Date of Hearing: April 14, 2021

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Lorena Gonzalez, Chair
AB 265 (Petrie-Norris) – As Introduced January 15, 2021

Policy Committee: Health Vote: 15 - 0

Urgency: No State Mandated Local Program: No Reimbursable: No

SUMMARY:

This bill removes a restriction that caps laboratory rates in the fee-for-service Medi-Cal program at 80% of the rate the federal Medicare program pays.

FISCAL EFFECT:

Indeterminate annual costs, potentially in the millions of dollars GF annually, depending on future adjustments to Medicare rates.

According to the November 2020 Medi-Cal Local Assistance Estimate, savings associated with the annual rate adjustments based on the 80% of Medicare cap, per current law, are projected to be (total funds):

1) $1.3 million for the 2019 adjustment.

2) $15 million for the 2020 adjustment.

3) $1.3 million for the 2021 adjustment.

Under this bill, these annual adjustments would no longer be made. This would result in foregone GF savings (or GF cost) of about 40% of the estimated total fund amount of savings for each year. For instance, if total fund savings for a particular annual adjustment would have been $10 million, this bill would result in foregone GF savings (or GF cost) of around $4 million for that year.

COMMENTS:

1) **Purpose.** According to the author, this bill will protect laboratory jobs and services in the state. The author contends current law results in automatic cuts to the state's carefully calculated Medi-Cal lab rates.

2) **Current Rates**. Under state law and a federally approved methodology, fee-for-service Medi-Cal laboratory rates are set based on the lowest of the following:

    a. The amount billed.
    b. The charge to the general public.
    c. Eighty percent of the lowest maximum allowance established by the federal Medicare Program for the same or similar services.

d. A reimbursement rate based on an average of the lowest amount that other payers and other state Medicaid programs are paying for similar clinical laboratory or laboratory services.

Both (c) and (d), above, are operative in a practical sense.

Every three years, DHCS adjusts rates using a weighted reimbursement methodology based on an average of the lowest prices other third-party payers are paying for similar services as specified in (d). This methodology was established by AB 1494 (Committee on Budget), Chapter 28, Statutes of 2012. DHCS also annually adjusts rates to ensure no rates exceed 80% of Medicare rates for the same or similar services, as specified in (d).

This bill would remove (c), above, the requirement that rates cannot exceed 80% of Medicare rates. The effective rates would then likely be the amount DHCS establishes every three years pursuant to AB 1494, based on the lowest third-party prices.

This bill does not affect the application of a 10% rate reduction to laboratory services still in place pursuant to AB 97 (Committee on Budget), Chapter 3, Statutes of 2011. The reduction is operative but excludes services provided through the Family Planning, Access, Care, and Treatment Program (FPACT) and outpatient hospital services. This reduction is applied after the rate is established pursuant to the limits described above.

3) **Recent Medicare Rate Cuts Impact the Operation of California's Rate Caps**. This bill's sponsor, the California Clinical Laboratory Association, points out that since California implemented the methodology established by AB 1494, the Medicare program has also reduced rates significantly by establishing a similar methodology based on the weighted median rates of other payers. The 2014 federal Protecting Access to Medicare Act (PAMA) implemented this new federal methodology, and in 2018 Medicare rate adjustments went into effect. Subsequently, DHCS instituted rate cuts each year based on the new federal Medicare rates. The sponsor argues the additional constraint of 80% of the new "right-sized" Medicare rates result in rates that are too low and below their costs. As noted above, DHCS projects millions of dollars in savings based on the "80% of Medicare" cap.

Laboratory providers also express concern about the implementation of the 80% cap and other rate adjustments, as DHCS has a practice of finalizing the rate adjustments after payment has been made and retroactively recouping the difference from providers.

4) **Staff Comments**. Low Medi-Cal payment rates can be a matter of public policy concern in some cases. Low rates could reduce the bottom line of Medi-Cal providers and affect their ability to maintain a robust set of health care services for Medi-Cal beneficiaries. Access to care for Medi-Cal beneficiaries can also be compromised if low rates result in providers refusing to participate in the Medi-Cal program and beneficiaries are not able to access services. It is unclear to what extent these potential concerns apply in the case of fee-for-service laboratory rates. Planned Parenthood Affiliates of California, a supporter of this bill, indicates it member clinics intend to always stay open to serve their clients, but the retroactive recoupments and lower rates hurt overall financial viability of the clinics. No direct evidence has been presented that lower rates have reduced access to laboratory services.

Analysis Prepared by: Lisa Murawski / APPR. / (916) 319-2081