

ASSEMBLY BILL

No. 651

Introduced by Assembly Member Grayson

February 15, 2019

An act to amend, add, and repeal Section 76000.10 of the Government Code, to add Section 1371.6 to the Health and Safety Code, to add Section 10126.65 to the Insurance Code, and to add Section 14124.15 to the Welfare and Institutions Code, relating to air ambulance services.

LEGISLATIVE COUNSEL'S DIGEST

AB 651, as introduced, Grayson. Air ambulance services.

(1) Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of the act a crime. Existing law also provides for the regulation of health insurers by the Department of Insurance. Existing law requires that health care service plans and health insurance policies, as specified, provide coverage for certain services and treatments, including emergency medical transportation services.

This bill would require a health care service plan contract or a health insurance policy issued, amended, or renewed on or after January 1, 2020, to provide that if an enrollee, insured, or subscriber, as applicable, receives covered services from a noncontracting air ambulance provider, the enrollee, insured, or subscriber shall pay no more than the same cost sharing that the enrollee, insured, or subscriber would pay for the same covered services received from a contracting air ambulance provider, referred to as the in-network cost-sharing amount. The bill would specify that an enrollee, subscriber, or insured would not owe the noncontracting provider more than the in-network cost-sharing

amount for services subject to the bill, as specified. The bill would allow a noncontracting provider to advance to collections only the in-network cost-sharing amount, as determined by the health care service plan or insurer, that the enrollee, insured, or subscriber has failed to pay. The bill would authorize a health care service plan, health insurer, or provider to seek relief in any court for the purpose of resolving a payment dispute, and would not prohibit a provider from using a health care service plan's or health insurer's existing dispute resolution processes. Because a willful violation of the bill's requirements relative to health care service plans would be a crime, the bill would impose a state-mandated local program.

(2) Existing law establishes the Medi-Cal program, which is administered by the State Department of Health Care Services and under which qualified low-income individuals receive healthcare services. The Medi-Cal program is, in part, governed and funded by federal Medicaid program provisions. Existing law provides for the federal Medicare Program, which is a public health insurance program for persons 65 years of age and older and specified persons with disabilities who are under 65 years of age.

This bill would, commencing July 1, 2020, require the department to set and maintain the Medi-Cal fee rate for air ambulance services provided by either fixed or rotary wing aircraft that is equal to a percentage of the rural Medicare rates for those services, as described, and to the extent federal financial participation is available and necessary federal approvals have been obtained. The bill would specify that, commencing July 1, 2020, the amounts a noncontract emergency medical transport provider could collect if the beneficiary received medical assistance other than through enrollment in a Medi-Cal managed care health plan pursuant to a specified federal law would be the resulting fee-for-service payment schedule amounts after the application of the rate established pursuant to the bill.

(3) Existing law, the Emergency Medical Air Transportation Act, effective until January 1, 2022, imposes a penalty of \$4 until January 1, 2020, upon every conviction for a violation of the Vehicle Code or a local ordinance adopted pursuant to the Vehicle Code, other than a parking offense. The act requires the county or the court that imposed the fine to transfer the moneys collected pursuant to that act to the Treasurer for deposit into the Emergency Medical Air Transportation and Children's Coverage Fund.

Under the act, moneys in the fund are made available, upon appropriation by the Legislature, to the State Department of Health Care Services for children’s healthcare coverage and administrative costs relating to emergency medical air transportation provider payments, with the appropriated moneys remaining after payment of the administrative costs to be used as follows: (A) 20% of the amount for offsetting the state portion of the Medi-Cal reimbursement rate for emergency medical air transportation services, and (B) 80% of the amount for augmenting emergency medical air transportation reimbursement payments made through the Medi-Cal program.

This bill, if the rate change to the Medi-Cal fee rate for air ambulance services is implemented pursuant to paragraph (2), would delete the authorization to use the moneys appropriated from the fund for augmenting Medi-Cal emergency medical air transportation reimbursement payments, while maintaining the authorization to use the moneys for offsetting the state portion of the Medi-Cal reimbursement rate for those services. The bill would preserve the authorization to use the moneys for augmentation of payments for purposes of emergency medical air transportation that was provided before July 1, 2020, as specified. The bill would make conforming changes by deleting or amending related provisions. The bill would repeal these provisions on January 1, 2023.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

- 1 SECTION 1. Section 76000.10 of the Government Code is
- 2 amended to read:
- 3 76000.10. (a) This section shall be known, and may be cited,
- 4 as the Emergency Medical Air Transportation Act.
- 5 (b) For purposes of this section:
- 6 (1) “Department” means the State Department of Health Care
- 7 Services.
- 8 (2) “Director” means the Director of Health Care Services.

1 (3) “Provider” means a provider of emergency medical air
2 transportation services.

3 (4) “Rotary wing” means a type of aircraft, commonly referred
4 to as a helicopter, that generates lift through the use of wings,
5 known as rotor blades, that revolve around a mast.

6 (5) “Fixed wing” means a type of aircraft, commonly referred
7 to as an airplane, that generates lift through the use of the forward
8 motion of the aircraft and wings that do not revolve around a mast
9 but are fixed in relation to the fuselage of the aircraft.

10 (6) “Air mileage rate” means the per-mileage reimbursement
11 rate paid for services rendered by rotary-wing and fixed-wing
12 providers.

13 (c) (1) For purposes of implementing this section, a penalty of
14 four dollars (\$4) shall be imposed upon every conviction for a
15 violation of the Vehicle Code or a local ordinance adopted pursuant
16 to the Vehicle Code, except parking offenses subject to Article 3
17 (commencing with Section 40200) of Chapter 1 of Division 17 of
18 the Vehicle Code.

19 (2) The penalty described in this subdivision is in addition to
20 the state penalty assessed pursuant to Section 1464 of the Penal
21 Code. However, this penalty shall not be included in the base fine
22 used to calculate the state penalty assessment pursuant to
23 subdivision (a) of Section 1464 of the Penal Code, the state
24 surcharge levied pursuant to Section 1465.7 of the Penal Code,
25 and the state court construction penalty pursuant to Section 70372
26 of this code, and to calculate the other additional penalties levied
27 pursuant to this chapter.

28 (d) The county or the court that imposed the fine shall, in
29 accordance with the procedures set out in Section 68101, transfer
30 moneys collected pursuant to this section to the Treasurer for
31 deposit into the Emergency Medical Air Transportation and
32 Children’s Coverage Fund, which is hereby established in the State
33 Treasury. Notwithstanding Section 16305.7, the Emergency
34 Medical Air Transportation and Children’s Coverage Fund shall
35 include interest and dividends earned on money in the fund. Any
36 law that references the Emergency Medical Air Transportation
37 Act Fund, as previously established by this subdivision, shall be
38 construed to reference the Emergency Medical Air Transportation
39 and Children’s Coverage Fund, effective January 1, 2018.

1 (e) (1) The Emergency Medical Air Transportation and
2 Children’s Coverage Fund shall be administered by the State
3 Department of Health Care Services. Moneys in the Emergency
4 Medical Air Transportation and Children’s Coverage Fund shall
5 be made available, upon appropriation by the Legislature, to the
6 department for any of the following purposes:

7 (A) For children’s health care coverage.
8 (B) For emergency medical air transportation provider payments,
9 as follows:

10 (i) For payment of the administrative costs of the department
11 in administering emergency medical air transportation provider
12 payments.

13 (ii) Twenty percent of the appropriated money remaining after
14 payment of administrative costs pursuant to clause (i) shall be used
15 to offset the state portion of the Medi-Cal reimbursement rate for
16 emergency medical air transportation services.

17 (iii) Eighty percent of the appropriated money remaining after
18 payment of administrative costs pursuant to clause (i) shall be used
19 to augment emergency medical air transportation reimbursement
20 payments made through the Medi-Cal program, as set forth in
21 paragraphs (2) and (3).

22 (2) If money in the Emergency Medical Air Transportation and
23 Children’s Coverage Fund is made available to the department for
24 the purpose described in subparagraph (B) of paragraph (1), both
25 of the following shall occur:

26 (A) The department shall seek to obtain federal matching funds
27 by using the moneys in the Emergency Medical Air Transportation
28 and Children’s Coverage Fund for the purpose of augmenting
29 Medi-Cal reimbursement paid to emergency medical air
30 transportation providers.

31 (B) The director shall augment emergency medical air
32 transportation provider payments in accordance with a federally
33 approved reimbursement methodology. The director may seek
34 federal approvals or waivers as may be necessary to implement
35 this section and to obtain federal financial participation to the
36 maximum extent possible for the payments under this section.

37 (3) (A) Upon appropriation by the Legislature, the department
38 shall use moneys in the Emergency Medical Air Transportation
39 and Children’s Coverage Fund and any federal matching funds to
40 do any of the following:

1 (i) Fund children's health care coverage.

2 (ii) Increase the Medi-Cal reimbursement for emergency medical
3 air transportation services in an amount not to exceed normal and
4 customary charges charged by the providers.

5 (B) Notwithstanding any other law, and pursuant to this section,
6 if money in the Emergency Medical Air Transportation and
7 Children's Coverage Fund is made available to the department for
8 the purpose described in subparagraph (B) of paragraph (1), the
9 department shall increase the Medi-Cal reimbursement for
10 emergency medical air transportation services if both of the
11 following conditions are met:

12 (i) Moneys in the Emergency Medical Air Transportation and
13 Children's Coverage Fund will cover the cost of increased
14 payments pursuant to clause (iii) of subparagraph (B) of paragraph
15 (1).

16 (ii) The state does not incur any General Fund expense to pay
17 for the Medi-Cal emergency medical air transportation services
18 increase.

19 (f) The assessment of penalties pursuant to this section shall
20 terminate on January 1, 2020. Penalties assessed before January
21 1, 2020, shall continue to be collected, administered, and
22 distributed pursuant to this section until exhausted or until June
23 30, 2021, whichever occurs first. On June 30, 2021, moneys
24 remaining unexpended and unencumbered in the Emergency
25 Medical Air Transportation and Children's Coverage Fund shall
26 be transferred to the General Fund, to be available, upon
27 appropriation by the Legislature, for the purposes of augmenting
28 Medi-Cal reimbursement for emergency medical air transportation
29 and related costs, generally, or funding children's health care
30 coverage.

31 (g) Notwithstanding the rulemaking provisions of Chapter 3.5
32 (commencing with Section 11340) of Part 1 of Division 3 of Title
33 2, the department may implement, interpret, or make specific this
34 section and any applicable federal waivers and state plan
35 amendments by means of all-county letters, plan letters, plan or
36 provider bulletins, or similar instructions without taking regulatory
37 action.

38 ~~(h) This section shall remain in effect only until January 1, 2022,~~
39 ~~and as of that date is repealed, unless a later enacted statute, that~~
40 ~~is enacted before January 1, 2022, deletes or extends that date.~~

1 *(h) This section shall remain in effect only until the earlier of*
2 *either of the following:*

3 (1) *The date on which the rate change to the Medi-Cal fee rate*
4 *for air ambulance service is implemented pursuant to Section*
5 *14124.15 of the Welfare and Institutions Code, and as of that date*
6 *is repealed.*

7 (2) *January 1, 2022, and as of that date is repealed.*

8 SEC. 2. Section 76000.10 is added to the Government Code,
9 to read:

10 76000.10. (a) This section shall be known, and may be cited,
11 as the Emergency Medical Air Transportation Act.

12 (b) For purposes of this section:

13 (1) “Department” means the State Department of Health Care
14 Services.

15 (2) “Director” means the Director of Health Care Services.

16 (3) “Provider” means a provider of emergency medical air
17 transportation services.

18 (4) “Rotary wing” means a type of aircraft, commonly referred
19 to as a helicopter, that generates lift through the use of wings,
20 known as rotor blades, that revolve around a mast.

21 (5) “Fixed wing” means a type of aircraft, commonly referred
22 to as an airplane, that generates lift through the use of the forward
23 motion of the aircraft and wings that do not revolve around a mast
24 but are fixed in relation to the fuselage of the aircraft.

25 (6) “Air mileage rate” means the per-mileage reimbursement
26 rate paid for services rendered by rotary-wing and fixed-wing
27 providers.

28 (c) (1) For purposes of implementing this section, a penalty of
29 four dollars (\$4) shall be imposed upon every conviction for a
30 violation of the Vehicle Code or a local ordinance adopted pursuant
31 to the Vehicle Code, except parking offenses subject to Article 3
32 (commencing with Section 40200) of Chapter 1 of Division 17 of
33 the Vehicle Code.

34 (2) The penalty described in this subdivision is in addition to
35 the state penalty assessed pursuant to Section 1464 of the Penal
36 Code. However, this penalty shall not be included in the base fine
37 used to calculate the state penalty assessment pursuant to
38 subdivision (a) of Section 1464 of the Penal Code, the state
39 surcharge levied pursuant to Section 1465.7 of the Penal Code,
40 and the state court construction penalty pursuant to Section 70372

1 of this code, and to calculate the other additional penalties levied
2 pursuant to this chapter.

3 (d) The county or the court that imposed the fine shall, in
4 accordance with the procedures set out in Section 68101, transfer
5 moneys collected pursuant to this section to the Treasurer for
6 deposit into the Emergency Medical Air Transportation and
7 Children's Coverage Fund, which is hereby established in the State
8 Treasury. Notwithstanding Section 16305.7, the Emergency
9 Medical Air Transportation and Children's Coverage Fund shall
10 include interest and dividends earned on money in the fund. Any
11 law that references the Emergency Medical Air Transportation
12 Act Fund, as previously established by this subdivision, shall be
13 construed to reference the Emergency Medical Air Transportation
14 and Children's Coverage Fund, effective January 1, 2018.

15 (e) The Emergency Medical Air Transportation and Children's
16 Coverage Fund shall be administered by the State Department of
17 Health Care Services. Moneys in the Emergency Medical Air
18 Transportation and Children's Coverage Fund shall be made
19 available, upon appropriation by the Legislature, to the department
20 for any of the following purposes:

21 (1) For children's healthcare coverage.

22 (2) For emergency medical air transportation provider payments,
23 as follows:

24 (A) For payment of the administrative costs of the department
25 in administering emergency medical air transportation provider
26 payments.

27 (B) The appropriated money remaining after payment of
28 administrative costs pursuant to subparagraph (A) shall be used
29 to offset the state portion of the Medi-Cal reimbursement rate for
30 emergency medical air transportation services.

31 (f) The assessment of penalties pursuant to this section shall
32 terminate on January 1, 2020. Penalties assessed before January
33 1, 2020, shall continue to be collected, administered, and
34 distributed pursuant to this section until exhausted or until June
35 30, 2021, whichever occurs first. On June 30, 2021, moneys
36 remaining unexpended and unencumbered in the Emergency
37 Medical Air Transportation and Children's Coverage Fund shall
38 be transferred to the General Fund, to be available, upon
39 appropriation by the Legislature, for the purposes of offsetting the
40 state portion of the Medi-Cal reimbursement rate for emergency

1 medical air transportation and related costs, generally, or funding
2 children’s healthcare coverage.

3 (g) Notwithstanding the rulemaking provisions of Chapter 3.5
4 (commencing with Section 11340) of Part 1 of Division 3 of Title
5 2, the department may implement, interpret, or make specific this
6 section and any applicable federal waivers and state plan
7 amendments by means of all-county letters, plan letters, plan or
8 provider bulletins, or similar instructions without taking regulatory
9 action.

10 (h) (1) This section shall become operative only if, and on the
11 date upon which, the rate change to the Medi-Cal fee rate for air
12 ambulance services is implemented pursuant to Section 14124.15
13 of the Welfare and Institutions Code.

14 (2) (A) Except as described in subdivision (f), moneys in the
15 Emergency Medical Air Transportation and Children’s Coverage
16 Fund shall remain available, upon appropriation by the Legislature,
17 to be used to augment emergency medical air transportation
18 reimbursement payments made through the Medi-Cal program for
19 purposes of emergency medical air transportation that was provided
20 before July 1, 2020, and that is therefore not eligible for the
21 Medi-Cal rate change made pursuant to Section 14124.15 of the
22 Welfare and Institutions Code. The emergency medical air
23 transportation reimbursement payments may be augmented
24 pursuant to this subparagraph using moneys deposited in the fund
25 within 90 calendar days following July 1, 2020.

26 (B) Moneys in the Emergency Medical Air Transportation and
27 Children’s Coverage Fund shall not be available to be used to
28 augment emergency medical air transportation reimbursement
29 payments made through the Medi-Cal program for purposes of
30 emergency medical air transportation that is provided on or after
31 July 1, 2020, and that is therefore eligible for the Medi-Cal rate
32 change made pursuant to Section 14124.15 of the Welfare and
33 Institutions Code.

34 (i) This section shall remain in effect only until January 1, 2023,
35 and as of that date is repealed.

36 SEC. 3. Section 1371.6 is added to the Health and Safety Code,
37 to read:

38 1371.6. (a) (1) Notwithstanding Section 1367.11, a health
39 care service plan contract issued, amended, or renewed on or after
40 January 1, 2020, shall provide that if an enrollee receives covered

1 services from a noncontracting air ambulance provider, the enrollee
 2 shall pay no more than the same cost sharing that the enrollee
 3 would pay for the same covered services received from a
 4 contracting air ambulance provider. This amount shall be referred
 5 to as the “in-network cost-sharing amount.”

6 (2) An enrollee shall not owe the noncontracting provider more
 7 than the in-network cost-sharing amount for services subject to
 8 this section. At the time of payment by the plan to the
 9 noncontracting provider, the plan shall inform the enrollee and the
 10 noncontracting provider of the in-network cost-sharing amount
 11 owed by the enrollee.

12 (b) The following shall apply for purposes of this section:

13 (1) Any cost sharing paid by the enrollee for the services subject
 14 to this section shall count toward the limit on annual out-of-pocket
 15 expenses established under Section 1367.006.

16 (2) Cost sharing arising from services subject to this section
 17 shall be counted toward any deductible in the same manner as cost
 18 sharing would be attributed to a contracting provider.

19 (3) The cost sharing paid by the enrollee pursuant to this section
 20 shall satisfy the enrollee’s obligation to pay cost sharing for the
 21 health service.

22 (c) A noncontracting provider may advance to collections only
 23 the in-network cost-sharing amount, as determined by the plan
 24 pursuant to subdivision (a), that the enrollee has failed to pay.

25 (d) A health care service plan or a provider may seek relief in
 26 any court for the purpose of resolving a payment dispute. A
 27 provider is not prohibited from using a health care service plan’s
 28 existing dispute resolution processes.

29 (e) Air ambulance service providers remain subject to the
 30 balance billing protections for Medi-Cal beneficiaries under Section
 31 14019.4 of the Welfare and Institutions Code.

32 SEC. 4. Section 10126.65 is added to the Insurance Code, to
 33 read:

34 10126.65. (a) (1) Notwithstanding Section 10352, a health
 35 insurance policy issued, amended, or renewed on or after January
 36 1, 2020, shall provide that if an insured or subscriber receives
 37 covered services from a noncontracting air ambulance provider,
 38 the insured or subscriber shall pay no more than the same cost
 39 sharing that the insured or subscriber would pay for the same
 40 covered services received from a contracting air ambulance

1 provider. This amount shall be referred to as the “in-network
2 cost-sharing amount.”

3 (2) A subscriber or insured shall not owe the noncontracting
4 provider more than the in-network cost-sharing amount for services
5 subject to this section. At the time of payment by the insurer to
6 the noncontracting provider, the insurer shall inform the insured
7 or subscriber and the noncontracting provider of the in-network
8 cost-sharing amount owed by the insured or subscriber.

9 (b) The following shall apply for purposes of this section:

10 (1) Any cost sharing paid by the insured or subscriber for the
11 services subject to this section shall count toward the limit on
12 annual out-of-pocket expenses established under Section 10112.28.

13 (2) Cost sharing arising from services subject to this section
14 shall be counted toward any deductible in the same manner as cost
15 sharing would be attributed to a contracting provider.

16 (3) The cost sharing paid by the insured or subscriber pursuant
17 to this section shall satisfy the insured’s or subscriber’s obligation
18 to pay cost sharing for the health service.

19 (c) A noncontracting provider may advance to collections only
20 the in-network cost-sharing amount, as determined by the insurer
21 pursuant to subdivision (a), that the insured or subscriber has failed
22 to pay.

23 (d) A health insurer or a provider may seek relief in any court
24 for the purpose of resolving a payment dispute. A provider is not
25 prohibited from using a health insurer’s existing dispute resolution
26 processes.

27 SEC. 5. Section 14124.15 is added to the Welfare and
28 Institutions Code, to read:

29 14124.15. (a) The department shall set and maintain the
30 Medi-Cal fee rate for air ambulance services provided by either
31 fixed or rotary wing aircraft that is equal to a percentage, as
32 specified in subdivision (b), of the rural Medicare rates for those
33 services.

34 (b) The final rate shall either meet or exceed the sum of the air
35 ambulance service rate as provided in the Medi-Cal program on
36 December 31, 2017, and the supplemental payment offered in the
37 year 2017 pursuant to Section 76000.10 of the Government Code.

38 (c) Each applicable Medi-Cal managed care health plan shall
39 satisfy its obligation under Section 438.114(c) of Title 42 of the
40 Code of Federal Regulations for emergency medical transports

1 and shall provide payment to noncontract emergency medical
2 transport providers consistent with Section 1396u-2(b)(2)(D) of
3 Title 42 of the United States Code. Commencing July 1, 2020, and
4 for each state fiscal year thereafter for which this chapter is
5 operative, the amounts a noncontract emergency medical transport
6 provider could collect if the beneficiary received medical assistance
7 other than through enrollment in a Medi-Cal managed care health
8 plan pursuant to Section 1396u-2(b)(2)(D) of Title 42 of the United
9 States Code shall be the resulting fee-for-service payment schedule
10 amounts after the application of this section.

11 (d) This section shall become operative July 1, 2020, and shall
12 be implemented only to the extent federal financial participation
13 is available and only if necessary federal approvals have been
14 obtained.

15 SEC. 6. No reimbursement is required by this act pursuant to
16 Section 6 of Article XIII B of the California Constitution because
17 the only costs that may be incurred by a local agency or school
18 district will be incurred because this act creates a new crime or
19 infraction, eliminates a crime or infraction, or changes the penalty
20 for a crime or infraction, within the meaning of Section 17556 of
21 the Government Code, or changes the definition of a crime within
22 the meaning of Section 6 of Article XIII B of the California
23 Constitution.