



## **Health and Human Services Policy Committee**

**Wednesday, October 14 • 3:00 – 4:00 p.m.**

**Via Conference Call**

**Dial In: (800) 867-2581 • Passcode: 7500559#**

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### **Supervisor Ken Yeager, Santa Clara County, Chair Supervisor Hub Walsh, Merced County, Vice Chair**

- 3:00 p.m.      **I. Welcome and Introductions**  
*Supervisor Ken Yeager, Santa Clara County  
Supervisor Hub Walsh, Merced County*
- 3:05 – 3:25      **II. End of Session & Legislative Update**  
*Farrah McDaid Ting, Legislative Representative  
Michelle Gibbons, Legislative Analyst*
- 3:25 – 3:40      **III. Health Care Special Session Update**  
*Farrah McDaid Ting, Legislative Representative  
Michelle Gibbons, Legislative Analyst*
- 3:40 – 3:55      **IV. Federal Medi-Cal 2020 Waiver Update**  
*Kelly Brooks-Lindsey, Hurst Brooks Espinosa, LLP*
- 4:00 p.m.      **V. Adjournment**

Please save the date for the next  
CSAC Health and Human Services Policy Committee meeting:  
**Wednesday, November 4 from 10 to 11 a.m.**

For those who wish to attend this meeting in person, it will be held in CSAC's Peterson Conference Room (1<sup>st</sup> floor, 1100 K Street, Sacramento).

The conference call number is noted above for those who wish to call in.

#### **Conference Call Etiquette**

1. Place your line on **mute** at all times until you wish to participate in the conversation.
2. **DO NOT PLACE THE LINE ON HOLD.**
3. Please identify yourself when speaking.



October 13, 2015

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To: CSAC Health and Human Services Policy Committee

From: Farrah McDaid Ting, Legislative Representative  
Michelle Gibbons, Legislative Analyst

**Re: End of Session & Legislative Update**

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The Legislature adjourned the regular legislative session on September 11 as planned, but the Health Special Session remains open throughout the interim fall period. CSAC followed scores of Health and Human Services-related bills throughout the 9-month regular session and worked to craft policy on foster youth placements, reforming the group home system, addressing mental illness in hospital emergency rooms, and refining the role of county public guardians and administrators, to name a few.

A comprehensive chart with each bill on which CSAC took an active position is attached; for a list of legislation within the special session, please refer to the special session memo included in this agenda packet.

The Legislature and Administration moved some huge issues forward this year, including requiring all children attending school to be vaccinated and allowing California to be the sixth state in the nation to adopt a “Right to Die” framework for assisted suicide for terminally ill patients. The public debate over these two issues dominated the health committees and headlines, and Governor Brown signed both into law.

However, the theme toward the end of the regular legislative session – and especially within the special health session – was a familiar one: partisan gridlock. Namely, Republican members’ concern over both special session tax issues (a transportation tax proposal and the Managed Care Organization [MCO] tax proposal) torpedoed any hope of passing these targeted taxes.

As a result, Governor Brown is expected to include a \$1.1 billion hole in his January budget proposal due to the lack of a new MCO tax, which will push that conversation from the policy process into the more fluid budget process. It may also have an impact on potential legislation during the next regular session, especially for anything related to Medi-Cal costs.

Legislators are currently busy thinking up new ideas for legislation, with homelessness and behavioral health issues seeming to be at the forefront. The Legislature reconvenes on January 4, 2016.

## **A Sample of Key 2015 Legislation**

### **Mental Health**

**AB 1300 (Ridley Thomas).** CSAC strongly opposed AB 1300, which would have made detrimental changes to the Lanterman Petris-Short (LPS) Act, commonly referred to as the 5150 process. CSAC worked collaboratively with the County Behavioral Health Directors Association and the National Alliance for Mental Illness to inform the sponsors, members of the Legislature, and staff of the adverse effects AB 1300 would have on patients, county behavioral health systems, and public safety. The bill was held and is a two-year bill. CSAC continues to work with the sponsors and the Steinberg Institute to identify policy changes that may assist ER doctors who are often the first medical professional to assess people experiencing a mental health crisis.

**AB 1299 (Ridley-Thomas).** CSAC worked collaboratively with county affiliates to inform the author and sponsors of county concerns, while also supporting the goal of ensuring foster children who are placed in a different county than their county of residence receive mental health services in a timely manner. While AB 1299 is now a 2-year bill, CSAC remains committed to working collaboratively throughout the fall to identify ways to ensure timely access to mental health services for children and work out the fiscal roadblocks that sometimes affect out-of-county placements for foster children.

**AB 193 (Maienschein).** CSAC has worked to oppose AB 193, which would have increased county General Fund costs and workload for county public guardians and administrators by allowing a Probate Judge to order LPS Conservatorship investigations. A large coalition, including the County Behavioral Health Directors, the County Public Guardian Association (CAPAPGPC), the Urban Counties Caucus, and Los Angeles County was ultimately successful in securing a veto of this measure by Governor Brown.

### **Human Services**

**AB 403 (M. Stone).** Sponsored by the Department of Social Services (DSS), AB 403 seeks to reform the continuum of care group home system for foster youth. This massive bill – now law – reclassifies juvenile treatment facilities and the transition from the use of group homes for children in foster care and on probation to the use of short-term residential treatment centers (STRTCs). It revises foster parent training requirements and provides for the development of Child-Family Teams to inform the process of placement and services to children. Additionally, the bill seeks to develop a new group home rate payment structure to fund placement options for children in foster care.

CSAC, along with our county affiliates – CWDA, CBHDA and CPOC – will continue to work closely with the Department of Social Services on implementation of this significant measure, including on both the potential fiscal and policy impacts.

### **Public Health**

**SB 277 (Pan).** Along with the County Health Executives Association (CHEAC), CSAC successfully advocated for SB 277, which Governor Brown signed into law. SB 277 eliminates the personal belief exemption for existing required immunizations in order to attend private (K-12) schools and daycare facilities, and further allows physicians to consider family medical history for medical exemptions.

### **Staff Contacts**

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### **Attachments**

CSAC Health and Human Services Legislation Chart (as of October 13, 2015)

### **Resources**

CSAC has also created a Special Session page to gather all materials and resources related to the 2015 special sessions on transportation and health:

<http://www.counties.org/special-sessions>

**CALIFORNIA STATE ASSOCIATION OF COUNTIES  
HEALTH AND HUMAN SERVICES  
2015-16 REGULAR SESSION BILL CHART**

| <b>Child Welfare</b>  |         |   |   |
|-----------------------|---------|---|---|
| SB 238 (Mitchell)     | Support | Increases communication and training amongst all parties serving foster youth through four key aspects: 1) DSS and DHCS developed monthly data reports; 2) development of an alert system; 3) update of the JV-220 form and 4) training on psychotropic medications for those directly serving foster youth.  | Signed into law.<br>Chapter 534, Statutes of 2015 |
| SB 478 (Huff)         | Support | Authorizes county welfare agencies - that choose to opt in - to develop a pilot program for internet-based reporting of child abuse and neglect, increase efficiency and reduce costs related to the transmission of written reports.   | Signed into law.<br>Chapter 490, Statutes of 2015 |
| <b>Medi-Cal</b>       |         |   |   |
| AB 858 (Wood)         | Support | Allows federally qualified health centers (FQHCs) and rural health clinics (RHCs) to draw down federal funding for patient visits with marriage and family therapists.  | Vetoed  |
| AB 690 (Wood)         | Support | Adds marriage and family therapists to the list of providers to receive federal financial participation on a per-visit basis at a federally qualified health center or a rural health clinic.   | Two-year bill.                                    |
| SB 36 (Hernandez)     | Support | Allows the Department of Health Care Services to seek an extension of the current 1115 Waiver.  | Signed into law.<br>Chapter 759, Statutes of 2015 |
| SB 33 (Hernandez)     | Support | Would 1) limit estate recovery for those ages 55 and over to only the health care services required to be recovered under federal law; 2) eliminate recovery against the estate of a surviving spouse of a deceased beneficiary; and 3) require DHCS to provide notice of total Medi-Cal expenses paid on behalf of the beneficiary that are subject to recovery and post notice on how to request this information on the website. | Two-year bill.                                    |
| <b>Child Support</b>  |         |   |   |
| AB 610 (Jones-Sawyer) | Support | Would expand an existing pilot program to apply to all child support cases and would authorize the local child support agency to administratively adjust account balances for cases if the agency verifies that the obligator is unable to pay due to incarceration.  | Signed into law.<br>Chapter 629, Statutes of 2015 |

**CALIFORNIA STATE ASSOCIATION OF COUNTIES  
HEALTH AND HUMAN SERVICES  
2015-16 REGULAR SESSION BILL CHART**

| <b>Adult Protective Services</b>   |                       |  |   |
|------------------------------------|-----------------------|--|---|
| SB 196 (Hancock)                   | Support               | Would authorize a county adult protective services agency to file a petition for a protective order on behalf of elder or dependent adults if the adult has been identified as lacking the capacity and a conservatorship is being sought.                         | Signed into law.<br>Chapter 285, Statutes of 2015 |
| <b>Mental Health</b>               |                       |  |   |
| AB 193 (Maienschein)               | Oppose                | Would authorize a Probate Court judge to recommend a Lanterman-Petris-Short Act (LPS) conservatorship to the county officer providing conservatorship investigations   | Vetoed  |
| AB 1300 (Ridley-Thomas)            | Oppose                | Would make over 80 technical changes to the Lanterman Petris-Short (LPS) Act (Welfare and Institutions Code Section 5000 et. seq.) – commonly referred to as the 5150 process– concerning the involuntary commitment to a mental health institution in California. | Two-year bill.                                    |
| AB 1299 (Ridley-Thomas)            | Oppose                | Would make changes to how foster children placed outside of their county of original jurisdiction are able to access mental health services.   | Two-year bill.                                    |
| AB 1193 (Eggman)                   | Oppose Unless Amended | Would require counties to hold a public hearing on Laura’s Law by January 1, 2018.   | Two-year bill.                                    |
| SB 804 (Senate Health Committee)   | Support               | Updates obsolete references to California Mental Health Directors Association of California to reflect the County Behavioral Health Directors Association (CBHDA).   | Signed into law.<br>Chapter 455, Statutes of 2015 |
| <b>Peer Certification</b>          |                       |  |   |
| SB 614 (Leno)                      | Support               | Would establish a statewide peer and family support specialist certification program to be administered by the Department of Health Care Services.   | Two-year bill.                                    |
| <b>Continuum of Care Reform</b>    |                       |  |   |
| AB 403 (Stone)                     | Support in Concept    | Reforms the continuum of care group home system for foster youth.  | Signed into law.<br>Chapter 773, Statutes of 2015 |
| <b>In-Home Supportive Services</b> |                       |  |   |
| AB 1436 (Burke)                    | Support               | Creates an authorized representative structure of the In-Home Supportive Services Program.   | Signed into law.<br>Chapter 707, Statutes of 2015 |
| AB 470 (Chu)                       | Support               | Would require fees charged for IHSS background checks to be continuously appropriated to the Department of Justice to offset administrative costs.   | Two-year bill.                                    |

**CALIFORNIA STATE ASSOCIATION OF COUNTIES  
HEALTH AND HUMAN SERVICES  
2015-16 REGULAR SESSION BILL CHART**

| <b>Juvenile Court Proceedings</b> |                       |   |  |
|-----------------------------------|-----------------------|---|--|
| AB 879 (Burke)                    | Support               | Would allow county welfare agencies and courts to provide notice by e-mail to parties in dependency cases at the parties consent.   | Signed into law.<br>Chapter 219, Statutes of 2015  |
| <b>Vaccinations</b>               |                       |   |  |
| SB 277 (Pan)                      | Support               | Eliminates the personal belief exemption for existing required immunizations in order to attend public and private K-12 schools and daycare facilities.   | Signed into law<br>Chapter 35, Statutes of 2015    |
| <b>Organized Camps</b>            |                       |   |  |
| SB 476 (Mendoza)                  | Oppose Unless Amended | Would expand the definition of organized recreational camps and create a new mandate on local health departments.   | Two-year bill.                                     |
| <b>CalWORKs</b>                   |                       |   |  |
| AB 702 (Maienschein)              | Support               | Would eliminate the requirement that temporary housing assistance be provided during one period of consecutive days up to 16 days.  | Two-Year bill.                                     |
| AB 376 (Lopez)                    | Support in Concept    | Would change the requirement of CalWORKs applicants or recipients to provide documentation that each child in the recipient unit not enrolled in school has received all the age appropriate immunizations.   | Vetoed   |
| <b>Tobacco</b>                    |                       |   |  |
| SB 140 (Leno)                     | Support               | Would expand the STAKE Act's definition of tobacco products to include electronic devises that deliver nicotine or vaporized liquids and make it illegal to furnish such products to minors.  | Two-year bill.<br>Special Session ABX2 6 (Cooper). |
| SB 151 (Hernandez)                | Support               | Would raise the age for restricted access to tobacco products from 18 to 21.  | Two-year bill.<br>Special Session ABX 8 (Wood).    |
| <b>Family Violence</b>            |                       |   |  |
| AB 1338 (Gomez)                   | Support               | Would: 1) rename the California Domestic Violence Prevention Fund in the State Treasury to the Domestic Violence and Sexual Assault Prevention Fund and 2) require fees from the domestic violence and sexual assault license plate program to be used for purposes of funding the services provided by the sexual assault services programs. | Signed into law<br>Chapter 268, Statutes of 2015   |



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October 13, 2015

To: CSAC Health and Human Services Policy Committee

From: Farrah McDaid Ting, Legislative Representative  
Michelle Gibbons, Legislative Analyst

**Re: Second Extraordinary Session on Health Care**

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**Topic:** The Health Care Special Session convened by Governor Brown in June remains open, but legislators have very little to show for the months-long session.

Special Session legislative committees met and reviewed more than 20 bills (see attached chart), but only one, ABX2 15 (Eggman, Alejo, M. Stone), the “Right to Die” assisted suicide bill made it to the Governor’s desk. Governor Brown signed ABX2 15 into law on October 6.

The Special Session remains open despite the adjournment of the regular session on September 11, and a conference committee (see below) has been named to continue work on reaching a new Managed Care Organization (MCO) tax deal (see below for more detail on the MCO tax, which is of importance to counties).

The Administration’s main special session goal was to create a workable MCO tax to provide at least \$1.1 billion for Medi-Cal services. While the Governor’s staff and Director of Health Care Services Jennifer Kent worked very hard near the end of the regular session to try to reach a MCO tax deal, they were ultimately unsuccessful due to resistance from health plans and a dearth of Republican votes.

Because of this, the Governor is expected to indicate a \$1.1 billion dollar Medi-Cal hole in his January budget proposal. While it is not clear if the special session conference committee will meet over the interim, efforts to craft a workable MCO tax continue.

**Background.** Governor Brown opened a second extraordinary special session on health care financing issues on June 16 as part of the 2015-16 budget agreement with Legislative Leaders. The Governor also declared a first extraordinary special session on Transportation issues. Hence, the Health Care Special Session is known as the second extraordinary session.

The Governor’s declaration (attached) explains the goals for the special session: “to consider and act upon legislation necessary to enact permanent and sustainable funding from a new managed care organization tax and/or alternative fund sources...”



The Governor is seeking at least \$1.1 billion in funding to stabilize the state's General Fund costs for Medi-Cal, but, in conjunction with Legislative Leaders, has also signaled the need for funding for additional priorities, including:

- Funding the 7 percent restoration of In-Home Supportive Services hours beyond the 2015-16 fiscal year (\$266 million)
- Providing funding for Medi-Cal Fee-For-Service provider rate increases (estimated to cost \$250 million annually)
- Providing funding for developmental disability community provider rate increases and services (\$100 million to provide a 10 percent rate increase)

**The top priority for the Governor and the Legislature is to authorize a new Managed Care Organization (MCO) tax to provide at least the first \$1.1 billion in funding to the state for Medi-Cal costs.** The current MCO tax expires June 30, 2016 and the Brown Administration has proposed a new, flat MCO tax on all health plans providing Medi-Cal services (link attached).

Any funds raised by a new MCO tax above the \$1.1 billion could be used for the additional priorities, which total roughly \$616 million.

**Special Session Process and Legislation.** Both houses of the Legislature organized new committees for the health special session, which met and considered special session bills ranging from the MCO tax (see below), tobacco legislation, and the "Right to Die" assisted suicide bill for terminally ill patients.

The health special session conference committee, which is a joint committee of the Senate and Assembly, was named in the waning days of the regular session:

| <b>SENATE</b>                  | <b>ASSEMBLY</b>                     |
|--------------------------------|-------------------------------------|
| Senator Ed Hernandez, Co-chair | Assembly Member Rob Bonta, Co-Chair |
| Senator Mark Leno              | Assembly Member Susan Bonilla       |
| Senator Holly Mitchell         | Assembly Member James Gallagher     |
| Senator Jim Nielsen            | Assembly Member Jim Patterson       |
| Republican Vacancy             | Assembly Member Miguel Santiago     |

The health special session conference committee has yet to convene.

MCO Tax Background

Several MCO tax proposals were introduced during the special session; however they did not make it to the Governor's desk before the Legislature adjourned the regular session.

ABX2 4 (Levine) would institute a \$7.88 monthly flat tax for each plan enrollee for 45 managed care organizations which cover 21 million Californians, of which 9 million

are Medi-Cal patients. The Author has stated that it will raise at least the \$1.1 billion needed to fund existing obligations as well as up to \$1.9 billion to provide funding for the additional stated priorities above (the IHSS 7 percent restorations, Medi-Cal provider rate increases, and disability services rate increases).

ABX2 19 (Bonta) would establish two tax tiers for managed care plans in FY 2016-17. It would further require the Department of Health Care Services and the Department of Managed Health Care to determine the tax methodology in FY 2017-18 and future years.

SBX2 14 (Hernandez) was introduced in the last days of the regular session. The measure would impose a tiered MCO tax on all managed care organizations, in addition to instituting a tobacco tax and a repeal of the 7 percent reduction in in-home supportive services hours. This measure would generate \$1.9 billion per year in MCO tax revenues and \$1.3 billion per year from tobacco tax revenues.

As of this writing, the Administration has not yet formally introduced their MCO tax proposal in the extraordinary session. However, their initial ideas circulated as a draft would impose the new tax on most MCOs, not just those licensed for Medi-Cal Managed Care. It proposes a tiered tax structure based on enrollment size: For example, according to the Legislative Analyst's Office, a MCO with 1 million taxable member months would pay \$3.50 per unit for the first 125,000 member months, \$25.25 per unit for the next 150,000 member months, and \$13.75 per unit for the remaining 725,000 member months, resulting in a total payment of \$14.2 million. A link to the text of the Administration's original spring MCO proposal is included at the end of this document, however, new models were developed near the end of the regular session in September, so this version is included only as an example of possible models. The Administration's newer models are not in print.

#### Tobacco Legislation

The six-bill package of tobacco legislation is sponsored by Save Lives California, a coalition comprised of SEIU, CMA, CHA, American Cancer Society, American Lung Association, some health plans and the Dentists (CDA). The coalition's goal is to raise the tax on tobacco by \$2 by 2016 to raise \$1.5 billion annually for unspecified health spending. None of the bills below made it to the Governor's desk, and the Save Lives California coalition has indicated that they intend to place some of this policy as an initiative on the November 2016 ballot.

Please note that CSAC supported two of the introduced tobacco bills, SBX2 5 (Leno)/ ABX2 6 (Cooper) and SBX2 7 (Hernandez)/ ABX2 8 (Wood), both of which the CSAC Health and Human Services Policy Committee voted to support during the regular session.

CSAC presented SBX2 9 (McGuire)/ ABX2 10 (Bloom) to the HHS Policy Committee and the CSAC Executive Committee. Both Committees agreed that pursuing a

tobacco tax at the local level would be difficult given the industry and did not recommend that CSAC formally weigh in.

SBX2 9 (McGuire)/ ABX2 10 (Bloom) would have allowed counties to levy taxes on tobacco distributors. Implementation at the county level would have been subject to the usual rules for the adoption of local taxes (two-thirds local vote).

SBX2 7 (Hernandez)/ ABX2 8 (Wood) would have increased the age of sale for tobacco products to 21. The CSAC HHS Policy Committee adopted a support position on Hernandez's SB 151, which was identical to these special session bills. SB 151 died in the Assembly Governmental Organizations Committee last month due to strong opposition from the tobacco industry.

SBX2 5 (Leno)/ ABX2 6 (Cooper) would have added e-cigarettes to existing tobacco products definitions. The CSAC HHS Policy Committee also adopted a support position on Leno's SB 140, which was identical to these special session bills. SB 140 also died in the Assembly Governmental Organizations Committee after committee members added hostile amendments to the bill, forcing author Senator Leno to abandon the bill.

SBX2 10 (Beall) / ABX2 11(Nazarian) would have established an annual Board of Equalization (BOE) tobacco licensing fee program. Funds would have been earmarked for existing tobacco control programs.

SBX2 8 (Liu)/ ABX2 9 (Thurmond and Nazarian) would have required all schools to be tobacco free.

SBX2 6 (Monning)/ ABX2 7 (Stone) would have closed loopholes in smoke-free workplace laws, including hotel lobbies, small businesses, break rooms, and tobacco retailers.

**County Impacts of Special Session.** The MCO tax issue is of importance to counties because the current MCO tax provides critical implementation funding for the Coordinated Care Initiative (CCI). The continuation of the CCI is tied to the county In-Home Supportive Services (IHSS) Maintenance of Effort (MOE) and the eventual plan to transition collective bargaining for IHSS workers from each county to the state, which was negotiated between the Administration and CSAC in 2012. If the CCI is unsuccessful, or MCO funding for the CCI is not continued, the county IHSS MOE could possibly cease as well.

It is worth noting that the Governor's proclamation calling for the special session does not mention continued funding for the CCI.

CSAC will continue to monitor the health special session.

## **Staff Contacts**

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## **Attachments**

Special Session Legislation Chart (as of October 13, 2015)

## **Resources**

CSAC has created a Special Session page to gather all materials and resources related to the 2015 special sessions on transportation and health:

<http://www.counties.org/special-sessions>

Legislative Analyst's Office: The MCO Tax: A Flat Versus Tiered Structure (August 18, 2015): <http://www.lao.ca.gov/handouts/health/2015/MCO-Tax-081815.pdf>

CSAC Explanation of MCO Tax and CCI Issues (January 2015):

[http://www.counties.org/sites/main/files/file-attachments/mco\\_and\\_cci\\_and\\_the\\_ihss\\_moe\\_june\\_2015.pdf](http://www.counties.org/sites/main/files/file-attachments/mco_and_cci_and_the_ihss_moe_june_2015.pdf)

The IHSS MOE: Frequently Asked Questions:

[http://www.counties.org/sites/main/files/file-attachments/ihss\\_labor\\_faq\\_oct\\_15\\_final.pdf](http://www.counties.org/sites/main/files/file-attachments/ihss_labor_faq_oct_15_final.pdf)

Governor's Proclamation for Extraordinary Session:

[http://gov.ca.gov/docs/6.16.15\\_Health\\_Care\\_Special\\_Session.pdf](http://gov.ca.gov/docs/6.16.15_Health_Care_Special_Session.pdf)

Draft Administration Language on MCO Tax (March 2015):

[http://www.dof.ca.gov/budgeting/trailer\\_bill\\_language/health\\_and\\_human\\_services/documents/647DHCSManagedCareOrganizationTaxTBL\\_000.pdf](http://www.dof.ca.gov/budgeting/trailer_bill_language/health_and_human_services/documents/647DHCSManagedCareOrganizationTaxTBL_000.pdf)

**CALIFORNIA STATE ASSOCIATION OF COUNTIES  
HEALTH AND HUMAN SERVICES  
2015-16 SPECIAL SESSION BILL CHART**

| <b>Tobacco</b>     |         |   |  |
|--------------------|---------|---|--|
| ABX 2 6 (Cooper)   | Support | Would expand the STAKE Act's definition of tobacco products to include electronic devises that deliver nicotine or vaporized liquids and make it illegal to furnish such products to minors.  | Awaiting action on the Assembly Floor.   |
| ABX2 7(Stone)      | Watch   | Would expand the prohibition on spoking in a place of employment to include owner-operated business.  | Awaiting action on the Assembly Floor.   |
| ABX 2 8 (Wood)     | Support | Would raise the age for restricted access to tobacco products from 18 to 21.  | Awaiting action on the Assembly Floor.   |
| ABX2 9 (Thurmond)  | Watch   | Would require the Department of Education to require that all school districts, charter schools and county offices of education receiving funding for tobacco use prevention programs adopt and enforce a tobacco-free campus policy. | Awaiting action on the Assembly Floor.   |
| ABX2 10 (Bloom)    | Watch   | Would authorize a county board of supervisors to impose a tax on distributing cigarettes and tobacco products in a county.  | Awaiting action on the Assembly Floor.   |
| ABX2 11 (Nazarian) | Watch   | Would require a fee of \$265 to obtain a license for each cigarette and tobacco retail location from the State Board of Equalization.   | Awaiting action on the Assembly Floor.   |
| ABX2 16 (Bonta)    | Watch   | Would expand the definition of tobacco products for purposes of the Cigarette and Tobacco Products Licensing Act to include electronic cigarettes.  | Referred to the Assembly Committee on Public Health and Developmental Services |
| SBX2 5 (Leno)      | Support | Would expand the definition of tobacco products in the STAKE Act to include electronic cigarettes.  | Held at the Senate desk.   |
| SBX2 6 (Monning)   | Watch   | Would expand the prohibition on smoking in a place of employment to include an owner-operated business.   | Held at the Senate desk.   |
| SBX2 7 (Hernandez) | Support | Would raise the age for restricted access to tobacco products from 18 to 21.  | Held at the Assembly desk.   |
| SBX2 9 (McGuire)   | Watch   | Would authorize a county board of supervisors to impose a tax on distributing cigarettes and tobacco products in a county.  | Held at the Assembly desk.   |
| SBX2 10 (Beall)    | Watch   | Would require a fee of \$265 to obtain a license for each cigarette and tobacco retail location from the State Board of Equalization.   | Held at the Assembly desk.   |

**CALIFORNIA STATE ASSOCIATION OF COUNTIES  
HEALTH AND HUMAN SERVICES  
2015-16 SPECIAL SESSION BILL CHART**

| <b>Managed Care Organization Tax</b> |             |  |   |
|--------------------------------------|-------------|--|---|
| ABX2 4 (Levine)                      | Pending     | Would repeal the support services sales tax and establish a new MCO tax to be administered by DHCS in consultation with DMHC.  | Awaiting policy committee hearing.                |
| ABX2 19 (Bonta)                      | Pending     | Would establish a new MCO tax and would establish two tax tiers for managed care plans in FY 2016-17. It would further require the Department of Health Care Services and the Department of Managed Health Care to determine the tax methodology in FY 17-18 and future years.   | Awaiting policy committee hearing.                |
| SBX2 14 (Hernandez)                  | Pending     | Would: 1) change the definition of tobacco products to include electronic cigarettes; 2) impose a \$2 tobacco tax on cigarettes and an equivalent tax on electronic cigarettes; 3) repeal the 7 percent reduction in in-home supportive services (IHSS) service hours; and 4) impose a tiered MCO tax on all managed care organizations. | Awaiting a vote on the Senate Floor.              |
| <b>Taxation</b>                      |             |  |   |
| ABX2 18 (Bonilla)                    | Watch       | Would impose a surtax on every individual for the purchase of a cocktail at a rate of \$0.05 per cocktail, adjusted annually.  | Re-referred to the Assembly Committee on Finance. |
| <b>Medi-Cal</b>                      |             |  |   |
| ABX2 13 (Gipson)                     | Watch       | Would declare the intent of the Legislature to enact legislation to increase funding for the AIDS Medi-Cal Waiver Program.   | Assembly desk.                                    |
| <b>End of Life</b>                   |             |  |   |
| ABX2 15 (Eggman)                     | No Position | Would enact the End of Life Option Act would expand the STAKE Act's definition of tobacco products to include electronic devises that deliver nicotine or vaporized liquids and make it illegal to furnish such products to minors.  | Signed into law.<br>Chapter 1, Statutes of 2015   |



October 13, 2015

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**To:** Health and Human Services Policy Committee Members

**From:** Farrah McDaid Ting, Legislative Representative  
Michelle Gibbons, Legislative Analyst

**Re:** **'Medi-Cal 2020' Waiver Renewal Update**

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CSAC has contracted with Hurst Brooks Espinosa to represent CSAC on the many facets concerning the waiver renewal. Kelly Brooks-Lindsey will provide the Health and Human Services Policy Committee with key updates regarding the negotiation process between the state and federal government and where the waiver currently stands. We have included her August 19 memo for your reference and look forward to hearing the latest news.

For more information about the state's proposal, please visit the Department of Health Care Service's Section 1115 Waiver Renewal page at:

<http://www.dhcs.ca.gov/provgovpart/Pages/WaiverRenewal.aspx>

**Attachments:**

Hurst Brooks Espinosa Memo: Medicaid Section 1115 Waiver Renewal: Medi-Cal 2020 Update

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August 19, 2015

TO: Matt Cate, CSAC Executive Director

FROM: Kelly Brooks-Lindsey, Partner

**Re: Medicaid Section 1115 Waiver Renewal: Medi-Cal 2020 Update**

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California is in the midst of negotiating a renewal to its existing “Bridge to Reform” Medicaid Section 1115 Waiver. The Department of Health Care Services (DHCS) submitted the waiver renewal, dubbed Medi-Cal 2020, to the Centers for Medicare and Medicaid Services (CMS) on March 27, 2015. The negotiations between DHCS and CMS began in earnest earlier this summer.

DHCS and CMS put together a schedule for regular discussions about specific waiver topics. The following is an outline of the joint plan for discussions over the summer and fall:

| Month     | Topics  |
|-----------|---|
| July      | <ul style="list-style-type: none"><li>Public Safety Net Global payments for the remaining uninsured</li><li>Managed care transformation incentive program</li><li>Accountability measures, including metrics for measuring achievements during the five-year waiver</li></ul> |
| August    | <ul style="list-style-type: none"><li>Financing, including budget neutrality</li><li>Federal/state shared savings concept</li><li>Public hospital transformation incentives (aka Delivery System Reform Incentive Payment successor)</li></ul>                                |
| September | <ul style="list-style-type: none"><li>Fee-for-service proposal (dental and maternity care)</li><li>Housing</li><li>Whole Person Care</li></ul>  |

**FINANCING ISSUES**

It is unclear how quickly some of the major financing questions will be settled; many of the financing issues will impact the policy portions of the waiver. It’s important to keep in mind that California’s existing Medicaid Section 1115 Waiver expires on October 31, 2015. California is seeking \$17 billion over the next five years, which is \$7 billion more than California received under the existing waiver. DHCS is anticipating further detail and comment from CMS on the financing proposals in mid to late August. The outcome of the financing discussions will affect the remainder of the negotiations.



**Shared Savings.** California is proposing to test a new investment strategy with the federal government by initiating a federal-state shared savings model. CMS continues to raise doubts about its authority to approve the federal-state shared savings component. California's shared savings proposal would be precedent-setting and allow other states the opportunity to make similar requests in 1115 waiver submissions. Many stakeholders are pessimistic about this proposal ultimately being included in the final waiver agreed to by the state and federal governments.

If the federal-shared savings proposal is not approved, approximately \$5 billion in policy initiatives under the state's waiver submission will need a source of non-federal match. The state did not commit any state General Fund to the current \$10 billion waiver, and \$2 billion of the current waiver directly benefits the state General Fund. If some of those policy initiatives continue to be included in the waiver, the state will need to identify a source of match.

**Budget Neutrality.** CMS also indicated to California that they are developing a national policy on budget neutrality that includes the concept of rebasing away from the use of fee-for-service (FFS) assumptions. Part of the budget neutrality calculation requires states to calculate their costs without the waiver and then to update those costs with the waiver. The difference between the "without" waiver and "with" waiver costs is the basis for budget neutrality. States use the budget neutrality calculation to inform how they approach CMS in asking for additional federal funds. California is proposing to continue to calculate budget neutrality by using a comparison of FFS costs with managed care costs, which is how the state calculates budget neutrality in the existing waiver.

While CMS has indicated that moving away from FFS is their policy goal, it is not clear what that may mean for California's waiver proposal. CMS is still developing policy on budget neutrality and it is unknown whether the policy will be drafted for purposes of the budget neutrality calculation discussion slated to occur with California in August. CMS has assured the state that it is not their intention to zero out California's waiver savings. California is not aware of CMS raising the new policy with other states in waiver negotiations.

#### **PENDING MANAGED CARE REGULATIONS & WAIVER IMPACTS**

CMS is proposing new managed care regulations that will impact California's Medi-Cal program and may have serious implications for the waiver renewal. Public comments were due to CMS on July 27. The proposed regulations could be finalized anytime between December 2015 and summer of 2016.

California, like other states, has traditionally used the flexibility of supplemental payments to support its core Medicaid programs. The proposed regulation would fundamentally change how payments are made to Medi-Cal providers – destabilizing the delivery system and interrupting plans and providers, particularly public safety net providers.

First, the draft regulations prohibit the state from directing health plan payments. If interpreted broadly (as it is written), the proposal would impact the hospital fee, intergovernmental transfers and other supplemental payments, amounting to over \$2 billion in California. Second, CMS is seeking to have actuaries certify to a specific rate – not a rate range, as is the practice today. The regulations would prohibit providers, like counties and fire districts, from paying above the lower bound since there would no longer be a range. This is another mechanism by which public systems have supplemented their rates.

The annual financial impact of the proposed managed care regulation on California's public hospitals alone is estimated to be between \$750 million and \$1 billion. The managed care regulation would severely limit, if not eliminate, potential benefits from a waiver renewal.

### **POLICY ISSUES**

DHCS has said very little publicly about the policy issues being raised by CMS in the negotiations. Many of the policy proposals are being discussed in September. Below is additional detail about the only policy issues that DHCS has shared significant information publicly.

***Public Safety Net Global Payments for the Remaining Uninsured.*** DHCS and CMS had detailed discussions about the public safety net global payments for the remaining uninsured in July. Recall that the Brown Administration is proposing to transform California's public safety net for the remaining uninsured by unifying the Disproportionate Share Hospital (DSH) and Safety Net Care Pool (SNCP) funding streams into a global payment system. DHCS believes they achieved the following outcomes in the global payments conversation: 1) CMS understands and is interested in the proposal and 2) DHCS has satisfactorily addressed CMS's questions. CMS has indicated they are developing a new federal policy on uncompensated care pools based on what was recently agreed to with the state of Florida. The pending federal policy likely impacts the global payments for the uninsured because the state is proposing to continue the use of SNCP revenue. It is unclear whether and how California's proposal may align with CMS's new national policy.

### **FEDERAL & STATE NEXT STEPS**

CMS remains very engaged, and DHCS indicates CMS is committed to completing the waiver by November 1, 2015. When the CSAC Board of Directors meet on September 3, 60 days will remain until the existing waiver expires.

Once more is known about the CMS financing discussions with California, counties may need to engage on a federal and state communications and outreach strategy. Outreach may include members of the California's federal delegation and members of the California State Legislature – likely with the goal of influencing key officials in CMS and the White House.

Once negotiations conclude on the financing and major policy proposals, CMS will create the Special Terms and Conditions (STCs), the legal document governing the waiver. State implementation cannot begin until the STCs are complete. The state and federal governments are focused on completing negotiations in order to begin implementation in November 2015.

The Legislature remains interested in working with the Brown Administration to enact statutory changes necessary to implement a new waiver. However, timing remains a challenge. Currently, there is not enough detail from the state/federal negotiations to develop a statutory framework. AB 72 by Assembly Member Rob Bonta and SB 36 by Senator Ed Hernandez continue to work their way through the legislative process as spot bills. Substantive amendments to the bills are anticipated in late August or early September once more is known about waiver negotiations. If sufficient information is not available prior to the Legislature's departure on September 11, additional legislation could be contemplated in January 2016 when the houses reconvene for the second year of the 2015-16 session.

Hurst Brooks Espinosa will continue to provide regular policy and political updates to counties on Medi-Cal 2020 Waiver renewal details as they become available. For additional questions, please contact Kelly Brooks-Lindsey at [kbl@hbeadvocacy.com](mailto:kbl@hbeadvocacy.com) or 916.272.0011.