50 non-contract hospitals filed administrative appeals with the Department's Office of Administrative Hearings and Appeals (OAHA). All challenge SB 1103's validity and, so, seek a retroactive reimbursement rate increase for FY 2004-05, based on SB 1103's alleged invalidity.

OAHA has been holding these administrative appeals in abeyance during the *Mission Hospital Regional Medical Center v. Douglas* litigation, which finally terminated in early 2014. ~~\*Currently, 23 cases remain in abeyance. Since 2013, OAHA has\*~~ dismissed at least 1724 of the SB 1103 administrative appeals on the grounds that these appeals are precluded by *res judicata*, that is, by the *Mission* litigation's challenge to SB 1103. In one case,\* ~~the hospital has ordered the administrative record but the petition for writ of mandate has not yet been filed.\*~~

In ~~\*48\*~~**approximately 16** cases, the dismissed hospitals have filed petitions for writ of mandate with the Los Angeles County Superior Court seeking to compel OAHA to order the Department to recalculate their reimbursement rate and pay the increased rate. In three such cases, the superior court denied the writ petition and the hospitals have appealed. (*Dignity Health v. Douglas*; *Hi-Desert Med. Center v. Douglas & Modoc Med. Center v. Douglas*). In the four other cases, the superior court denied **granted\*** ~~the\*~~ writ petition and the Department has appealed one.

(*George L. Mee Mem'l Hosp. v. Douglas*). ~~\*The Department has not yet filed a notice of appeal in the other two cases. (*Desert Valley Hosp. v. Douglas & Ridgecrest Regional Hosp. v. Douglas*.)\*~~**The appellate court heard these four cases together and, in August 2015, found that each hospital's case was barred by its participation in the Mission litigation. The hospitals sought rehearing before the appellate court and filed a petition for review with the Supreme Court, both of which were denied.**

**The Department also appealed two other cases in which the superior court had granted the hospital's writ petition. (*Desert Valley Hosp. v. Douglas & Ridgecrest Regional Hosp. v. Douglas*.) Because Desert Valley Hospital had not participated in the Mission litigation and had actively tried to pursue its administrative appeal while Mission was pending, the Department settled this case for \$500,000. Ridgecrest is scheduled for oral argument in March 2016. Since the California Supreme Court denied the petition for review, all but**

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To date, no court has ruled on SB 1103's substantive validity.

**2. California Hospital Association v. Shewry**

The California Hospital Association (Plaintiff) is a trade association representing nursing facilities that are a distinct part of a hospital (DP/NFs). Plaintiff contends the Department's policy of excluding the projected costs of facilities with less than 20% Medi-Cal days in determining the median rate results in rates that violate various laws, including 42 U.S.C. section 1396a(a)(30)(A). Plaintiff also contends that the freeze in rates during rate year 2004-05 violated section 1396a(a)(30)(A). Plaintiff seeks an injunction against the continued use of the 20% exclusion policy and a writ of mandate requiring the Department to recalculate rates for rate years 2001-02 to present and pay DP/NFs the additional amount owed based on the recalculations.

On August 20, 2010, the Court of Appeal issued a decision reversing the trial court's judgment in favor of the Department. The Court of Appeal held that the Department violated section 1396a(a)(30)(A) by failing to evaluate whether rates were reasonable relative to provider costs. On October 12, 2011, the United States Supreme Court denied the Department's petition for certiorari (i.e., review) of the Court of Appeal decision. The case was then remanded back to the trial court for further litigation concerning the Plaintiff's challenge to the rates paid for rate years 2001-02 to present. Additional discovery was conducted during February and March of 2012, but no other activity has occurred since the remand and it is the Plaintiffs' obligation to pursue further action at the trial court level.

**3. Santa Rosa Memorial Hospital, et al. v. Sandra Shewry, Director of the Department of Health Care Services (Federal Court Litigation).**

Plaintiffs are 17 hospitals that contend that the 10% Medi-Cal payment ~~reductions~~ **reduction and larger reduction for some hospitals that** the Department implemented for non-contract hospital inpatient services, pursuant to ABX4 5 (Chapter 3, Statutes of 2008), **and AB 1183 (Chapter 758, Statutes of 2008)**, violate various federal Medicaid laws, including 42 U.S.C. sections 1396a(a)(8), **1396a(a)(13)**, and 1396a(a)(30). The status of the case is as follows:

- On November 18, 2009, the district court issued a preliminary injunction with respect to the 10% payment reduction for non-contract hospital inpatient services rendered on or after that date with respect to only the 17 plaintiff hospitals,
- On May 27, 2010, the Ninth Circuit issued a decision affirming the preliminary injunction,
- On February 22, 2012, the United States Supreme Court issued a ruling that vacates the Ninth Circuit decision and remanded the case back to the Ninth Circuit to reconsider the Department's appeal of the preliminary injunction, and
- On January 9, 2014, the Ninth Circuit issued a decision reversing and vacating the November 2009 injunction and remanded to the district court for further proceedings.

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- On October 10, 2014, the district court stayed further proceedings, pending a decision by the United States Supreme Court in the case of *Armstrong, et al. v. Exceptional Child Center, et al.*
  - On March 31, 2015, the Supreme Court held in the *Armstrong* case that the Supremacy Clause of the United States Constitution did not confer a right of action for providers to sue states for violation of section 1396a(a)(30)(A). In June 2015 the parties in the *Santa Rosa* case completed supplemental briefing on the impact of that case and are waiting on the federal district court to issue a decision on the parties pending cross-motions for summary judgment.
  - **On July 20, 2015, the district court denied the Department's motion for summary judgment based on mootness, and dismissed the Plaintiffs' lawsuit without prejudice to pursuing their state court lawsuit challenging the AB 5 and AB 1183 payment reductions.**
  - **The Department appealed the district court's ruling denying its motion for summary judgment and dismissing the Plaintiffs' lawsuit without prejudice. Appellate briefing is now in progress.**
4. ***Santa Rosa Memorial Hospital, et al. v. Department of Health Care Services and Northbay Healthcare Group, et al. v. Department of Health Care Services (State Court Litigation)***

**The Plaintiffs in these two state court lawsuits are over 30 hospitals, including the 17 that are Plaintiffs in the federal court *Santa Rosa Memorial Hospital* case. The two lawsuits have been consolidated for litigation purposes. The Plaintiffs contend that the 10% Medi-Cal payment reduction and larger reduction for some hospitals that the Department implemented for non-contract hospital inpatient services, pursuant to ABX 4 5 (Chapter 3, Statutes of 2008) and AB 1183 (Chapter 758, Statutes of 2008) violate various federal Medicaid laws, including 42 U.S.C. sections 1396(a)(8), 1396a(a)(13), and 1396a(a)(30). The Plaintiffs seek retroactive damages of almost \$100 million, including interest based on the Department's implementation of the AB 5 and AB 1183 reduced payments.**

**Litigation in this case had been stayed (i.e., placed on hold), until the federal court ruling dismissing the federal court *Santa Rosa Memorial Hospital* lawsuit. As of April 2016, the parties had completed briefing on the Plaintiffs' legal claims and were waiting for a ruling from the court.**

5. ***LA Care v. Department of Health Care Services***

**The Plaintiff in this case is a managed care plan that contracts with the Department to provide Medi-Cal covered services to Medi-Cal eligible persons enrolled in the plan. In 2013, Lancaster Hospital sued the Plaintiff complaining that the rates the Plaintiff paid for emergency and post-stabilization services rendered to plan enrollees were invalid on various grounds. Lancaster Hospital was an out-of-network hospital (i.e., not part of the Plaintiff's network of contracting hospitals). The rates that the Plaintiff paid Lancaster Hospital for emergency and post stabilization services were the specific rates that the Department told managed care plans to pay out-of-network hospitals for such services. The Plaintiff ultimately reached a settlement with**

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**Lancaster Hospital, agreeing to pay some portion of the amount that the hospital alleged it was underpaid. The Plaintiff then sued the Department seeking indemnification for what it agreed to pay Lancaster hospital. The parties have agreed to non-binding mediation, which will begin soon.**

**6. AB 97 Litigation**

Four lawsuits challenge the 10% rate reductions **and one lawsuit seeks recoupment for unreimbursed services** enacted by AB 97 (Chapter 3, Statutes of 2011), effective June 1, 2011.

- *California Hospital Association v. Douglas, et al.*

Plaintiffs include the California Hospital Association and Medi-Cal beneficiaries, who contend that payment reductions enacted by AB 97 for nursing facilities that are distinct parts of hospitals (DP/NFs) violate the takings clause of the U.S. Constitution and 42 U.S.C. sections 1396a(a)(8), (19), and (30). AB 97 provides that rates to DP/NFs effective June 1, 2011, shall be the rates paid in the 2008-09 rate year reduced by 10%. The federal government, which approved a State Plan Amendment (SPA) concerning these reductions, has been named as a co-defendant.

On December 28, 2011, the district court issued a preliminary injunction against the AB 97 reductions for DP/NFs. On March 8, 2012, the district court issued an order modifying the injunction to exclude from its effect services rendered prior to December 28, 2011, that were not reimbursed prior to that date. On December 13, 2012, the Ninth Circuit issued a decision reversing the preliminary injunction with respect to the AB 97 rate freeze and reduction for DP/NFs. On May 24, 2013, the Ninth Circuit denied the Plaintiffs' request for rehearing and on June 25, 2013, issued an order formally vacating the four court injunctions. On January 13, 2014, the United States Supreme Court denied the Plaintiffs' petition for certiorari asking it to review the Ninth Circuit decision. Now that the injunction is vacated, the Department will implement the AB 97 payment reductions (also rate freeze with respect to the *California Hospital Association* case), as described in the 10% Payment Reduction for LTC Facilities and Non-AB 1629 LTC Rate Freeze policy changes. The lawsuit has been remanded to the federal district court where Plaintiffs have indicated they intend to seek a new court order prohibiting the Department from implementing the AB 97 reduced payments for DP/NFs.

- *California Medical Transportation Association v. Douglas, et al.*

Plaintiffs filed a Complaint for Injunctive and Declaratory Relief challenging the validity of the 10% reduction under AB 97 for reimbursements to providers of NEMT services in the Medi-Cal fee-for-service system. Plaintiffs allege that the implementation of the AB 97 reductions for NEMT services violates 42 U.S.C., section 1396a(a)(30)(A). Additionally, Plaintiffs allege that Defendant Secretary Kathleen Sebelius' approval of the SPA that sets forth the 10% reduction for NEMT services violates 5 U.S.C., sections 701-706.

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On January 10, 2012, the district court issued an injunction enjoining implementation of the reduction on reimbursement for NEMT services on or after June 1, 2011. The court subsequently modified the injunction to allow the Department to implement the 10% reduction for NEMT services rendered prior to January 10, 2012, that had not been reimbursed prior to that date. On December 13, 2012, the Ninth Circuit issued a decision reversing the preliminary injunction with respect to the AB 97 rate freeze and reduction for DP/NFs. On May 24, 2013, the Ninth Circuit denied the Plaintiffs' request for rehearing and on June 25, 2013 issued an order formally vacating the four court injunctions. On January 13, 2014, the United States Supreme Court denied the Plaintiffs' petition for certiorari asking it to review the Ninth Circuit decision. Now that the injunction is vacated, the Department will implement the AB 97 payment reductions, as described in the 10% Provider Payment Reduction policy changes. This case has been remanded to the federal district court where the Plaintiffs have indicated they intend to pursue a new court order that would prohibit the Department from implementing the AB 97 payment reductions for NEMT services.

- *California Medical Association et al. v. Douglas,*

Plaintiffs include the California Medical Association, California Dental Association, and California Pharmacy Association. Plaintiffs challenge the validity of a 10% reduction in Medi-Cal payments for physician, dental, pharmacy, and other services, authorized by AB 97. The federal government, which approved a SPA concerning the 10% reductions, is also named as a co-defendant. Plaintiffs contend the reductions violate 42 U.S.C. section 1396a(a)(30)(A).

On January 31, 2012, the court issued an injunction prohibiting implementation of the payment reductions for physicians, dentists, clinics, non-drug pharmacy services, emergency medical transportation, medical supplies, and durable medical equipment, except for services rendered prior to January 31, 2012, that are not reimbursed at the unreduced rates prior to that date. The Department and Plaintiffs appealed that portion of the district court's order excluding some services from the injunction. On March 22, 2012, the Ninth Circuit denied the Department's request for a stay of the injunction pending appeal. On December 13, 2012, the Ninth Circuit issued a decision reversing the preliminary injunction with respect to the AB 97 rate freeze and reduction for DP/NFs. On May 24, 2013, the Ninth Circuit denied the Plaintiffs' request for rehearing and on June 25, 2013 issued an order formally vacating the four court injunctions. On January 13, 2014, the United States Supreme Court denied the Plaintiffs' petition for certiorari asking it to review the Ninth Circuit decision. Now that the injunction is vacated, the Department will implement the AB 97 payment reductions, as described in the 10% Provider Payment Reduction policy changes. This case has been remanded to the federal district court where the Plaintiffs have indicated they intend to seek a new court order prohibiting the Department from implementing the AB 97 reduced payments.

- *Eastern Plumas Healthcare District, et al. v. Dept. of Health Care Services, et al.*

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Plaintiffs are nine hospitals that operate nursing facilities that are a distinct part of a hospital (DP/NFs). This lawsuit was filed May 2014 in San Francisco Superior Court to challenge the validity of the AB 97 reduced rates for DP/NFs that are to be implemented for the period June 1, 2011, through September 30, 2013, pursuant to the federally approved State Plan.

- *American Indian Health Services, Inc., et al. v. Toby Douglas, et al.*

Petitioners and Plaintiffs, which are Federally Qualified Health Centers (FQHC), filed a Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief- **in Sacramento Superior Court.** Petitioners and Plaintiffs ~~seek~~**sought** an order requiring the Department to process and pay claims for adult dental, podiatry, and chiropractic services that Petitioners provided to eligible Medi-Cal beneficiaries during the period July 1, 2009, to September 26, 2013, pursuant to 42 U.S.C. sections 1396a(a)(10)(A), 1396d(l)(1) and (20), 1395x(aa)(1)(A) and 1395x(r), and the Ninth Circuit decision in *California Association of Rural Health Clinics, et al v. Douglas* (9<sup>th</sup> Cir. 2013) 738 F.3d 1007. ~~\*The parties are currently in the discovery process with hearing set for November 13, 2015.\*~~**On December 8, 2015, the court granted the Petition for Writ of Mandate. The court further directed Counsel for Petitioners to prepare a formal judgment and writ, submit it to the Department's counsel for approval as to form, and thereafter submit it to the court for signature and entry of judgment. On January 11, 2016, the Court issued the final formal judgment and writ. On February 19, 2016, Counsel for Petitioners sent a letter to Counsel for Respondents; this letter set forth an informal settlement proposal. Counsel for Respondents responded in April 2016, via letter, reflecting the Department's disinterest in pursuing the proposal.**

### 7. Managed Care Potential Legal Damages

Four health plans filed lawsuits against the Department challenging the Medi-Cal managed care rate-setting methodology for rate years 2002 through 2005. The cases are referred to as:

- *Santa Clara County Health Authority dba Santa Clara Family Health Plan v. DHCS*
- *Health Net of California, Inc. v. DHCS*
- *Blue Cross of California, Inc., dba Anthem Blue Cross v. DHCS*
- *Molina Healthcare of California, Inc., v. DHCS*

On April 20, 2011, the trial court issued a judgment in favor of Plaintiff Santa Clara County Health Authority and on June 13, 2011, judgment was issued in favor of Plaintiffs in the Health Net, Blue Cross, and Molina Healthcare cases. In all of the cases, the trial court determined that the Department had breached its contract with the managed care plans for the years in question. On November 2, 2012, the Department and Health Net entered into a settlement agreement resolving the Health Net lawsuit. Similarly, the Department has entered into settlement agreements with Blue Cross and Molina in mid/late 2013. The Department and Santa Clara have also entered into a settlement agreement. In

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November 2014, the Department fully paid Santa Clara in accordance with the terms of the settlement.

8. AIDS Healthcare dba Positive Healthcare

Plaintiff seeks declaratory and injunctive relief to prohibit the Department from complying with W&I Code section 14105.46. The complaint alleges that section 14105.46 violates State and federal law, because that State statute illegally compels AIDS Healthcare Foundation (AHF) to accept payment under the methodology set forth in the federal 340B program for the drugs it provides to persons with HIV and AIDS.

As a result of a Motion to Dismiss filed by the Department, on March 15, 2010, the court dismissed this case in its entirety, with prejudice. Plaintiff appealed. On November 3, 2011, the Ninth Circuit Court of Appeals issued an unpublished decision affirming in part and reversing in part the lower court's dismissal of the case. Plaintiff's claims for violations of equal protection, 42 U.S.C. section 1396a(a)(30)(A), and failure to obtain federal approval of a SPA proceeded. In October 2012, the U.S. District Court stayed this case pending a ruling in the AB 97 consolidated appeal. On December 13, 2012, the Ninth Circuit Court of Appeal issued a decision in the AB 97 consolidated cases. The Department filed a motion to continue the stay, but on February 25, 2013, the court lifted the stay.

After the stay was lifted, the parties filed cross-motions for summary judgment. On March 18, 2013, the court found in favor of the Department on the Equal Protection claims, but ruled in favor of Plaintiff on their cross-motion for summary judgment on the (a)(30)(A) and SPA approval causes of action. The court held that:

- The Department was required to obtain SPA approval prior to implementation and did not do so, and
- Neither the legislature nor the Department considered the relevant factors under (a)(30)(A). The court enjoined the Department from implementing the 340B drug program, effective May 3, 2013.

The Department submitted the SPA on November 1, 2013. CMS approved the SPA on January 30, 2014. Following the Department's motion the Ninth Circuit vacated the judgment and remanded to the district court to consider the impact of CMS' approval. At the June 18, 2014, hearing on the order of the Ninth Circuit Vacating and Remanding, the district court changed the findings of fact to reflect the SPA approval, but re-issued the permanent injunction.

The Ninth Circuit granted the Director's motion for a stay until June 22, 2015, at which time the Department filed in the Ninth Circuit a Motion for Summary Reversal and Remand with Direction to Dismiss, and for a Stay of the Briefing Schedule. AHF's opposition was filed on July 16, 2015. **The Director filed the opening brief with the Ninth Circuit on January 5, 2016. The court approved AHF's request for an extension of time to file its response to the Director's first brief on cross-appeal, which is now due on March 4, 2016. The Director's brief (third brief on cross-appeal) is due on April 4, 2016.**

**INFORMATION ONLY**9. California Pharmacists Association v. David Maxwell-Jolly

This lawsuit challenges the legality of a new upper billing limit provision concerning maximum allowable ingredient costs (MAICs) and the use of recently reduced average wholesale prices (AWPs) in reimbursing drugs. Plaintiffs claim that the State has not complied with 42 U.S.C. section 1396a(a)(30)(A) in enacting and implementing these changes.

On May 5, 2010, the district court issued an order granting preliminary injunction concerning the new upper billing limit and new MAICs, but denied the preliminary injunction concerning the AWP reductions. The Department and Plaintiff both appealed. On April 2, 2012, the Ninth Circuit lifted a stay of the appellate injunction that had been in effect, however the preliminary injunction remains in effect. The Ninth Circuit has postponed the appellate court briefing to allow the parties time to explore a possible settlement. Mediation activities are ongoing.

10. Centinela Freeman Emergency Medical Associates, et al. v. Maxwell-Jolly

This 2009 class action lawsuit was brought by five physician groups who allege that the Medi-Cal reimbursement rates for emergency room physicians are inadequate and that the Department has the duty to review these rates annually. Plaintiffs allege the following causes of action:

- Violation of the Equal Protection Clause,
- Violation of 42 U.S.C. section 1396a(a)(30)(A) of the Federal Medicaid Act, and
- Violation of Welfare & Institutions Code section 14079 (duty to review rates annually).

The court granted Petitioners' writ on the third cause of action (duty to review rates annually) and ordered the Department to conduct an annual review of reimbursement rates for all physician and dental services. On October 24, 2014, the court found the Department's 2011 rate review report and the analyses of the five third-party payer rates data satisfactory, and discharged the Department's ministerial duty under Welfare and Institutions Code section 14079. The court also found that the Department satisfactorily demonstrated its intention of conducting this rate review on an annual basis. On May 22, 2015, Petitioners filed a motion for attorneys' fees in the amount of \$2.5 million in attorneys' fees and costs. On July 10, 2015, the court ordered both Petitioners and the Department to file a supplemental brief as to the timeliness of the motion. ~~\*The hearing on the motion was on September 11, 2015.\*~~ **On February 5, 2016, the court denied the plaintiff's motion for attorneys. Plaintiff filed a notice of appeal on February 24, 2016. We are awaiting plaintiff's opening brief. Oral arguments have not been set.**

**INFORMATION ONLY****11. Family Planning Drugs and Supplies – Office of Inspector General (OIG) Audits (Los Angeles and Orange Counties)**

The OIG ~~is conducting~~ **conducted** an audit of family planning drugs and supplies claimed under the Family PACT program in Los Angeles and Orange counties. This audit is a result of duplicate payments identified in the review of Family PACT drugs and supplies in Orange County. The audit covers payments made during the period October 1, 2011, through ~~December 31, 2013~~ **September 30, 2012**.

**12. Family Planning Drugs and Supplies – Office of Inspector General (OIG) Audits (Los Angeles County)**

The OIG ~~is conducting~~ **conducted** an audit of family planning drugs and supplies claimed under the Family PACT program in Los Angeles county. The audit will determine whether the Department complied with Federal and State requirements when claiming Federal reimbursement at the 90% rate for family planning drugs and supplies provided under the Family PACT program. The audit period covers payments made during the period October 1, 2011, through September 30, 2012.

**13. Saavedra, et al. v. Toby Douglas, California Department of Health Services Lawsuit**

In this writ litigation, Petitioners allege that the Department improperly transitioned Seniors and Persons with Disabilities from the fee-for-service Medi-Cal delivery system into the managed care Medi-Cal delivery system by failing to appropriately respond to and process beneficiary requests to be exempted from the transition to managed care (“medical exemption requests”). Petitioners assert that the Department is applying improper standards in deciding medical exemption requests. The Department has revised the denial letter, denial codes and the regulation governing medical exemption requests and is resuming settlement discussions with Petitioners’ counsel. The hearing in this matter was taken off calendar after the parties agreed to settle the Petition for Writ of Mandate with the Department making a payment of \$475,000 for Petitioners attorneys’ fees and costs. The court approved the settlement on May 28, 2015.

**14. Farrow v. ~~Toby Douglas~~ Jennifer Kent, Director of DHCS, et al.**

Petitioner is a disabled Medi-Cal beneficiary whose services were reduced when he reached the age of twenty-one (21). Petitioner alleges that the Department failed to provide Petitioner with medically necessary in-home nursing services to which he was entitled under the Medi-Cal program, thereby placing him at risk of institutionalization in violation of state and federal anti-discrimination laws. Petitioner also alleges that the Department failed to comply with statutory and Constitutional due process requirements, including timely notice of termination of benefits, a pre-termination hearing, and aid pending a hearing decision. In addition, Petitioner contends that the Department denied him a fair administrative hearing. No hearing has been scheduled. ~~It is petitioner’s obligation to set this matter for hearing and they have not done so. If petitioner does not set a hearing date, the Department may move to dismiss in~~ **2016. Petitioner has commenced discovery.**

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15. Asante, et al. v. Department of Health Care Services, et al.

Plaintiffs are 48~~19~~ out-of-state **border** hospitals that challenge the validity of Medi-Cal reimbursement paid to out-of-state hospitals for hospital inpatient services. They filed this lawsuit in June 2014 in San Francisco Superior Court. **The Department removed the case to federal court, so it would be litigated in that forum.** Plaintiffs contend that aspects of the new diagnosis-related group (DRG) reimbursement policy discriminate against out-of-state hospitals in violation of the Interstate Commerce clause and Equal Protection clause of the United States Constitution. **They seek an injunction to eliminate the alleged discriminatory DRG policies with respect to both fee-for-service reimbursement, and in the DRG based rates that managed care plans pay to out-of-network hospitals.** They further contend that the Department is violating federal Medicaid law **and discriminating against out-of-state hospitals in violation of the Commerce Clause and Equal Protection Clause** by not making disproportionate share hospital (DSH) payments to qualifying out-of-state hospitals. **In addition to injunctive relief, the Plaintiffs seek damages back to July 1, 2013. On December 21, 2015, the federal court granted the Plaintiffs' motion for partial summary judgment, ruling that certain aspects of the DRG rate methodology and the Department's policy of not making DSH payments to qualifying out-of-state hospitals constituted discrimination against out-of-state hospitals in violation of the Commerce Clause. Further litigation will be necessary to determine what specific judicial relief the court will grant.**

16. Riverside Recovery Resources v. Riverside County Department of Mental Health, et al.

On July\*~~30~~\*~~22~~, 2014, Riverside Recovery Resources\* served the Department\* **filed** an amended **writ of administrative mandamus and** complaint filed July 22, 2014, in Riverside County Superior Court against the Department and Riverside County Department of Mental Health contesting disallowances of monies for Drug Medi-Cal services provided to minors in Riverside County schools. A Post Service Post Payment audit found that Plaintiff, **Riverside Recovery Resources**, submitted claims for services provided at uncertified satellite sites, which were not eligible for reimbursement. As a result, Riverside County withheld reimbursement for services during the period of time Riverside Recovery Resources was found to be in non-compliance. Plaintiff disputes the facts upon which the non-compliance findings were based, and alleges denial of due process in the administrative appeal process.

Plaintiff filed their opening brief in support of the writ of administrative mandamus on May 1, 2015. Plaintiff argues the Department should be equitably estopped from disallowing the claims because of a lack of clarity in the certification standards. The Department filed its opposition on June 30, 2015. Plaintiff filed its **its** reply brief was on July 31, 2015, and oral argument was set for August 15, 2015. **On August 20, 2015\* the\* court issued \*a tentative ruling holding the Department\* violated Welfare & Institutions code section 14171 by failing to provide Plaintiff with an administrative appeal pursuant to the Administrative Procedures Act. The tentative ruling remanded the case back to the Department for a formal evidentiary hearing before an administrative law judge. On November 19, 2015, pursuant to a stipulation, the court remanded the case back to the Department to provide Plaintiff with a formal evidentiary hearing. The Department has vacated its decision on the second level appeal and OAHA set the case for**

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**hearing March 15, 2016. The Department filed a return in superior court showing that the Department complied with the writ of mandate; that the Department vacated its second level appeal and set the date for a formal hearing on Riverside Recovery's appeal.**

17. Westside Center for Independent Living, et al v. DHCS

On July 2, 2014, seven Petitioners filed a lawsuit in state court against the Department and its director asking the court to enjoin the implementation of the Coordinated Care Initiative (CCI) and to dis-enroll beneficiaries currently enrolled in CCI. CCI is a joint CMS/Department project seeking to coordinate care for dual eligible beneficiaries. Petitioners allege that the Department was without authority to implement CCI and violated certain statutory provisions and due process by failing to comply with necessary notice requirements. On July 11, 2014, the court denied Petitioners' ex parte application for a temporary restraining order. The court continued the matter for hearing until August 1, 2014, to decide whether the court should enjoin CCI pending a hearing on the merits. On August 1, 2014, the court denied Petitioners' motion for preliminary injunction. Petitioners did not appeal the order denying the motion for preliminary injunction. The Department filed a demurrer seeking to dismiss the petition, which was heard on January 9, 2015. The demurrer was overruled. Subsequently, the Department filed a motion for judgement on the pleadings (MJOP), which the court granted in part and denied in part. In its ruling on the MJOP on April 25, 2015, the court found that the Department has authority to implement CCI. ~~\*Petitioners have not yet set a hearing date on the issue of whether the CCI notices are legally sufficient and comport with due process.~~ **On October 20, 2015, Petitioners\* requested that the entire action be dismissed with prejudice. On October 28, 2015, the court granted the request for dismissal and the case has been closed.**

18. Placentia-Linda Hospital, et al. v. California Department of Health Care Services

The lawsuit was filed in San Francisco County Superior Court on April 9, 2014. Plaintiffs are five hospitals that contend that the Department implemented Medi-Cal payment reductions for non-contract hospital inpatient services from July 1, 2008, through April 12, 2011, as required by Assembly Bill 5 (statutes 2008) and Assembly Bill 1183 (statutes 2008), in violation of 42 United States Code sections 1396a(a)(13) and 1396a(a)(30)(A). Plaintiffs seek a court order requiring the Department to retroactively pay them the additional money they would have received if the Department had not implemented the reductions.

19. Korean Community Center of the East Bay, et al. v. Toby Douglas, et al.

Petitioners ~~\*seek\*~~ **sought** a preliminary injunction and writ of mandate preventing DHCS from terminating Medi-Cal benefits for those beneficiaries who failed to return any renewal information during the 2014 renewals, until the renewal form (the Request for Tax Household Information or RFTHI) is translated into all threshold languages and ~~\*the\*~~ 90 day cure period **language** is included in all notices of action issued by the counties. Petitioners

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also claim that the ex parte process required by state and federal law is not being utilized and fails to comply with the law.

Petitioners sought **and were denied** a temporary restraining order to prevent counties from terminating beneficiaries. ~~\*At the hearing on November 18, 2014, the TRO was denied for lack of evidence of exigency and irreparable harm. A hearing on Petitioners request for Preliminary Injunction (Petitioners asked the court to make their request for TRO and Writ petition into a request for Preliminary Injunction) was held on December 9, 2014. Because Petitioner's submitted over 200 pages of new evidence in reply to the Department's opposition brief, the court ordered the Department to further brief the issue and hold a further hearing on December 23, 2014\*~~

~~\*The court denied in part and granted in part Petitioner's request for Preliminary Injunction.\*~~ **After a hearing on the request for preliminary injunction, the court denied in part and granted in part Petitioner's request for Preliminary Injunction.** In response, the Department filed a motion for reconsideration. The court denied the motion and issued the preliminary injunction on June 23, 2015, enjoining the termination of beneficiaries for failure to respond or provide requested information who do not have compliant 90 day cure period language in the notices of action and do not have requisite specificity regarding the information required for redetermination but not provided. The Department has directed the **Statewide Automated Welfare System (SAWS)** and the counties to cease terminations effective June 23, 2015, ~~\*for these reasons\*~~ **until the SAWS is able to issue notices with compliant language.** ~~\*The Department is working with CalHEERS and the SAWS to program compliant language provided by the Department.\*~~

**Currently, the parties are in discovery, with a temporary stay until early February 2016, to provide time for settlement discussions. Discovery will close on April 1, 2016. Petitioners' opening brief is due on April 15, 2016, with Respondents' opposition brief due on June 20, 2016, and Petitioners' reply due on July 15, 2016. This matter will be heard on August 1, 2016.**

20. Thomas, et al. v. Jennifer Kent, Director of DHCS, et al.

Plaintiffs are disabled Medi-Cal beneficiaries receiving nursing care and other services in their homes under the Medi-Cal Home and Community Based Services Nursing Facility/Acute Hospital Waiver. Plaintiffs allege that they are unable to obtain needed services to continue living safely in their homes because of the Waiver's individual cost limitations for each level of care, which are below the cost for the individual to live in an equivalent institution. Plaintiffs allege that the individual cost cap places the Plaintiffs and other similarly situated Medi-Cal beneficiaries at risk of institutionalization, and therefore violates the Americans with Disabilities Act of 1990, the Rehabilitation Act of 1973, and California Government Code section 11135. Plaintiffs ask the US District Court to:

- Declare the Waiver's individual cost limitations unlawful;
- Enjoin the Department from reducing services, discriminating against Plaintiffs, and putting them at risk of institutionalization through the cost and eligibility limitations;
- Order the Department to provide Plaintiffs needed services, and amend policies and procedures to meet Plaintiffs' needs and federal cost neutrality requirements. (By,

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among other things, amending the waiver to an aggregate cap, increasing the total cost of the waiver, and adding additional participant slots to the waiver.)

**Parties are currently conducting discovery. Trial is set for May 31, 2016.****21. A.D. v. Jennifer Kent, et al.**

Plaintiff is a medically fragile child living at home with the help of nursing services provided through the Early and Periodic Screening, Diagnostic and Treatment (EPSDT) program. Plaintiff alleges that the Department assessment process for determining covered nursing services violates Medicaid's EPSDT requirements, the Americans with Disabilities Act, and the Rehabilitation Act because it fails to consider individual medical necessity and instead imposes service limitations. Plaintiff seeks a declaration of those violations, an injunction against the Department reducing services to Plaintiff and others, and an order requiring the Department to amend its policies and procedures to comply with legal authorities. **The case was settled on the agreement that the Department will revise its processes.**

**22. Noorraldeen Kathem and Llal Tluang v. CDSS and DHCS**

Petitioners are unaccompanied refugee minors, and as such are beneficiaries of the United States Office of Refugee Resettlement's (ORR) Unaccompanied Refugee Minor (URM) program. The URM program ensures that eligible unaccompanied refugee minors receive foster care and other services, such as health care, upon arrival in the U.S. The California Department of Social Services (CDSS) is responsible for overseeing California's URM program. URM's are not part of California's dependency program and the state does not take legal responsibility for these children. Rather, URM's in California are the legal responsibility of either Catholic Charities or Crittenton, two non-profit agencies selected by ORR that contract with the state. Under current law, URM's may be eligible to receive full, limited, or restricted scope Medi-Cal administered by the Department of Health Care Services (Department). URM's assert that they must be given the option to select fee for service Medi-Cal rather than a managed care plan. Foster youth are also eligible for "former foster youth" Medi-Cal if they are (1) in foster care under the responsibility of the state and (2) are Medi-Cal beneficiaries at age 18 or when they age out of foster care, with no income eligibility or annual renewal, until age 26.

CDSS and the Department have been engaged in discussions with our federal partners ~~\*for two years\*~~ concerning this population, ~~\*and are now preparing\*~~ **and issued** a joint All County Welfare Directors Letter (ACWDL) /All County Letter (ACL) **on January 13, 2016**, that should solve the substance of the issues in the writ. ~~\*A case management conference is set for October 1, 2015 to allow the parties time to discuss settlement.\*~~ **The parties are currently involved in settlement discussions.** CDSS and the Department have filed a demurrer in this matter and ~~a the~~ hearing is ~~\*currently set for November 24, 2015 if the parties do not settle all of the issues before that time\*~~ **on hold until June 2016, pending the settlement of all issues.**

**INFORMATION ONLY****23. Rivera v. Douglas, Director of DHCS**

There were a significant number of Medi-Cal applicants whose applications had not been processed within 45 days of the application date ("backlog") and that were still pending **when Petitioners filed suit**. Petitioners filed a writ seeking an order that this backlog is in violation of state law and that state law requires that all Medi-Cal applicants that appear to be eligible should be granted eligibility for Medi-Cal benefits while any necessary verifications are being completed; and specifically that the Department (1) give notice to all applicants in the backlog that they have a right to hearing on the delay, and (2) grant all pending applicants that appear eligible\* immediate\* **conditional** eligibility for Medi-Cal benefits.

Petitioners' Motion for Preliminary Injunction (PI) Motion was granted on January 20, 2015. The Preliminary Injunction ~~\*prohibits\*~~ **prohibited** the Department from failing to comply with its duty to make eligibility determinations within 45 days unless certain specified legal exceptions apply. It further ~~orders~~ **ordered** that when an application has not been determined within 45 days, the Department may comply with the injunction by (1) for applicants who appear likely eligible for Medi-Cal, granting Medi-Cal benefits, including a notice of action, pending completion of the final eligibility determination, and (2) for each applicant who has not been granted these benefits and to whom none of the exceptions apply, provide with a notice of hearing rights. Petitioners' claim that all applicants that appear to be eligible should be granted immediate **conditional** eligibility while verification is completed was not determined in the PI\*ruling.\* **The PI no longer binds the Department because final Judgment has been entered.**

The writ was heard on May 18, 2015 **and largely granted on August 15, 2015.** ~~\*The Court has not ruled on the Writ.~~ \* **The court ruled in favor of the Petitioners on all but one claim and issued its Judgment on December 2, 2015. This Judgment ordered the Department to comply with its duty to make eligibility determinations within 45 days unless certain specified legal exceptions apply. It further ordered that the Department may, as an alternative means of complying with this duty, (1) for applicants who appear likely eligible for Medi-Cal, grant provisional Medi-Cal benefits until those applications have received an eligibility determination, and (2) for each applicant who has not been granted these benefits and to whom none of the exceptions apply, provide him/her with a notice of hearing rights that includes a statement of the specific reason or reasons why the application has not been determined within 45 days. The court denied without prejudice Petitioners' request that the Department be required to grant "conditional benefits" as early in the 45 day period as the county finds an applicant for whom income verification is pending is otherwise eligible. The injunction and writ were stayed by 61 days to allow the Department time to file an appeal.**

**The Department appealed the Judgment/Writ. The Notice of Appeal was filed on February 1, 2016. Petitioners have cross-appealed.**

**Petitioners filed a motion to enforce the Writ claiming that the filing of the appeal did not automatically stay enforcement. This motion was heard by the court March 9, 2016 and a decision is currently pending.**<sup>45</sup>

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~~\*Unknown at this time, but it is likely that the costs attributable to the Writ will be (1) for sending out notices to applicants that do not have their eligibility determined within 45 days, (2) granting provisional eligibility to applicants whose applications have not been determined within 45 days until there is no longer a backlog being created, and (3) for Petitioners' attorneys' fees. \*~~**Costs attributable to the writ are currently unknown. If the Appeal is not successful, the costs attributable to the writ will likely be one or more of the following: (1) for granting provisional eligibility to applicants whose applications have not been determined within 45 days whenever the Department is unable to timely determine eligibility, and (2) for sending out notices to applicants not granted provisional eligibility and that have not had their eligibility determined within 45 days, with the specific reason(s) for the delay specified in each notice.** It is possible, but not likely, that if Petitioners' additional claim that ~~\*immediate\*~~ **conditional** eligibility ~~\*should\*~~ **must** be granted **during the 45 day period** while verification is completed is successful, the fiscal impact could be in the millions.

**24. Luna McLaurin v. Tuolumne County California Children's Services**

**An agreement was entered into between Jordan McLaurin, Parent, on behalf of Luna McLaurin, Student and the Department on behalf of Tuolumne County California Children's Services. The complaint was filed with the Department of General Services' Office of Administrative Hearings (OAH). The agreement also resolved a complaint filed by the parents with the California Department of Education (CDE) against the Department and California Children's Services (CCS) in which CDE's investigation found that the Department was in violation of the stay put order and as a result, CDE ordered compensatory Occupational and Physical Therapy be provided to the student. The parties wish to resolve their pending disputes with respect to the OAH, the compliance complaint, and the Department's compliance with the Superior Court's stay put order through December 31, 2016. The agreement does not include any resolution of the claims currently pending between the parties in the California Court of Appeal, Fifth District, Case No. F071023.**

**25. Educationally Necessary Statewide Occupational Therapy and Physical Therapy Services**

**The Department is engaged in litigation in State and Federal court with the Department of General Services' Office of Administrative Hearings (OAH) to address a fundamental difference in the interpretation of the mandates of Part B of the Individuals with Disabilities Education Act (IDEA) and Government Code 7570 et. seq. relating to Special Education. This litigation follows from three county level IDEA due process-complaint decisions by OAH Administrative Law Judges in which the California Children's Services (CCS)/Medical Therapy Program (MTP) was made responsible for the provision of educationally necessary occupational therapy (OT) and physical therapy (PT) without regard to medical necessity. The Department prevailed in U.S. District Court in a matter originating in Santa Clara County but lost in State Superior Court in a matter originating in Tuolumne County (however, the U.S. District Court commented that the State court erred in its interpretation of the**

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purpose of the due process-complaint procedure). The Department is appealing the Tuolumne matter and the family/family's law firm is appealing the Santa Clara matter. If the OAH prevails, this will establish a precedent that has the potential to obligate the CCS/MTP to provide ongoing educationally necessary OT/PT services statewide at an annual and ongoing cost of many millions of dollars.

**26. MALDEF, et al. Title VI Administrative Complaints**

On December 15, 2015, the Mexican American Legal Defense and Educational Fund (MALDEF), the National Health Law Program (NHeLP), and several other advocacy groups filed an administrative complaint with the U.S. Department of Health & Human Services' Office for Civil Rights (DHHS OCR) pursuant to Title VI of the 1964 Civil Rights Act. The groups allege, on behalf of several Medi-Cal beneficiaries, that inadequate Medi-Cal reimbursement rates, coupled with the Department's failure to ensure timely access to services, constitute discrimination against the Latino population. They seek a finding from DHHS OCR that the Department's reimbursement rates violate Title VI and an order requiring the Department to raise the rates. On December 22, 2015, MALDEF sent a copy of the administrative complaint to the attention of CHHS Secretary Diana Dooley and Department Director Jennifer Kent, along with a cover letter citing the Department's regulations governing Title VI complaint investigations. The letter demands immediate action from the Department to raise reimbursement rates and improve monitoring of access.

DHHS OCR will conduct its own investigation of the Department pursuant to the administrative complaint, and will contact the Department for any additional information. DHHS OCR is reviewing the cover letter and administrative complaint.

**OTHER: REIMBURSEMENTS****1. Federal Upper Payment Limit**

The Upper Payment Limit (UPL) is computed in the aggregate by hospital category, as defined in federal regulations. The federal UPL limits the total amount paid to each category of facilities to not exceed a reasonable estimate of the amount that would be paid for the services furnished by the category of facilities under Medicare payment principles. Payments cannot exceed the UPL for each of the three hospital categories.

**2. Accrual Costs Under Generally Accepted Accounting Principles**

Medi-Cal has been on a cash basis for budgeting and accounting since FY 2004-05. On a cash basis, expenditures are budgeted and accounted for based on the fiscal year in which payments are made, regardless of when the services were provided. On an accrual basis, expenditures are budgeted and accounted for based on the fiscal year in which the services are rendered, regardless of when the payments are made. Under Generally Accepted Accounting Principles (GAAP), the state's fiscal year-end financial statements must include an estimate of the amount the state is obligated to pay for services provided but not yet

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paid. This can be thought of as the additional amount that would have to be budgeted in the next fiscal year if the Medi-Cal program were to be switched to an accrual basis

**3. Freestanding Clinic – Former Agnews State Hospital**

The 2003-04 Governor's Budget directed the California Department of Developmental Services (CDDS) to develop a plan to close Agnews Developmental Center (Agnews) by July 2005. The facility is now officially closed and all of the former residents have been placed in community settings or other alternate locations.

As part of the closure plan, Agnews agreed to continue to operate a freestanding clinic at the former Agnews location in order to continue to cover services that were previously provided as part of the general acute care hospital. The clinic services include health, dental and behavioral services which are offered to former Agnews residents as well as referrals from the various developmental centers in the area. The freestanding clinic became operational on April 1, 2009, and will remain open until CDDS is no longer responsible for the Agnews property.

The Department has obtained approval from CMS to amend the State Plan to establish a cost-based reimbursement methodology for the freestanding clinic beginning April 1, 2009.

The Department will enter into an Interagency Agreement with CDDS to reimburse the FFP for Medi-Cal clients served at the clinic.

**4. Refund of Recovery**

CMS requested the Department prepare reconciliations of grant awards vs. federal draws for all fiscal years. The Department determined FFP was overpaid on some recovery activities. As a result of this determination, the Department is correcting the reporting of overpayments on the CMS 64 report. The Department expects a one-time refund of \$240 million FFP for federal FY 2007 through 2011 and \$34 million FFP ongoing each month.

**5. Payment Deferrals**

The Department issues weekly payments for Fee-For-Service providers. This process is referred to as the checkwrite. Starting in FY 2004-05, the Department implemented (1) an additional week of claim review prior to the release of provider payments starting in July 2004, this shifts the payments of the Fee-For-Service checkwrite by one week, and (2) the last checkwrite in June of each fiscal year has been delayed until the start of the next fiscal year. Beginning in FY 2012-13, an additional checkwrite and the last month of managed care capitation payments are delayed at the end of each fiscal year until the start of the next fiscal year.

**INFORMATION ONLY****OTHER: RECOVERIES**1. Additional Personal Injury Recoveries

In *Arkansas Department of Health and Human Services v. Ahlborn* (2006) 547 U.S. 268, the United States Supreme Court held that a Medicaid agency's lien recovery from a Medicaid beneficiary's tort settlement is limited to the portion of the settlement that represents payment for medical expenses, or medical care, provided on behalf of the beneficiary. Then, in *Wos v. E.M.A.* (2013) 133 S.Ct. 1391, the U.S. Supreme Court held that states may not adopt a one-size-fits-all mechanism for allocating medical expenses, such as deeming a specific percentage of a tort settlement or award to be the medical expenses portion. Instead, states must have processes for determining and recovering only that portion that is attributable to medical expenses.

In response to the *Ahlborn* ruling, California amended Welfare & Institutions (W&I) Code Section 14124.76 and enacted W&I Code Section 14124.785.

On December 26, 2013, H.J. Res. 59 (federal Budget Act) was signed into law. Section 202 of the Act addresses Medicaid third party liability. Section 202, effective October 1, 2014, essentially supersedes *Ahlborn* and *Wos* by allowing states to recover from the full amount of a beneficiary's tort settlement, instead of only the portion designated for medical expenses. The implementation date has been delayed to October 1, 2017\*2016\*. The nullification of the *Ahlborn* ruling is expected to increase savings for the Department.

**FISCAL INTERMEDIARY: MEDICAL**1. Advance Payment Authority

The Department proposes to seek legislative authority which authorizes the State Controller's Office to make advance payments pursuant to the California Medicaid Management Information Systems Fiscal Intermediary (FI) contract contingency payment process. This would allow advanced interim payments to providers in the event there are issues with checkwrite production during any of the System Replacement Releases. If approved, this legislation would reduce the State's potential risk of losing Federal Financial Participation due to non-compliance with federal and the California's Prompt Payment Act requirements, and allows up to twenty thousand providers to receive payment for services rendered to ensure California's 12 million Medi-Cal beneficiaries continue to receive health care services.

**FISCAL INTERMEDIARY: HEALTH CARE OPTIONS****FISCAL INTERMEDIARY: DENTAL**1. Dental Program Utilization Controls Assessment

In an effort to improve the provider experience and to encourage further provider participation, the Department is evaluating program utilization controls and other administrative requirements to make the program more provider friendly while maintaining

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program integrity. The results of this effort are anticipated to be increased provider participation and potentially increased beneficiary utilization.

### 2. Teledentistry

The Department considers Teledentistry a cost-effective alternative to dental services provided in-person, predominantly in underserved areas. Teledentistry is a way for dentists to deliver services to their patients that is similar to in-person care. The standard of care is the same whether the patient is seen in person or through the Teledentistry environment. This method of providing services allows for improved access to care options for beneficiaries who typically experience access to care issues.

### 3. Dental Managed Care Experience Based Rates

The rates for the Dental Managed Care plans are currently based on Fee-for-Service program experience. The Dental Managed Care plans believe that the capitation rates they receive do not adequately compensate them for all the duties and benefits they provide. The Department is considering developing a rate setting methodology based on actual plan experience.

**DISCONTINUED ASSUMPTIONS**

**Fully Incorporated into Base Data/Ongoing**

**ELIGIBILITY**

**AFFORDABLE CARE ACT**

PC 31 ACA Redeterminations

**BENEFITS**

PC 9 Medi-Cal Access Program 30 Week Change

**HOME & COMMUNITY-BASED SERVICES**

**BREAST AND CERVICAL CANCER**

**PHARMACY**

**DRUG MEDI-CAL**

**MENTAL HEALTH**

**1115 WAIVER—MH/UCD & BTR**

**MANAGED CARE**

**PROVIDER RATES**

PC 145 10% Provider Payment Reduction for LTC Facilities

PC 146 Non-AB 1629 LTC Rate Freeze

**SUPPLEMENTAL PAYMENTS**

**OTHER: AUDITS AND LAWSUITS**

**OTHER: REIMBURSEMENTS**

**OTHER: RECOVERIES**

**FISCAL INTERMEDIARY: MEDICAL**

**FISCAL INTERMEDIARY: HEALTH CARE OPTIONS**

**FISCAL INTERMEDIARY: DENTAL**

**DISCONTINUED ASSUMPTIONS**

**Time Limited/No Longer Available**

**ELIGIBILITY**

**AFFORDABLE CARE ACT**

**BENEFITS**

**HOME & COMMUNITY-BASED SERVICES**

**BREAST AND CERVICAL CANCER**

**PHARMACY**

**DRUG MEDI-CAL**

**MENTAL HEALTH**

**1115 WAIVER—MH/UCD & BTR**

**MANAGED CARE**

**PROVIDER RATES**

**SUPPLEMENTAL PAYMENTS**

**OTHER: AUDITS AND LAWSUITS**

**OTHER: REIMBURSEMENTS**

**OTHER: RECOVERIES**

**FISCAL INTERMEDIARY: MEDICAL**

**FISCAL INTERMEDIARY: HEALTH CARE OPTIONS**

**FISCAL INTERMEDIARY: DENTAL**

## **DISCONTINUED ASSUMPTIONS**

### **Withdrawn**

#### **ELIGIBILITY**

OA 47 MAGI-CHIP Quality Control Test Certification

#### **AFFORDABLE CARE ACT**

#### **BENEFITS**

#### **HOME & COMMUNITY-BASED SERVICES**

#### **BREAST AND CERVICAL CANCER**

#### **PHARMACY**

#### **DRUG MEDI-CAL**

#### **MENTAL HEALTH**

PC 79 IMD Ancillary Services

#### **1115 WAIVER—MH/UCD & BTR**

#### **MANAGED CARE**

#### **PROVIDER RATES**

#### **SUPPLEMENTAL PAYMENTS**

#### **OTHER: AUDITS AND LAWSUITS**

#### **OTHER: REIMBURSEMENTS**

#### **OTHER: RECOVERIES**

#### **FISCAL INTERMEDIARY: MEDICAL**

#### **FISCAL INTERMEDIARY: HEALTH CARE OPTIONS**

#### **FISCAL INTERMEDIARY: DENTAL**