

Date of Hearing: March 23, 2021

ASSEMBLY COMMITTEE ON HEALTH

Jim Wood, Chair

AB 265 (Petrie-Norris) – As Introduced January 15, 2021

SUBJECT: Medi-Cal: reimbursement rates.

SUMMARY: Repeals one of four the caps on Medi-Cal laboratory or laboratory services reimbursement, which prohibits reimbursement from exceeding 80% of the lowest maximum allowance established by the federal Medicare program for the same or similar services under a Medi-Cal payment methodology that reimburses the “lowest of” of one of four methodologies. Specifically, **this bill:**

EXISTING LAW:

- 1) Establishes a schedule of covered benefits in the Medi-Cal program, which includes outpatient laboratory services, subject to utilization controls.
- 2) Defines, pursuant to Medi-Cal regulation, “clinical laboratory or laboratory services” to include the biological, microbiological, serological, chemical, immunohematological, hematological, biophysical, cytological, pathological, or other types of examination of materials derived from the human body, for purposes of diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings.
- 3) Prohibits Medi-Cal reimbursement for clinical laboratory or laboratory services from exceeding 80% of the lowest maximum allowance established by the federal Medicare program for the same or similar services.
- 4) Caps Medi-Cal reimbursement to providers for clinical laboratory or laboratory services at 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; or,
 - 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.

FISCAL EFFECT: Unknown. This bill has not been analyzed by a fiscal committee.

COMMENTS:

- 1) **PURPOSE OF THIS BILL.** According to the author, this bill is a critical measure needed for the protection of jobs and health care services in California. Laboratories provide our state with 75,826 jobs that we cannot afford to lose in the face of an unprecedented unemployment crisis and the COVID-19 pandemic. The author concludes that not only will this bill protect tens of thousands of jobs, it will also ensure safety-net providers can implement and be properly reimbursed for much-needed health care services.

- 2) **BACKGROUND.** AB 1494 (Committee on Budget), Chapter 28, Statutes of 2012, the health budget trailer bill of 2012, established a new Medi-Cal reimbursement methodology for laboratory services using a “lowest of” laboratory reimbursement methodology described in existing law in 4)c) above. Prior to the “lowest of” methodology established by AB 1494, reimbursement for clinical laboratory or laboratory services was prohibited from exceeding 80% of the lowest maximum allowance established by the federal Medicare program. Following the calculation of the “lowest of” rate, an additional 10% reduction is then applied under the provisions of AB 97 (Committee on Budget), Chapter 3, Statutes of 2011.

For purposes of establishing Medi-Cal reimbursement rates for clinical laboratory or laboratory services under the “lowest of” methodology, laboratory service providers are required to submit data reports according a schedule. Medi-Cal reimbursement is linked to Medicare reimbursement through the “lowest of” methodology as one of the payor sources considered under the “lowest of” is 80% of the lowest maximum allowance established by the federal Medicare Program for the same or similar services.

In 2014, Congress passed and President Obama signed the Protecting Access to Medicare Act (PAMA), a federal bill that extended expiring program authorizations and appropriations under the Medicaid and Medicare programs. PAMA required significant changes to the way Medicare reimburses for clinical diagnostic laboratory tests under the Clinical Laboratory Fee Schedule (CLFS). Starting January 1, 2018, PAMA required laboratory tests on the CLFS be equal to the weighted median of rates of private payors, including Medicare, Medicaid, and other managed care plans, and required certain laboratories to submit data in order to determine the new rate.

As a result of PAMA, the Department of Health Care Services (DHCS) instituted Medi-Cal rate reductions based on the lower Medicare rates in 2018, in order to comply with the “lowest of” requirements in existing state law. DHCS submitted to the federal Centers for Medicare and Medicaid Services and received approval for a State Plan Amendment for rate reductions again in 2019 and 2020.

In the 2020-21 Medi-Cal Estimate, DHCS assumes savings from the laboratory-related provisions that are prospective savings and retroactive recoupments from prior years totaling \$31.1 million (\$15.6 million General Fund). DHCS assumes prospective savings resulting from the 2020 new rate methodology, and three years (2019-2021) of annual rate adjustments. DHCS also assumes savings from retroactive recoupments from AB 1494, two years of retroactive adjustments (2015 and 2016) from the new rate methodology, and two years (2019 and 2020) of retroactive annual rate adjustments. It is unclear whether these payment reductions have affected Medi-Cal beneficiary access to laboratory services, such as a reduction in the number of laboratories participating in the program, a delay in results, or laboratories limiting the volume of their Medi-Cal line of business.

At the federal level, the PAMA changes have been modified. In 2019, as part of the federal budget bill, Congress delayed the next laboratory rate reporting period from 2020 to 2021 and directed the Medicare Payment Advisory Commission to conduct a study to review the methodology and data collection implemented by the federal Department of Health and Human Services. The Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 further extended the data reporting delay from 2021 to 2022. The CARES Act also eliminated any payment reductions for 2021 and required the 15% cap on payment

reductions, established by PAMA, to be extended from 2022 to 2024.

- 3) **SUPPORT.** This bill is sponsored by the California Clinical Laboratory Association (CCLA) and supported by county and private laboratory providers and Planned Parenthood Affiliates of California. CCLA writes that the requirement to cap Medi-Cal reimbursement at no more than 80% of Medicare has become a problem since Medicare rates have been substantially cut by the federal government. Meanwhile, DHCS carefully collects data and calculates the appropriate rate for Medi-Cal tests based on state market rate data. CCLA states that the old section of law will trigger automatic cuts to the carefully calculated Medi-Cal rates simply because of changes at the federal level.

This bill is also supported by Quest Diagnostics Incorporated, which argues the current reimbursement structure creates confusion and uncertainty for any laboratory doing business with Medi-Cal. Quest states the multiple retroactive clawback/recoupment efforts currently underway due to the 80% Medicare cap and the prospect for future recoupments on the horizon makes it difficult and expensive for labs like Quest Diagnostics, which provides 2.4 million tests for Medi-Cal patients per year, to plan, budget, and staff the necessary operations to serve the Medi-Cal population in California.

Planned Parenthood Affiliates of California writes in support that because Medicare recently adopted California's market-based methodology for calculating laboratory rates, maintaining California's 80% of Medicare cap on Medi-Cal laboratory rates would severely reduce rates in California and disproportionately harm community clinics that provide in-house laboratory testing services, including Planned Parenthood.

- 4) **PREVIOUS LEGISLATION.** This bill is identical to AB 1327 (Petrie-Norris) of last year. AB 1327 was vetoed by Governor Newsom, who stated that he was unable to sign AB 1327 because it would result in costs more appropriately addressed through the annual budget process.

REGISTERED SUPPORT / OPPOSITION:

Support

California Clinical Laboratory Association (sponsor)
California Society of Pathologists
Laboratory Corporation of America
Planned Parenthood Affiliates of California
Quest Diagnostics

Opposition

None on file.

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