Assembly Bill No. 678

CHAPTER 397

An act to add Section 14105.94 to the Welfare and Institutions Code, relating to Medi-Cal, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 2011. Filed with Secretary of State October 2, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

AB 678, Pan. Medi-Cal: supplemental provider reimbursement.

Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services, pursuant to which medical benefits are provided to public assistance recipients and certain other low-income persons. The Medi-Cal program is, in part, governed and funded by federal Medicaid Program provisions. Existing law provides for a schedule of benefits under the Medi-Cal program, which includes medical transportation, and authorizes the department to prescribe polices and regulations as necessary to carry out the Medi-Cal program, including setting rates for payment of services.

This bill would provide that an eligible provider, as described, may receive supplemental Medi-Cal reimbursement, in addition to the rate of payment that the provider would otherwise receive, for Medi-Cal ground emergency medical transportation services and that the supplemental reimbursement shall be equal to the amount of federal financial participation the department receives as a result of claims submitted for expenditures for services, as specified. This bill would require the department to promptly seek any necessary federal approvals for the implementation of these provisions, including obtaining approval from the federal Centers for Medicare and Medicaid Services for the specified payment methodology to be used to distribute the supplemental reimbursement.

This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 14105.94 is added to the Welfare and Institutions Code, to read:

14105.94. (a) An eligible provider, as described in subdivision (b), may, in addition to the rate of payment that the provider would otherwise receive for Medi-Cal ground emergency medical transportation services, receive supplemental Medi-Cal reimbursement to the extent provided in this section.

(b) A provider shall be eligible for supplemental reimbursement only if the provider has all of the following characteristics continuously during a state fiscal year:

(1) Provides ground emergency medical transportation services to Medi-Cal beneficiaries.

(2) Is a provider that is enrolled as a Medi-Cal provider for the period being claimed.

(3) Is owned or operated by the state, a city, county, city and county, fire protection district organized pursuant to Part 2.7 (commencing with Section 13800) of Division 12 of the Health and Safety Code, special district organized pursuant to Chapter 1 (commencing with Section 58000) of Division 1 of Title 6 of the Government Code, community services district organized pursuant to Part 1 (commencing with Section 61000) of Division 3 of Title 6 of the Government Code, health care district organized pursuant to Chapter 1 (commencing with Section 32000) of Division 23 of the Health and Safety Code, or a federally recognized Indian tribe.

(c) An eligible provider's supplemental reimbursement pursuant to this section shall be calculated and paid as follows:

(1) The supplemental reimbursement to an eligible provider, as described in subdivision (b), shall be equal to the amount of federal financial participation received as a result of the claims submitted pursuant to paragraph (2) of subdivision (f).

(2) In no instance shall the amount certified pursuant to paragraph (1) of subdivision (e), when combined with the amount received from all other sources of reimbursement from the Medi-Cal program, exceed 100 percent of actual costs, as determined pursuant to the Medi-Cal State Plan, for ground emergency medical transportation services.

(3) The supplemental Medi-Cal reimbursement provided by this section shall be distributed exclusively to eligible providers under a payment methodology based on ground emergency medical transportation services provided to Medi-Cal beneficiaries by eligible providers on a per-transport basis or other federally permissible basis. The department shall obtain approval from the federal Centers for Medicare and Medicaid Services for the payment methodology to be utilized, and may not make any payment pursuant to this section prior to obtaining that approval.

(d) (1) It is the Legislature's intent in enacting this section to provide the supplemental reimbursement described in this section without any expenditure from the General Fund. An eligible provider, as a condition of receiving supplemental reimbursement pursuant to this section, shall enter into, and maintain, an agreement with the department for the purposes of implementing this section and reimbursing the department for the costs of administering this section.

(2) The nonfederal share of the supplemental reimbursement submitted to the federal Centers for Medicare and Medicaid Services for purposes of claiming federal financial participation shall be paid only with funds from the governmental entities described in paragraph (3) of subdivision (b) and certified to the state as provided in subdivision (e).

(e) Participation in the program by an eligible provider described in this section is voluntary. If an applicable governmental entity elects to seek supplemental reimbursement pursuant to this section on behalf of an eligible provider owned or operated by the entity, as described in paragraph (3) of subdivision (b), the governmental entity shall do all of the following:

(1) Certify, in conformity with the requirements of Section 433.51 of Title 42 of the Code of Federal Regulations, that the claimed expenditures for the ground emergency medical transportation services are eligible for federal financial participation.

(2) Provide evidence supporting the certification as specified by the department.

(3) Submit data as specified by the department to determine the appropriate amounts to claim as expenditures qualifying for federal financial participation.

(4) Keep, maintain, and have readily retrievable, any records specified by the department to fully disclose reimbursement amounts to which the eligible provider is entitled, and any other records required by the federal Centers for Medicare and Medicaid Services.

(f) (1) The department shall promptly seek any necessary federal approvals for the implementation of this section. The department may limit the program to those costs that are allowable expenditures under Title XIX of the federal Social Security Act (42 U.S.C. 1396 et seq.). If federal approval is not obtained for implementation of this section, this section shall not be implemented.

(2) The department shall submit claims for federal financial participation for the expenditures for the services described in subdivision (e) that are allowable expenditures under federal law.

(3) The department shall, on an annual basis, submit any necessary materials to the federal government to provide assurances that claims for federal financial participation will include only those expenditures that are allowable under federal law.

(g) (1) If either a final judicial determination is made by any court of appellate jurisdiction or a final determination is made by the administrator of the federal Centers for Medicare and Medicaid Services that the supplemental reimbursement provided for in this section must be made to any provider not described in this section, the director shall execute a declaration stating that the determination has been made and on that date this section shall become inoperative.

(2) The declaration executed pursuant to this subdivision shall be retained by the director, provided to the fiscal and appropriate policy committees of the Legislature, the Secretary of State, the Secretary of the Senate, the Chief Clerk of the Assembly, and the Legislative Counsel, and posted on the department's Internet Web site.

(h) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department may implement and administer this section by means of provider bulletins, or similar instructions, without taking regulatory action.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for statutory changes relating to the Medi-Cal program to be implemented as soon as possible, it is necessary that this act take effect immediately.

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BILL ANALYSIS

Senate Appropriations Committee Fiscal Summary
Senator Christine Kehoe, Chair

AB 678 (Pan)

Hearing Date: 8/25/2011 Amended: 8/15/2011
Consultant: Katie Johnson Policy Vote: Health 8-0

BILL SUMMARY: AB 678, an urgency measure, would permit publicly owned or operated ground emergency medical transportation services to utilize a certified public expenditure (CPE) process to access new federal funds and subsequently receive supplemental Medi-Cal payments.

Fiscal Impact (in thousands)

Major Provisions	2011-12	2012-13	2013-14	Fund
Supplemental Medi-Cal payments to providers	potentially in the tens of millions of dollars annually upon federal approval			Federal
DHCS administration of the program	$150	$300	$300	Local/* Federal

*50 percent local funds, 50 percent federal funds

STAFF COMMENTS: SUSPENSE FILE.

DHCS Administration
This bill would establish a new supplemental payment program for publicly owned or operated providers of ground emergency medical transportation services; providers would include those owned or operated by the state, a city, a county, a city or a county, a special district, a community services district, a health care district, or a federally recognized Indian tribe. Provider participation in the program would be voluntary and payment would be above and beyond the provider's current Medi-Cal reimbursement.

The state Medicaid agency, the Department of Health Care Services (DHCS), would be required to seek all necessary federal approvals, and, after obtaining federal approvals for the program, make all applicable payments. If federal approval is

obtained, it is possible that reimbursement could date back to October 1, 2009, FY 2009-2010, since DHCS has a placeholder state plan amendment filed with the Centers for Medicare and Medicaid Services for this bill's purpose. DHCS would likely need to establish a process by which it would certify a provider's expenditures in a manner sufficient to meet federal requirements at an expense of approximately $300,000 annually for staff for the program and accounting and legal services.

Actual staffing costs could potentially be more or less depending on the number of providers that choose to participate. This bill would provide that DHCS' administrative expenditures would be reimbursed by participating providers. Costs would be shared 50 percent local funds and 50 percent federal funds. This bill would state that it is the Legislature's intent to not implement these provisions with General Fund monies.

Supplemental Payments
In order to receive a supplemental payment for services rendered

to a Medi-Cal beneficiary, a provider would certify that it spent X amount of funds on that service, that it received Y reimbursement from Medi-Cal, and that Z amount of the total cost was uncompensated by Medi-Cal. For example, if the actual cost of an ambulance transport for a Medi-Cal beneficiary was $100, then a provider would certify that it spent $100 on a transport, that it received $60 in Medi-Cal reimbursement (50 percent General Fund, 50 percent federal funds), and that there was a remainder of $40 in uncompensated cost. The provider would receive $20 of that $40 as a reimbursement from the federal government in the form of a supplemental payment provided for in this bill.

Supplemental payments would be made on a "per transport" basis. Although the actual amount of supplemental payments is unknown, it is reasonable to assume that a provider would work to receive additional reimbursement. The California Ambulance Association states that there are about 715 providers in the state, of which about 77 percent are fire departments. According to the sponsors of this bill, the California Professional Firefighters, it is estimated that about 130 fire departments would be eligible to receive reimbursement pursuant to this bill, among other public providers. The percentage of total transports provided by publicly-owned or operated ground emergency transportation

services is unknown.

An ambulance cost study conducted by the Federal Government Accountability Office in 2007 (GAO-07-383) found that the per transport cost for ambulance providers without shared costs averaged $415, but varied from $99 to $1,218 per transport, a variation of more than $1,100. With an 18 percent weighted inflation adjustment used by Medicare, the actual costs would be $592 today. Medi-Cal base rates, established in 1999 in Section 51527 of Title 22 of the California Code of Regulations, for emergency basic life support services is $118.20 and for non-emergency services is $107.16. Additionally, ambulances may claim $3.55 per mile of transport one-way, as well as various other specified rate augmentations. In AB 97 (Committee on Budget), Chapter 3, Statutes of 2011, ground ambulance rates, along with those of several other categories of providers, were reduced by 10 percent commencing June 1, 2011, subject to federal approval. If the federal government approves the rate reductions, the base ground ambulance service rates for emergency and non-emergency services would be $106.38 and $96.44, respectively.

The cost differential between the actual cost of service ($592.00) and average Medi-Cal reimbursement ($118.20) per transport is $473.80 or $485.62 with the 10 percent reduction. In 2009, there were about 292,000 transports of Medi-Cal fee-for-service patients at a Medi-Cal cost of approximately $44 million. The California Ambulance Association estimates that there were an additional 171,000 ambulance transports reimbursed through Medi-Cal managed care plans in 2009 at a cost of about $26 million. This bill would only apply to fee-for-services providers.

Potential costs of this bill are estimated as follows: assume 1) 292,000 fee-for-service transports annually, 2) uncompensated costs eligible for CPEs of $473.80 or $485.62 with the 10 percent reduction, and 3) 50 percent of uncompensated costs equals the amount of federal fund reimbursement. Using these assumptions, there would be approximately $70 million in additional federal funds available, assuming 100 percent of transports were made by public providers. If public providers conducted 20 percent or 50 percent of Medi-Cal ground transportation emergency services, $14 million or $35 million federal funds would be available for supplemental reimbursement.

These numbers are illustrative estimates and actual costs would vary based on 1) actual Medi-Cal reimbursement, 2) the percentage of Medi-Cal emergency transports provided by public providers, and 3) the actual number of public providers that would participate in the program.