

AMENDED IN SENATE JULY 17, 2017
AMENDED IN SENATE JUNE 20, 2017
AMENDED IN ASSEMBLY MAY 26, 2017
AMENDED IN ASSEMBLY MARCH 23, 2017
CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 614

Introduced by Assembly Member Limón

February 14, 2017

An act to add *and repeal* Section 9402.5 ~~to~~ of the Welfare and Institutions Code, relating to public social services.

LEGISLATIVE COUNSEL'S DIGEST

AB 614, as amended, Limón. Area agency on aging: Alzheimer's disease and dementia: training and services.

Existing law establishes the California Department of Aging in the California Health and Human Services Agency. Existing law requires the department to designate various private nonprofit or public agencies as area agencies on aging to work for the interests of older Californians within a planning and service area and provide a broad array of social and nutritional services. Existing law requires the department to provide leadership to those agencies in developing systems of home- and community-based services that maintain individuals in their own homes or least restrictive homelike environments and requires those agencies to function as the community link at the local level for the development of those services. Existing law requires each area agency on aging to maintain a professional staff that is supplemented by volunteers, governed by a board of directors or elected officials, and whose activities

are reviewed by an advisory council consisting primarily of older individuals from the community.

Existing law requires the department to adopt policies and guidelines to carry out the purposes of the Alzheimer's Day Care-Resource Center program, whereby direct services contractors receive funding to provide services to meet the special care needs of, and address the behavioral problems of, individuals with Alzheimer's disease or a disease of a related type.

This bill would ~~require~~ *require, until July 1, 2023*, each area agency on aging to develop an evidence-based or evidence-informed core training program *for staff* relating to Alzheimer's disease and dementia, and any additional training based on local needs. The bill would also require each agency to maintain an Alzheimer's and dementia specialist to provide information, assistance, referrals, and options counseling to families. If an agency lacks the capacity to maintain a specialist, the bill would authorize the agency to contract with a qualified local entity to provide these services, as specified. The bill would specify that it would be implemented only to the extent that funds are appropriated by the Legislature for its ~~purposes~~ *purposes, including funding to augment the administrative operations of the department that are necessary to implement these provisions*.

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

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

1 SECTION 1. Section 9402.5 is added to the Welfare and
2 Institutions Code, to read:

3 9402.5. (a) Each area agency on aging, in consultation with a
4 qualified local Alzheimer's organization or other community
5 stakeholders with expertise in Alzheimer's research or care,
6 including, but not limited to, the local chapter of the Alzheimer's
7 Association, universities, and caregiver organizations, shall develop
8 an evidence-based or evidence-informed core training program
9 *for staff* relating to Alzheimer's disease and dementia, and any
10 additional training based on local needs.

11 (b) (1) Each area agency on aging shall maintain an Alzheimer's
12 and dementia specialist to provide information, assistance, referrals,
13 and options counseling to families.

1 (2) If an area agency on aging lacks the capacity to maintain an
2 Alzheimer's and dementia specialist, it may contract with a
3 qualified local entity to provide the services described in paragraph
4 (1). The area agency on aging shall coordinate with the qualified
5 local entity in implementing the agency's regular services and the
6 specialist services.

7 (c) This section shall be implemented only to the extent that
8 funds are appropriated by the Legislature for that ~~purpose~~: *purpose,*
9 *including funding to augment the administrative operations of the*
10 *department that are necessary to implement this section.*

11 (d) *This section shall become inoperative on July 1, 2023, and,*
12 *as of January 1, 2024, is repealed.*

AMENDED IN SENATE JULY 6, 2017

AMENDED IN SENATE JULY 3, 2017

AMENDED IN ASSEMBLY MAY 2, 2017

AMENDED IN ASSEMBLY APRIL 6, 2017

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 668

**Introduced by Assembly Member Gonzalez Fletcher
(Coauthors: Assembly Members Chiu and Chu)
(Coauthor: Senator Hertzberg)**

February 14, 2017

An act to add Chapter 5 (commencing with Section 19400) to Division 19 of the Elections Code, relating to elections, by providing the funds necessary therefor through an election for the issuance and sale of bonds of the State of California and for the handling and disposition of those funds.

LEGISLATIVE COUNSEL'S DIGEST

AB 668, as amended, Gonzalez Fletcher. Voting Modernization Bond Act of 2018.

Existing law, the Voting Modernization Bond Act of 2002, authorizes the Voting Modernization Finance Committee to issue and sell bonds in the amount of \$200,000,000, as specified. Existing law authorizes a county to apply to the Voting Modernization Board for money from the proceeds of the sale of bonds (1) to pay for or purchase new voting systems that are certified or conditionally approved by the Secretary of State, (2) to research and develop new voting systems, or (3) to manufacture the minimum number of voting system units reasonably

necessary to test and seek certification or conditional approval of the voting system, or test and demonstrate the capabilities of a voting system in a pilot program.

This bill would enact the Voting Modernization Bond Act of 2018 which, if approved, would authorize the issuance and sale of bonds in the amount of \$450,000,000, as specified, for similar purposes. This bill would authorize the Voting Modernization Finance Committee and the Voting Modernization Board to administer the Voting Modernization Bond Act of 2018.

This bill would provide for submission of the act to the voters at the June 5, 2018, statewide direct primary election.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. Chapter 5 (commencing with Section 19400) is
2 added to Division 19 of the Elections Code, to read:

3

4 CHAPTER 5. VOTING MODERNIZATION BOND ACT OF 2018

5

6 19400. This chapter shall be known and may be cited as the
7 Voting Modernization Bond Act of 2018.

8 19401. The State General Obligation Bond Law (Chapter 4
9 (commencing with Section 16720) of Part 3 of Division 4 of Title
10 2 of the Government Code), except as otherwise provided herein,
11 is adopted for the purpose of the issuance, sale, and repayment of,
12 and otherwise providing with respect to, the bonds authorized to
13 be issued by this chapter, and the provisions of that law, as
14 amended from time to time, apply to the bonds and are incorporated
15 into this chapter as though set out in full in this chapter.

16 19402. For purposes of this chapter, the following definitions
17 apply:

18 (a) "Ballot on demand system" means a ballot manufacturing
19 system, as defined in Section 303.4, that is subject to Sections
20 13004 and 13004.5.

21 (b) "Board" means the Voting Modernization Board, established
22 pursuant to Section 19256.

23 (c) "Bond" means a state general obligation bond issued
24 pursuant to this chapter.

1 (d) "Bond act" means this chapter authorizing the issuance of
2 state general obligation bonds.

3 (e) "Committee" means the Voting Modernization Finance
4 Committee, established pursuant to Section 19253.

5 (f) "Electronic poll book" means an electronic list of registered
6 voters that may be transported to the polling location or vote center
7 pursuant to Section 2550.

8 (g) "Fund" means the Voting Modernization Fund of 2018,
9 established pursuant to Section 19403.

10 (h) "Remote accessible vote by mail system" means a system,
11 as defined in Section 303.3, that is certified pursuant to Chapter
12 3.5 (commencing with Section 19280) of Division 19.

13 (i) "Vote by mail ballot drop box" means a secure receptacle
14 established by a county or city and county elections official
15 whereby a voted vote by mail ballot may be returned to the
16 elections official from whom it was obtained pursuant to Section
17 3025.

18 (j) "Voting system" means any voting machine, voting device,
19 or vote tabulating device that does not use prescored punch card
20 ballots.

21 (k) *"Open source software or firmware" means software or*
22 *firmware licensed using a software license approved by the Open*
23 *Source Initiative.*

24 19402.5. (a) The Voting Modernization Fund of 2018 is hereby
25 established.

26 (b) The committee may authorize the issuance and sale, pursuant
27 to the State General Obligation Bond Law, of the bonds authorized
28 by this chapter.

29 (c) The board may administer the fund and may reject any
30 application for fund money it deems inappropriate, excessive, or
31 that does not comply with the intent of this chapter.

32 19403. (a) The committee may create a debt or debts, liability
33 or liabilities, of the State of California, in the aggregate amount
34 of not more than four hundred fifty million dollars (\$450,000,000),
35 exclusive of refunding bonds, in the manner provided herein for
36 the purpose of creating a fund to assist counties in paying for an
37 expense listed in subdivision (d).

38 (b) The proceeds of bonds (exclusive of refunding bonds issued
39 pursuant to Section 19410) issued and sold pursuant to this chapter
40 shall be deposited in the fund.

1 (c) A county is eligible to apply to the board for fund money if
2 it meets both of the following requirements:

3 (1) After ~~January 1, 2017~~, *April 29, 2015*, the county has agreed
4 to pay for an expense listed in subdivision (d) for which it continues
5 to make payments on the date that this chapter becomes effective.

6 (2) The county matches fund moneys at one of the following
7 ratios:

8 (A) If the county conducts an election pursuant to Section 4005
9 or 4007, one dollar (\$1) of county moneys for every three dollars
10 (\$3) of fund moneys.

11 (B) If the county does not conduct an election pursuant to
12 Section 4005 or 4007, one dollar (\$1) of county moneys for every
13 two dollars (\$2) of fund moneys.

14 (d) (1) A county may use fund moneys to purchase or lease the
15 following:

16 (A) Voting systems certified or conditionally approved by the
17 Secretary of State that do not use prescored punch card ballots.

18 (B) Electronic poll books certified by the Secretary of State.

19 (C) Ballot on demand systems certified by the Secretary of State.

20 (D) Vote by mail ballot drop boxes that comply with any
21 relevant regulations promulgated by the Secretary of State pursuant
22 to subdivision (b) of Section 3025.

23 (E) Remote accessible vote by mail systems certified or
24 conditionally approved by the Secretary of State.

25 (F) Technology to facilitate electronic connection between
26 polling places, vote centers, and the office of the county elections
27 official or the Secretary of State's office.

28 (G) Vote by mail ballot sorting and processing equipment.

29 (2) A county may use fund moneys to contract and pay for the
30 following:

31 (A) Research and development of a new voting system that has
32 not been certified or conditionally approved by the Secretary of
33 State. A voting system developed pursuant to this subparagraph
34 shall use only nonproprietary software and firmware with disclosed
35 source code, except that it may use unmodified commercial
36 off-the-shelf software and firmware, as defined in paragraph (1)
37 of subdivision (a) of Section 19209.

38 (B) Manufacture of the minimum number of voting system units
39 reasonably necessary for either of the following purposes:

1 (i) Testing and seeking certification or conditional approval for
2 the voting system pursuant to Sections 19210 to 19214, inclusive.

3 (ii) Testing and demonstrating the capabilities of the voting
4 system in a pilot program pursuant to paragraph (2) of subdivision
5 (b) and subdivision (c) of Section 19209.

6 (iii) *For purposes of this paragraph, "voting system" includes*
7 *a part of a voting system.*

8 (e) Any voting system purchased or leased using bond funds
9 that does not require a voter to directly mark on the ballot must
10 produce, at the time the voter votes his or her ballot or at the time
11 the polls are closed, a paper version or representation of the voted
12 ballot or of all the ballots cast on a unit of the voting system. The
13 paper version shall not be provided to the voter but shall be retained
14 by elections officials for use during the 1 percent manual tally
15 described in Section 15360, or any recount, audit, or contest.

16 19404. The Legislature may amend subdivision (c) of Section
17 19402.5, subdivisions (c) and (d) of Section 19403, and Section
18 19256 by a statute, passed in each house of the Legislature by
19 rollcall vote entered in the respective journals, by not less than
20 two-thirds of the membership in each house concurring, if the
21 statute is consistent with, and furthers the purposes of, this chapter.

22 19405. (a) All bonds authorized by this chapter, when duly
23 sold, issued, and delivered as provided herein, constitute valid and
24 legally binding general obligations of the State of California, and
25 the full faith and credit of the state is hereby pledged for the
26 punctual payment of both principal of, and interest on, the bonds
27 as that interest becomes due and payable. The bonds issued
28 pursuant to this chapter shall be repaid within 10 years from the
29 date they are issued.

30 (b) There shall be collected annually, in the same manner and
31 at the same time as other state revenue is collected, a sum of
32 money, in addition to the ordinary revenues of the state, sufficient
33 to pay the principal of, and interest on, the bonds as provided
34 herein. All officers required by law to perform any duty in regard
35 to the collection of state revenues shall collect this additional sum.

36 19406. (a) Notwithstanding Section 13340 of the Government
37 Code, there is hereby continuously appropriated from the General
38 Fund, for purposes of this chapter, a sum of money that will equal
39 the sum annually necessary to pay the principal of, and the interest

1 on, the bonds issued and sold as provided in this chapter, as that
2 principal and interest become due and payable.

3 (b) The board may request the Pooled Money Investment Board
4 to make a loan from the Pooled Money Investment Account, in
5 accordance with Section 16312 of the Government Code, for
6 purposes of this chapter. The amount of the request shall not exceed
7 the amount of the unsold bonds that the committee has, by
8 resolution, authorized to be sold, excluding any refunding bonds
9 authorized pursuant to Section 19410, for purposes of this chapter,
10 less any amount withdrawn pursuant to subdivision (c). The board
11 shall execute any documents as required by the Pooled Money
12 Investment Board to obtain and repay the loan. Any amount loaned
13 shall be deposited in the fund to be allocated in accordance with
14 this chapter.

15 (c) For purposes of carrying out this chapter, the Director of
16 Finance may, by executive order, authorize the withdrawal from
17 the General Fund of any amount or amounts not to exceed the
18 amount of the unsold bonds that the committee has, by resolution,
19 authorized to be sold, excluding any refunding bonds authorized
20 pursuant to Section 19410, for purposes of this chapter, less any
21 amount withdrawn pursuant to subdivision (b). Any amounts
22 withdrawn shall be deposited in the fund to be allocated in
23 accordance with this chapter. Any moneys made available under
24 this subdivision shall be returned to the General Fund, plus the
25 interest that the amounts would have earned in the Pooled Money
26 Investment Account, from moneys received from the sale of bonds
27 which would otherwise be deposited in that fund.

28 19407. Upon request of the board, supported by a statement
29 of its plans and projects approved by the Governor, the committee
30 shall determine whether to issue any bonds authorized under this
31 chapter in order to carry out the board's plans and projects and, if
32 so, the amount of bonds to be issued and sold. Successive issues
33 of bonds may be authorized and sold to carry out these plans and
34 projects progressively, and it is not necessary that all of the bonds
35 be issued or sold at any one time.

36 19408. (a) The committee may authorize the Treasurer to sell
37 all or any part of the bonds authorized by this chapter at the time
38 or times established by the Treasurer. Bonds shall be sold upon
39 the terms and conditions specified in one or more resolutions

1 adopted by the committee pursuant to Section 16731 of the
2 Government Code.

3 (b) Whenever the committee deems it necessary for an effective
4 sale of the bonds, the committee may authorize the Treasurer to
5 sell any issue of bonds at less than their par value, notwithstanding
6 Section 16754 of the Government Code. However, the discount
7 on the bonds shall not exceed 3 percent of the par value thereof.

8 19409. Out of the first money realized from the sale of bonds
9 as provided by this chapter, there shall be redeposited in the
10 General Obligation Bond Expense Revolving Fund, established
11 by Section 16724.5 of the Government Code, the amount of all
12 expenditures made for purposes specified in that section, and this
13 money may be used for the same purpose and repaid in the same
14 manner whenever additional bond sales are made.

15 19410. Any bonds issued and sold pursuant to this chapter may
16 be refunded in accordance with Article 6 (commencing with
17 Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of
18 the Government Code. The approval of the voters for the issuance
19 of bonds under this chapter includes approval for the issuance of
20 bonds issued to refund bonds originally issued or any previously
21 issued refunding bonds. Any bond refunded with the proceeds of
22 a refunding bond as authorized by this section may be legally
23 defeased to the extent permitted by law in the manner and to the
24 extent set forth in the resolution, as amended from time to time,
25 authorizing that refunded bond.

26 19411. Notwithstanding any provision of the bond act, if the
27 Treasurer sells bonds under this chapter for which bond counsel
28 has issued an opinion to the effect that the interest on the bonds is
29 excludable from gross income for purposes of federal income tax,
30 subject to any conditions that may be designated, the Treasurer
31 may establish separate accounts for the investment of bond
32 proceeds and for the earnings on those proceeds, and may use those
33 proceeds or earnings to pay any rebate, penalty, or other payment
34 required by federal law or take any other action with respect to the
35 investment and use of bond proceeds required or permitted under
36 federal law necessary to maintain the tax-exempt status of the
37 bonds or to obtain any other advantage under federal law on behalf
38 of the funds of this state.

39 19412. All moneys derived from premiums and accrued interest
40 on bonds sold pursuant to this chapter shall be transferred to the

1 General Fund as a credit to expenditures for bond interest;
2 provided, however, that amounts derived from premiums may be
3 reserved and used to pay the costs of issuance of the related bonds
4 prior to transfer to the General Fund.

5 19413. The Legislature hereby finds and declares that,
6 inasmuch as the proceeds from the sale of bonds authorized by
7 this chapter are not “proceeds of taxes” as that term is used in
8 Article XIII B of the California Constitution, the disbursement of
9 these proceeds is not subject to the limitations imposed by Article
10 XIII B.

11 SEC. 2. Section 1 of this act shall take effect upon the approval
12 by the people of the Voting Modernization Bond Act of 2018,
13 submitted to the voters pursuant to Section 3 of this act.

14 SEC. 3. Notwithstanding Section 9040 of the Elections Code,
15 a ballot measure that sets forth the Voting Modernization Bond
16 Act of 2018, as set forth in Section 1 of this act, shall be submitted
17 to the voters at the June 5, 2018, statewide direct primary election.

AMENDED IN SENATE JUNE 29, 2017

AMENDED IN ASSEMBLY MAY 8, 2017

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 1200

Introduced by Assembly Member Cervantes

February 17, 2017

An act to add Article 4 (commencing with Section 9120) to Chapter 2 of Division 8.5 of the Welfare and Institutions Code, relating to aging.

LEGISLATIVE COUNSEL'S DIGEST

AB 1200, as amended, Cervantes. Aging and Disabilities Resource Connection program.

Existing law, the Mello-Granlund Older Californians Act, establishes the California Department of ~~Aging~~, *Aging* and states that the mission of the department is to provide leadership to the area agencies on aging in developing systems of home- and community-based services that maintain individuals in their own homes or least restrictive homelike environments.

Existing law vests in the Department of Rehabilitation the responsibility and authority for the encouragement of the planning, development, and funding of independent living centers, which are private, nonprofit organizations that provide specified services to individuals with disabilities, in order to assist those individuals in their attempts to live fuller and freer lives outside institutions.

Existing law establishes the Medi-Cal program, administered by the State Department of Health Care Services, under which qualified low-income individuals receive health care services. The Medi-Cal program is, in part, governed and funded by federal Medicaid program

provisions. Existing law provides that Medi-Cal long-term services and supports, including In-Home Supportive Services (IHSS), Community-Based Adult Services (CBAS), Multipurpose Senior Services Program (MSSP) services, and certain skilled nursing facility and subacute care services, shall be covered services by a specified date under managed care health plan contracts for beneficiaries residing in counties participating in the Coordinated Care Initiative.

This bill would establish the Aging and Disability Resource Connection (ADRC) program, to be administered by the California Department of Aging, to provide information to consumers and their families on available long-term services and supports (LTSS) programs and to assist older adults, caregivers, and persons with disabilities in accessing LTSS programs at the local level. The bill would require the department to establish the Aging and Disability Resource Connection Advisory Committee as the primary adviser in the ongoing development and implementation of the ADRC program. The bill would ~~require the department, authorize the department to designate and approve ADRC programs, and, in consultation with the advisory committee, to formulate criteria for the designation and approval of local ADRC program sites, and programs. The bill would specify the services offered by, and responsibilities of, a program site. program, including requiring a program to submit data on an annual basis to the department, and would authorize the department to develop a data collection tool for that purpose.~~ The bill would require the department and the State Department of Health Care Services to enter into a memorandum of understanding to explore reimbursement for qualified administrative activities performed pursuant to these provisions.

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

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

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) California's long-term services and supports (LTSS) system
- 4 is plagued by fragmentation of programs at the state, regional, and
- 5 local levels. In many communities, multiple agencies administer
- 6 LTSS and have complex, fragmented, and often duplicative intake,
- 7 assessment, and eligibility functions. This fragmentation results
- 8 in a lack of access to coordinated services. As a result, consumers

1 and their families struggle to identify and access necessary home-
2 and community-based services, resulting in *the* increased likelihood
3 of hospitalization and institutional placements.

4 (b) In 2003, the federal Administration for Community Living
5 and the federal Centers for Medicare and Medicaid Services
6 established a joint funding opportunity through the Aging and
7 Disability Resource Center (ADRC) initiative, which was designed
8 to provide visible and trusted sources of information, one-on-one
9 counseling, and streamlined access to LTSS.

10 (c) ADRCs build on the strength of existing community
11 agencies, including area agencies on aging and independent living
12 centers, to provide a more coordinated system of information and
13 access for all persons seeking LTSS to minimize confusion,
14 enhance individual choice, and support informed decisionmaking.

15 (d) In California, ADRC partnerships exist in ~~eight~~ *seven* areas
16 of the state that facilitate access to LTSS based on individuals'
17 needs, preferences, and goals.

18 (e) California's ADRC Advisory Committee engages
19 stakeholders in identifying and implementing strategies to
20 strengthen, sustain, and expand ADRC services throughout the
21 state.

22 SEC. 2. Article 4 (commencing with Section 9120) is added
23 to Chapter 2 of Division 8.5 of the Welfare and Institutions Code,
24 to read:

25
26 Article 4. Aging and Disability Resource Connection Program
27

28 9120. (a) There is hereby established an Aging and Disability
29 Resource Connection (ADRC) program to provide information to
30 consumers and their families on available long-term services and
31 supports (LTSS) programs and to assist older adults, caregivers,
32 and persons with disabilities in accessing LTSS programs at the
33 local level.

34 (b) This article shall be administered by the California
35 Department of Aging. The department shall enter into interagency
36 agreements with the Department of Rehabilitation and the State
37 Department of Health Care Services for purposes of implementing
38 this article.

39 9121. (a) The department shall establish the Aging and
40 Disability Resource Connection Advisory Committee as the

1 primary adviser to the department, the Department of
2 Rehabilitation, and the State Department of Health Care Services
3 in the ongoing development and implementation of the ADRC
4 program.

5 (b) The advisory committee shall do all of the following:

6 (1) Consider high-level aspects of the ADRC program operations
7 and related systemwide ~~issues~~. *issues, including, but not limited*
8 *to, steps to establish ADRC programs throughout the state.*

9 (2) Provide input and recommendations to the departments in
10 developing ADRC program policies and procedures.

11 (3) Serve as the forum for ADRC stakeholders to discuss
12 evolving federal guidance, funding opportunities, and best
13 practices.

14 9122. (a) ~~The department,~~ *department may designate and*
15 *approve ADRC programs.*

16 (b) *The department, in consultation with the advisory committee,*
17 ~~shall may~~ *formulate criteria for the designation and approval of*
18 *local ADRC program sites. programs.*

19 (c) *The department, in consultation with the advisory committee,*
20 *may develop a data collection tool that captures program activity*
21 *and performance indicators for the purpose of reporting to the*
22 *department, pursuant to subdivision (f).*

23 ~~(b)~~

24 (d) Area agencies on aging and independent living centers shall
25 be the core local partners in developing ADRC ~~program sites,~~
26 *programs,* but the department may work with other local partners
27 in developing ADRC ~~program sites. programs.~~

28 ~~(e)~~

29 (e) An ADRC program-site shall provide all of the following:

30 (1) Enhanced information and referral services and other
31 assistance at hours that are convenient for the public.

32 (2) Options counseling concerning available LTSS programs
33 and public and private benefits programs.

34 (3) Short-term service coordination.

35 (4) Transition services from hospitals to home and from skilled
36 nursing facilities to the community.

37 ~~(d)~~

38 (f) An ADRC program-site shall do all of the following:

39 (1) Provide services within the geographic area served.

1 (2) Provide information to the public about the services provided
2 by the ~~site~~ program.

3 (3) ~~Submit to the department all reports and data required or~~
4 ~~requested by the department.~~ *department, on an annual basis, data*
5 *that the department requires the program to report, including data*
6 *reported using the data collection tool described in subdivision*
7 *(c).*

8 (e)

9 (g) ~~The department shall consult with the advisory committee~~
10 ~~when exploring steps to establish ADRC program sites statewide.~~
11 *may, in consultation with the advisory committee, explore steps*
12 *to establish ADRC programs throughout the state.*

13 9123. The department and the State Department of Health Care
14 Services shall enter into a memorandum of understanding to
15 explore reimbursement for qualified administrative activities
16 performed pursuant to this article, consistent with Section
17 14132.47.

AMENDED IN SENATE JUNE 21, 2017
AMENDED IN ASSEMBLY MAY 30, 2017
AMENDED IN ASSEMBLY MAY 30, 2017
AMENDED IN ASSEMBLY APRIL 25, 2017
AMENDED IN ASSEMBLY APRIL 17, 2017
AMENDED IN ASSEMBLY APRIL 4, 2017

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 1250

Introduced by Assembly Member Jones-Sawyer
(Coauthor: Assembly Member Gonzalez Fletcher)
(Coauthors: Assembly Members Bonta and Gonzalez Fletcher)

February 17, 2017

An act to add ~~Sections~~ *Section* 31000.10 and 37103.1 to the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 1250, as amended, Jones-Sawyer. ~~Counties and cities:~~ *Counties:* contracts for personal services.

Existing law authorizes the board of supervisors of a county to contract for special services on behalf of various public entities with persons who are specially trained, experienced, expert, and competent to perform the special services, as prescribed. These services include financial, economic, accounting, engineering, legal, and other specified services. Existing law also authorizes legislative bodies of cities to contract with any specially trained and experienced person, firm, or corporation for

~~special services and advice in financial, economic, accounting, engineering, legal, or administrative matters.~~

This bill would establish specific standards for the use of personal services contracts by ~~counties and cities~~ *counties*. Beginning January 1, 2018, the bill would allow a county or county ~~agency, or a city or city agency~~ *agency* to contract for personal services currently or customarily performed by employees, as applicable, when specified conditions are met. Among other things, the bill would require the county ~~or city~~ to clearly demonstrate that the proposed contract will result in actual overall costs savings to the county ~~or city~~ and also to show that the contract does not cause the displacement of county ~~or city~~ workers. The bill would require a contract entered into under these provisions to specify that it may be terminated upon material breach, if notice is provided, as specified. Additionally, the bill would require the county ~~or city~~ to conduct an audit of ~~the contract~~ *contracts for personal services in excess of \$100,000 annually* to determine whether cost savings have been realized and would require the contractor to reimburse the *county* for the cost of the audit. The bill *also* would impose additional disclosure requirements for contracts exceeding \$100,000 annually. The bill would exempt certain types of contracts from its provisions, and would exempt a ~~charter city and county~~ from its provisions. By placing new duties on local government agencies, the bill would impose a state-mandated local program.

The bill also would provide that its provisions are severable.

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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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 31000.10 is added to the Government
- 2 Code, to read:
- 3 31000.10. The purpose of this section is to establish standards
- 4 for the use of personal services contracts by counties.

1 (a) If otherwise permitted by law, a county or county agency
2 may contract for personal services currently or customarily
3 performed by that county's employees when all the following
4 conditions are met:

5 (1) The board of supervisors or county agency clearly
6 demonstrates that the proposed contract will result in actual overall
7 cost savings to the county for the duration of the entire contract
8 as compared with the county's actual costs of providing the same
9 services, provided that:

10 (A) In comparing costs, there shall be included the county's
11 additional cost of providing the same service as proposed by a
12 contractor. These additional costs shall include the salaries and
13 benefits of additional staff that would be needed and the cost of
14 additional space, equipment, and materials needed to perform the
15 function.

16 (B) In comparing costs, there shall not be included the county's
17 indirect overhead costs unless these costs can be attributed solely
18 to the function in question and would not exist if that function was
19 not performed in county service. Indirect overhead costs shall
20 mean the pro rata share of existing administrative salaries and
21 benefits, rent, equipment costs, utilities, and materials.

22 (C) In comparing costs, there shall be included in the cost of a
23 contractor providing a service any continuing county costs that
24 would be directly associated with the contracted function. These
25 continuing county costs shall include, but not be limited to, those
26 for inspection, supervision, and monitoring.

27 (2) Proposals to contract out work shall not be approved solely
28 on the basis that savings will result from lower contractor pay rates
29 or benefits. Proposals to contract out work shall be eligible for
30 approval if the contractor's wages are at the industry's level and
31 do not significantly undercut county pay rates.

32 (3) The contract does not cause the displacement of county
33 employees. "Displacement" includes layoff, demotion, involuntary
34 transfer to a new class, involuntary transfer to a new location
35 requiring a change of residence, and time base reductions.
36 "Displacement" does not include changes in shifts or days off or
37 reassignment to other positions within the same class and general
38 location.

39 (4) The contract does not cause vacant positions in county
40 employment to remain unfilled.

1 (5) The contract does not adversely affect any of the county's
2 nondiscrimination, affirmative action efforts.

3 (6) The savings shall be large enough to ensure that they will
4 not be eliminated by private sector and county cost fluctuations
5 that could normally be expected during the contracting period.

6 (7) The amount of savings clearly justifies the size and duration
7 of the contracting agreement.

8 (8) The contract is awarded through a publicized, competitive
9 bidding process. The county shall reserve the right to reject any
10 and all bids or proposals.

11 (9) The contract includes specific provisions pertaining to the
12 qualifications of the staff that will perform the work under the
13 contract, as well as assurance that the contractor's hiring practices
14 meet any applicable nondiscrimination, affirmative action
15 standards.

16 (10) The potential for future economic risk to the county from
17 potential contractor rate increases is minimal.

18 (11) The contract is with a firm. "Firm" means a corporation,
19 partnership, nonprofit organization, or sole proprietorship.

20 (12) The potential economic advantage of contracting is not
21 outweighed by the public's interest in having a particular function
22 performed directly by county government.

23 (13) The contract shall provide that it may be terminated at any
24 time by the county without penalty if there is a material breach of
25 the contract and notice is provided at least 30 days before
26 termination.

27 (14) If the contract is for personal services in excess of one
28 hundred thousand dollars (\$100,000) annually, all of the following
29 shall occur:

30 (A) The county shall require the contractor to disclose all of the
31 following information as part of its bid, application, or answer to
32 a request for proposal:

33 (i) A description of all charges, claims, or complaints filed
34 against the contractor with any federal, state, or local administrative
35 agency during the prior 10 years.

36 (ii) A description of all civil complaints filed against the
37 contractor in any state or federal court during the prior 10 years.

38 (iii) A description of all state or federal criminal complaints or
39 indictments filed against the contractor, or any of its officers,
40 directors, or managers, at any time.

1 (iv) A description of any debarments of the contractor by any
2 public agency or licensing body at any time.

3 (v) The total compensation, including salaries and benefits, the
4 contractor provides to workers performing work similar to that to
5 be provided under the contract.

6 (vi) The total compensation, including salaries, benefits, options,
7 and any other form of compensation, provided to the five highest
8 compensated officers, directors, executives, or employees of the
9 contractor.

10 (vii) Any other information the county deems necessary to
11 ensure compliance with this section.

12 (B) The contract shall provide that the county is entitled to
13 receive a copy of any records related to the contractor's or any
14 subcontractor's performance of the contract, and that, in addition
15 to records specifically requested by the county, every month the
16 contractor shall furnish the county with: (i) the names of any
17 subcontractors providing services under the contract; (ii) the names
18 of the employees of the contractor and any subcontractors
19 providing services pursuant to the contract and their hourly rates;
20 and (iii) the names of any workers providing services pursuant to
21 the contract as independent contractors and the compensation rates
22 for those workers. The contract shall provide that all records
23 provided to the county by the contractor shall be subject to the
24 California Public Records Act (Chapter 3.5 (commencing with
25 Section 6250) of Division 7 of Title 1). In furtherance of this
26 subdivision, contractors and any subcontractors shall maintain
27 records related to performance of the contract that ordinarily would
28 be maintained by the county in performing the same functions.

29 (C) The county shall include in the contract specific, measurable
30 performance standards and provisions for a performance audit by
31 the county, or an independent auditor approved by the county, to
32 determine whether the performance standards are being met and
33 whether the contractor is in compliance with applicable laws and
34 regulations. The county shall not renew or extend the contract prior
35 to receiving and considering the audit report.

36 (D) The contract shall include provisions for an audit by the
37 county, or an independent auditor approved by the county, to
38 determine whether and to what extent the anticipated cost savings
39 have actually been realized. The county shall not renew or extend
40 the contract before receiving and considering the audit report. The

1 contractor shall reimburse the county for the cost of the audit.
2 Contractors shall be prohibited from factoring the costs of the audit
3 into the contract costs with the county.

4 (b) This section does not preclude a county from adopting more
5 restrictive rules regarding the contracting of public services.

6 (c) When otherwise permitted by law, the absence of any
7 requirement of subdivision (a) shall not prevent personal services
8 contracting when any of the following conditions are met:

9 (1) The contract is for a new county function and the Legislature
10 has specifically mandated or authorized the performance of the
11 work by independent contractors.

12 (2) The contract is between the county and another government
13 entity for services to be performed by employees of the other
14 government entity.

15 (3) The services contracted cannot be performed satisfactorily
16 by county employees, or are of such a highly specialized or
17 technical nature that the necessary expert knowledge, experience,
18 and ability are not available among county employees.

19 (4) The services are incidental to a contract for the purchase or
20 lease of real or personal property. Contracts under this criterion,
21 known as "service agreements," shall include, but not be limited
22 to, agreements to service or maintain office equipment or
23 computers that are leased or rented.

24 (5) The legislative, administrative, or legal goals and purposes
25 cannot be accomplished through the utilization of county
26 employees. Contracts are permissible under this criterion to protect
27 against a conflict of interest or to ensure independent and unbiased
28 findings in cases where there is a clear need for a different, outside
29 perspective. These contracts shall include, but not be limited to,
30 obtaining expert witnesses in litigation.

31 (6) The nature of the work is such that the standards of this part
32 for emergency appointments apply. These contracts shall conform
33 with Section 31000.4.

34 (7) Public entities or officials need private counsel because a
35 conflict of interest on the part of the county counsel's office
36 prevents it from representing the public entity or official without
37 compromising its position. These contracts shall require the written
38 consent of the county counsel.

39 (8) The contractor will provide legal services to the county
40 solely on a contingency fee or *hourly* basis.

1 (9) The contractor will provide equipment, materials, facilities,
2 or support services that could not feasibly be provided by the
3 county in the location where the services are to be performed.

4 (10) The contractor will conduct training courses for which
5 appropriately qualified county employee instructors are not
6 available, provided that permanent instructor positions in academies
7 or similar settings shall be filled by county employees.

8 (11) The services are of such an urgent, temporary, or occasional
9 nature that the delay incumbent in their implementation by county
10 employees would frustrate their very purpose.

11 (d) This section shall apply to all counties, including counties
12 that have adopted a merit or civil service ~~system~~. *system, but shall*
13 *not apply to a city and county.*

14 (e) This section does not apply to any of the following contracts:

15 (1) A contract for services described in Section 4525 or 4529.10.

16 (2) A contract *for construction, alteration, demolition,*
17 *installation, repair, or maintenance work* that is subject to Chapter
18 1 (commencing with Section 1720) of Part 7 of Division 2 of the
19 Labor Code.

20 (3) A contract for public transit services, including paratransit
21 services, if the county's transit services are fully funded by Federal
22 Transit Administration assistance and the county is thereby subject
23 to the guidelines established in FTA Circular 4220.1F or any
24 subsequent guidelines or revisions issued by the Federal Transit
25 Administration.

26 (4) A contract for street sweeping services.

27 (5) A contract for solid waste handling services authorized by
28 or made pursuant to Section 40059 of the Public Resources Code.
29 As used in this paragraph, "solid waste handling services" means
30 the collection, transportation, storage, transfer, conversion,
31 processing, recycling, composting, or disposal of solid wastes.

32 (f) This section shall not be construed to authorize or otherwise
33 permit the contracting out of fire protection services, other than
34 the contracts between public agencies that are explicitly authorized
35 by Chapter 4 (commencing with Section 55600) of Part 2 of
36 Division 2 of Title 5 of this code or by Article 4 (commencing
37 with Section 4141) of Chapter 1 of Part 2 of Division 4 of the
38 Public Resources Code.

(g) This section shall apply to contracts for personal services currently or customarily performed by the employees of a county entered into, renewed, or extended on or after January 1, 2018.

SEC. 2. ~~Section 37103.1 is added to the Government Code, to read:~~

~~37103.1. The purpose of this section is to establish standards for the use of personal services contracts by cities.~~

(a) ~~If otherwise permitted by law, a city or city agency may contract for personal services currently or customarily performed by that city's employees when all the following conditions are met:~~

(1) ~~The city council or city agency clearly demonstrates that the proposed contract will result in actual overall cost savings to the city for the duration of the entire contract as compared with the city's actual costs of providing the same services, provided that:~~

(A) ~~In comparing costs, there shall be included the city's additional cost of providing the same service as proposed by a contractor. These additional costs shall include the salaries and benefits of additional staff that would be needed and the cost of additional space, equipment, and materials needed to perform the function.~~

(B) ~~In comparing costs, there shall not be included the city's indirect overhead costs unless these costs can be attributed solely to the function in question and would not exist if that function was not performed in city service. Indirect overhead costs shall mean the pro rata share of existing administrative salaries and benefits, rent, equipment costs, utilities, and materials.~~

(C) ~~In comparing costs, there shall be included in the cost of a contractor providing a service any continuing city costs that would be directly associated with the contracted function. These continuing city costs shall include, but not be limited to, those for inspection, supervision, and monitoring.~~

(2) ~~Proposals to contract out work shall not be approved solely on the basis that savings will result from lower contractor pay rates or benefits. Proposals to contract out work shall be eligible for approval if the contractor's wages are at the industry's level and do not significantly undercut city pay rates.~~

(3) ~~The contract does not cause the displacement of city employees. "Displacement" includes layoff, demotion, involuntary~~

1 transfer to a new class, involuntary transfer to a new location
2 requiring a change of residence, and time base reductions.
3 "Displacement" does not include changes in shifts or days off or
4 reassignment to other positions within the same class and general
5 location.

6 (4) The contract does not cause vacant positions in city
7 employment to remain unfilled.

8 (5) The contract does not adversely affect any of the city's
9 nondiscrimination, affirmative action efforts.

10 (6) The savings shall be large enough to ensure that they will
11 not be eliminated by private sector and city cost fluctuations that
12 could normally be expected during the contracting period.

13 (7) The amount of savings clearly justifies the size and duration
14 of the contracting agreement.

15 (8) The contract is awarded through a publicized, competitive
16 bidding process. The city shall reserve the right to reject any and
17 all bids or proposals.

18 (9) The contract includes specific provisions pertaining to the
19 qualifications of the staff that will perform the work under the
20 contract, as well as assurance that the contractor's hiring practices
21 meet any applicable nondiscrimination, affirmative action
22 standards.

23 (10) The potential for future economic risk to the city from
24 potential contractor rate increases is minimal.

25 (11) The contract is with a firm. "Firm" means a corporation,
26 partnership, nonprofit organization, or sole proprietorship.

27 (12) The potential economic advantage of contracting is not
28 outweighed by the public's interest in having a particular function
29 performed directly by city government.

30 (13) The contract shall provide that it may be terminated at any
31 time by the city without penalty if there is a material breach of the
32 contract and notice is provided at least 30 days before termination.

33 (14) If the contract is for personal services in excess of one
34 hundred thousand dollars (\$100,000) annually, all of the following
35 shall occur:

36 (A) The city shall require the contractor to disclose all of the
37 following information as part of its bid, application, or answer to
38 a request for proposal:

1 (i) ~~A description of all charges, claims, or complaints filed~~
2 ~~against the contractor with any federal, state, or local administrative~~
3 ~~agency during the prior 10 years.~~

4 (ii) ~~A description of all civil complaints filed against the~~
5 ~~contractor in any state or federal court during the prior 10 years.~~

6 (iii) ~~A description of all state or federal criminal complaints or~~
7 ~~indictments filed against the contractor, or any of its officers,~~
8 ~~directors, or managers, at any time.~~

9 (iv) ~~A description of any debarments of the contractor by any~~
10 ~~public agency or licensing body at any time.~~

11 (v) ~~The total compensation, including salaries and benefits, the~~
12 ~~contractor provides to workers performing work similar to that to~~
13 ~~be provided under the contract.~~

14 (vi) ~~The total compensation, including salaries, benefits, options,~~
15 ~~and any other form of compensation, provided to the five highest~~
16 ~~compensated officers, directors, executives, or employees of the~~
17 ~~contractor.~~

18 (vii) ~~Any other information the city deems necessary to ensure~~
19 ~~compliance with this section.~~

20 (B) ~~The contract shall provide that the city is entitled to receive~~
21 ~~a copy of any records related to the contractor's or any~~
22 ~~subcontractor's performance of the contract, and that, in addition~~
23 ~~to records specifically requested by the city, every month the~~
24 ~~contractor shall furnish the county with: (i) the names of any~~
25 ~~subcontractors providing services under the contract; (ii) the names~~
26 ~~of the employees of the contractor and any subcontractors~~
27 ~~providing services pursuant to the contract and their hourly rates;~~
28 ~~and (iii) the names of any workers providing services pursuant to~~
29 ~~the contract as independent contractors and the compensation rates~~
30 ~~for those workers. The contract shall provide that all records~~
31 ~~provided to the city by the contractor shall be subject to the~~
32 ~~California Public Records Act (Chapter 3.5 (commencing with~~
33 ~~Section 6250) of Division 7 of Title 1). In furtherance of this~~
34 ~~subdivision, contractors and any subcontractors shall maintain~~
35 ~~records related to performance of the contract that ordinarily would~~
36 ~~be maintained by the city in performing the same functions.~~

37 (C) (1) ~~The city shall include in the contract specific,~~
38 ~~measurable performance standards and provisions for a~~
39 ~~performance audit by the city, or an independent auditor approved~~
40 ~~by the city, to determine whether the performance standards are~~

1 being met and whether the contractor is in compliance with
2 applicable laws and regulations. The legislative body shall not
3 renew or extend the contract prior to receiving and considering
4 the audit report.

5 (2) The contractor shall reimburse the city for the cost of the
6 audit.

7 (D) The contract shall include provisions for an audit by the
8 city, or an independent auditor approved by the city, to determine
9 whether and to what extent the anticipated cost savings have
10 actually been realized. The city shall not renew or extend the
11 contract before receiving and considering the audit report. The
12 contractor shall reimburse the city for the cost of the audit.
13 Contractors shall be prohibited from factoring the costs of the audit
14 into their contract costs with the city.

15 (b) This section does not preclude a city from adopting more
16 restrictive rules regarding the contracting of public services.

17 (c) When otherwise permitted by law, the absence of any
18 requirement of subdivision (a) shall not prevent personal services
19 contracting when any of the following conditions are met:

20 (1) The contract is for a new city function and the Legislature
21 has specifically mandated or authorized the performance of the
22 work by independent contractors.

23 (2) The contract is between a city and other government entity
24 for services to be performed by employees of the other government
25 entity.

26 (3) The services contracted cannot be performed satisfactorily
27 by city employees, or are of such a highly specialized or technical
28 nature that the necessary expert knowledge, experience, and ability
29 are not available among city employees.

30 (4) The services are incidental to a contract for the purchase or
31 lease of real or personal property. Contracts under this criterion,
32 known as "service agreements," shall include, but not be limited
33 to, agreements to service or maintain office equipment or
34 computers that are leased or rented.

35 (5) The legislative, administrative, or legal goals and purposes
36 cannot be accomplished through the utilization of city employees.
37 Contracts are permissible under this criterion to protect against a
38 conflict of interest or to ensure independent and unbiased findings
39 in cases where there is a clear need for a different, outside

1 perspective. These contracts shall include, but not be limited to,
2 obtaining expert witnesses in litigation.

3 (6) The nature of the work is such that the standards of this title
4 for emergency appointments apply. These contracts shall conform
5 with Section 45080.

6 (7) Public entities or officials need private counsel because a
7 conflict of interest on the part of the city attorney's office prevents
8 it from representing the public entity or official without
9 compromising its position. These contracts shall require the written
10 consent of the city attorney.

11 (8) The contract will provide legal services to the city solely on
12 a contingency fee basis.

13 (9) The contractor will provide equipment, materials, facilities,
14 or support services that could not feasibly be provided by the city
15 in the location where the services are to be performed.

16 (10) The contractor will conduct training courses for which
17 appropriately qualified city employee instructors are not available;
18 provided that permanent instructor positions in academies or similar
19 settings shall be filled by city employees.

20 (11) The services are of such an urgent, temporary, or occasional
21 nature that the delay incumbent in their implementation by city
22 employees would frustrate their very purpose.

23 (d) (1) Except as provided in paragraph (2), this section shall
24 apply to all cities, including cities that have adopted a merit or
25 civil service system.

26 (2) This section does not apply to a charter city formed pursuant
27 to Section 3 of Article XI of the California Constitution.

28 (e) This section does not apply to any of the following contracts:

29 (1) A contract for services described in Section 4525 or 4529.10.

30 (2) A contract that is subject to Chapter 1 (commencing with
31 Section 1720) of Part 7 of Division 2 of the Labor Code.

32 (3) A contract for public transit services, including paratransit
33 services, if the city's transit services are fully funded by Federal
34 Transit Administration assistance and the city is thereby subject
35 to the guidelines established in FTA Circular 4220.1F or any
36 subsequent guidelines or revisions issued by the Federal Transit
37 Administration.

38 (4) A contract for street sweeping services.

39 (5) A contract for solid waste handling services authorized by
40 or made pursuant to Section 40059 of the Public Resources Code.

1 As used in this paragraph, "solid waste handling services" means
2 the collection, transportation, storage, transfer, conversion,
3 processing, recycling, composting, or disposal of solid wastes.

4 (f) This section shall not be construed to authorize or otherwise
5 permit the contracting out of fire protection services other than the
6 contracts between public agencies that are explicitly authorized
7 by Chapter 4 (commencing with Section 55600) of Part 2 of
8 Division 2 of Title 5 of this code or by Article 4 (commencing
9 with Section 4141) of Chapter 1 of Part 2 of Division 4 of the
10 Public Resources Code.

11 (g) This section shall not apply to the renewal of existing
12 contracts or awards of contracts to perform the same services as
13 other contractors, if those contracts cause neither the displacement
14 of city employees nor the reduction of city employee positions.

15 SEC. 3.

16 SEC. 2. The provisions of this act are severable. If any
17 provision of this act or its application is held invalid, that invalidity
18 shall not affect other provisions or applications that can be given
19 effect without the invalid provision or application.

20 SEC. 4.

21 SEC. 3. If the Commission on State Mandates determines that
22 this act contains costs mandated by the state, reimbursement to
23 local agencies and school districts for those costs shall be made
24 pursuant to Part 7 (commencing with Section 17500) of Division
25 4 of Title 2 of the Government Code.

AMENDED IN ASSEMBLY APRIL 19, 2017

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 1401

Introduced by Assembly Member Maienschein

February 17, 2017

An act to amend Section 340 of the Welfare and Institutions Code, relating to juveniles.

LEGISLATIVE COUNSEL'S DIGEST

AB 1401, as amended, Maienschein. Juveniles: protective custody warrant.

Existing law establishes the jurisdiction of the juvenile court, which is permitted to adjudge certain children to be dependents of the court under certain circumstances, including when the child is abused, a parent or guardian fails to adequately supervise or protect the child, as specified, or a parent or guardian fails to provide the child with adequate food, clothing, shelter, or medical treatment. Existing law requires a proceeding in the juvenile court to declare a child to be a dependent child of the court to be commenced by the filing with the court, by the social worker, of a petition in conformity with specified requirements. Existing law authorizes the court to issue a protective custody warrant for a minor under certain circumstances, including when a petition has been filed in the juvenile court alleging that the minor comes within the jurisdiction of the juvenile court as a dependent or when a dependent minor has run away from his or her court-ordered placement.

This bill would authorize the court to issue a protective custody warrant, without filing a petition in the juvenile court alleging that the minor comes within the jurisdiction of the juvenile court as a dependent, if there is probable cause to believe the minor comes within the

jurisdiction of the juvenile court as a dependent, there is a substantial danger to the ~~physical or emotional health, or both,~~ *safety or physical health* of the child, and there are no reasonable means to protect the ~~child's safety or physical health~~ without removal. *The bill would require any child taken into protective custody under these provisions to immediately be delivered to the social worker who shall investigate the facts and circumstances of the child and the facts surrounding the child being taken into custody and attempt to maintain the child with the child's family through the provision of services. By imposing additional duties on county social workers, this bill would impose a state-mandated local program.*

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: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

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

1 SECTION 1. Section 340 of the Welfare and Institutions Code
2 is amended to read:

3 340. (a) Whenever a petition has been filed in the juvenile
4 court alleging that a minor comes within Section 300 and praying
5 for a hearing on that petition, or whenever any subsequent petition
6 has been filed praying for a hearing in the matter of the minor and
7 it appears to the court that the circumstances of his or her home
8 environment may endanger the health, person, or welfare of the
9 minor, or whenever a dependent minor has run away from his or
10 her court-ordered placement, a protective custody warrant may be
11 issued immediately for the minor.

12 (b) A protective custody warrant may be issued without filing
13 a petition under Section 300 if the court finds probable cause to
14 support all of the following:

15 (1) The child is a person described in Section 300.

16 (2) There is a substantial danger to the ~~physical or emotional~~
17 ~~health, or both,~~ *safety or physical health* of the child.

1 (3) There are no reasonable means to protect the ~~child~~ child's
2 safety or physical health without removal.

3 (c) Any child taken into protective custody pursuant to this
4 section shall immediately be delivered to the social worker who
5 shall investigate, pursuant to Section 309, the facts and
6 circumstances of the child and the facts surrounding the child
7 being taken into custody and attempt to maintain the child with
8 the child's family through the provision of services.

9 (d) Nothing in this section is intended to limit any other
10 circumstance permitting a magistrate to issue a warrant for a
11 person.

12 SEC. 2. To the extent that this act has an overall effect of
13 increasing the costs already borne by a local agency for programs
14 or levels of service mandated by the 2011 Realignment Legislation
15 within the meaning of Section 36 of Article XIII of the California
16 Constitution, it shall apply to local agencies only to the extent that
17 the state provides annual funding for the cost increase. Any new
18 program or higher level of service provided by a local agency
19 pursuant to this act above the level for which funding has been
20 provided shall not require a subvention of funds by the state or
21 otherwise be subject to Section 6 of Article XIII B of the California
22 Constitution.

AMENDED IN ASSEMBLY JULY 5, 2017

AMENDED IN SENATE MAY 2, 2017

AMENDED IN SENATE APRIL 19, 2017

SENATE BILL

No. 171

Introduced by Senator Hernandez
(Coauthor: Assembly Member Wood)

January 23, 2017

An act to amend Section ~~10951~~ 1367.035 of the Health and Safety Code, and to amend Sections 10950 and 10951 of, to add Section 10959.5 to, and to add Article 6.3 (commencing with Section 14197) to Chapter 7 of Part 3 of Division 9 of, the Welfare and Institutions Code, relating to Medi-Cal, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 171, as amended, Hernandez. Medi-Cal: Medi-Cal managed care plans.

(1) Existing law establishes the Medi-Cal program, administered by the State Department of Health Care Services, under which health care services are provided to qualified, low-income persons. The Medi-Cal program is, in part, governed and funded by federal Medicaid program provisions. Under existing law, one of the methods by which Medi-Cal services are provided is pursuant to contracts with various types of managed care plans. Existing federal regulations, published on May 6, 2016, revise regulations governing Medicaid managed care plans to, among other things, align, where feasible, those rules with those of other major sources of coverage, including coverage through qualified health plans offered through an American Health Benefit Exchange, such as the California Health Benefit Exchange, and promote quality

of care and strengthen efforts to reform delivery systems that serve Medicaid and CHIP beneficiaries. These federal regulations, among other things, authorize an enrollee to request a state fair hearing only after receiving notice that the Medicaid managed care plan is upholding an adverse benefit determination, and requires the enrollee to request a state fair hearing no later than 120 calendar days from the date of the Medicaid managed care plans notice of resolution. *These federal regulations require, with regards to a state fair hearing request filed by an enrollee entitled to an expedited resolution of an appeal by a managed care plan, an agency to take final administrative action as expeditiously as the enrollee's health condition requires, but not later than 3 working days after the agency receives, from the managed care plan, the case file and information for any appeal of a denial or a service that, as indicated by the managed care plan meets the criteria for expedited resolution of an appeal, but was not resolved within the timeframe for expedited resolution, or was resolved within the timeframe for expedited resolution of an appeal, but the managed care plan reached a decision wholly or partially adverse to the enrollee.*

Existing state law establishes hearing procedures for an applicant for or beneficiary of Medi-Cal who is dissatisfied with certain actions regarding health care services and medical assistance to request a hearing from the State Department of Social Services under specified circumstances, and requires a request for a hearing to be filed within 90 days after the order or action complained of.

This bill would implement various provisions in regard to those federal regulations, as amended May 6, 2016, governing Medicaid managed care plans. The bill would authorize ~~a person~~ *person, after he or she has exhausted the Medi-Cal managed care plan's appeals process*, to request a hearing involving a Medi-Cal managed care plan within 120 calendar days ~~after the order or action complained of~~, *he or she has either received verbal or written notice from the Medi-Cal managed care plan that the adverse benefit determination, as defined, is upheld or the appeal or expedited appeal is denied, or the person is deemed to have exhausted the Medi-Cal managed care plans appeals process, as specified*, and would exclude a request from the 120-calendar day filing time if there is good cause, as defined, for filing the request beyond the 120-calendar day period. *The bill would require the State Department of Social Services to adopt any necessary rules and regulations to implement these changes, and, until July 1, 2018, would*

authorize the State Department of Social Services to adopt any necessary rules and regulations as emergency regulations.

The bill would require the State Department of Social Services, for a beneficiary of a Medi-Cal managed care plan who meets the criteria for an expedited resolution of an appeal, to take final administrative action as expeditiously as the individual's health condition requires, but no later than 3 working days after the State Department of Social Services receives certain information from the Medi-Cal managed care plan consistent with the federal regulation described above. The bill would require a Medi-Cal managed care plan, upon notice from the State Department of Social Services that a beneficiary has requested a state fair hearing, to provide to the department a copy of the case file and any information for any appeal of a denial of a service within 3 business days of the Medi-Cal managed care plan's receipt of the department's notice of a request by a beneficiary for a state fair hearing.

(2) These federal regulations require a state that contracts with specified Medicaid managed care plans to develop and enforce network adequacy standards and requires each state to ensure that all services covered under the Medicaid state plan are available and accessible to enrollees of specified Medicaid managed care plans in a timely manner. These regulations also require specified Medicaid managed care plans to calculate and report a medical loss ratio (MLR) for the rating period that begins in 2017. If a state elects to mandate a minimum MLR for its Medicaid managed care plans, these regulations require that minimum MLR to be equal to or higher than 85% and authorizes the state to impose a remittance requirement consistent with the minimum standards established in these federal regulations for the failure to meet the minimum ratio standard imposed by the state.

The bill would require the State Department of Health Care Services, in consultation with the Department of Managed Health Care, to develop time and distance standards for specified provider types to ensure *that covered and medically necessary* ~~covered~~ services are accessible to enrollees of Medi-Cal managed care plans, as defined, to develop, for those Medi-Cal managed care plans that cover long-term services and supports (LTSS), time and distance standards for LTSS providers and network adequacy standards other than time and distance standards, and to develop timeliness standards to ensure that all *covered and medically necessary* services are available and accessible to enrollees of Medi-Cal managed care plans in a timely manner, as specified. The bill would require these standards to meet ~~or exceed~~ specified existing

standards for timeliness of access to care established by the Department of Managed Health Care or those set forth in existing Medi-Cal managed care ~~plan contracts~~. *contracts, and would require the department, in developing these standards, to take into consideration requirements under a specified federal regulation.* The bill would authorize the State Department of Health Care Services, upon the request of a Medi-Cal managed care plan, to allow alternative access standards, including the use of telecommunications technology, if the applying Medi-Cal managed care plan has exhausted all other reasonable options to obtain providers to meet either the time and distance or timely access standards. The bill would require, ~~on-at least an annual basis~~, *basis and when requested by the State Department of Health Care Services, a Medi-Cal managed care plan, as defined, to demonstrate to the department State Department of Health Care Services and, for Medi-Cal managed care plans licensed under the Knox-Keene Health Care Service Plan Act of 1975 (Knox-Keene Act), the Department of Managed Health Care its compliance with the standards developed under this provision. The bill would also require a health care service plan licensed under the Knox-Keene Act that provides services to Medi-Cal beneficiaries to provide to the Department of Managed Health Care, in a manner specified by the department, data regarding the standards developed under this provision. Because a willful violation of the Knox-Keene Act by a health care service plan is a crime, this bill would impose a state-mandated local program.*

The bill would require a Medi-Cal managed care plan, as defined, to comply with the MLR *calculation and reporting requirements imposed under those federal regulations, and would require a Medi-Cal managed care plan to comply with a minimum 85% MLR and to provide a remittance to the state if the ratio does not meet the minimum ratio of 85% for that reporting year consistent with those federal regulations. The bill would generally provide that these MLR requirements do not apply to a health care service plan under a subcontract with a Medi-Cal managed care plan to provide covered health care services to Medi-Cal beneficiaries enrolled in the Medi-Cal managed care plan. The bill would require the department to post specified information on its Internet Web site, including any required remittances owed by a Medi-Cal managed care plan.*

The bill would require the department to adopt regulations by July 1, 2019, and, commencing July 1, 2018, would require the department

to provide a status report to the Legislature on a semiannual basis until regulations are adopted.

(3) These federal regulations require specified managed care plans to have a grievance and appeal system in place for enrollees, and requires managed care plans to resolve each grievance and appeal, and to provide timely and adequate notice, as expeditiously as the enrollee's health condition requires, within certain state-established timeframes that may not exceed specified timeframes.

This bill would require a Medi-Cal managed care plan, as defined, to give a beneficiary timely and adequate notice of an adverse benefit determination, as defined, in writing consistent with those federal regulations. The bill would require a Medi-Cal managed care plan to establish and maintain an expedited review process for a beneficiary or the beneficiary's provider to request an expedited resolution of an appeal based on specified circumstances, including when the beneficiary's condition is such that the beneficiary faces an imminent and serious threat to his or her health, or the standard timeline would be detrimental to the beneficiary's life or health or could jeopardize the beneficiary's ability to regain maximum function. The bill would require a Medi-Cal managed care plan to resolve a standard appeal no more than 30 calendar days from the day the Medi-Cal managed care plan receives the appeal, and would require the Medi-Cal managed care plan to resolve an expedited appeal no longer than 72 hours after the Medi-Cal managed care plan receives the appeal.

(4) Existing federal regulations, published on March 30, 2016, revise regulations governing mental health parity requirements to address the application of certain mental health parity requirements under a specified federal law to certain Medicaid managed care plans, Medicaid benchmark and benchmark-equivalent plans, and the Children's Health Insurance Program (CHIP).

This bill would require the State Department of Health Care Services to ensure that all covered mental health and substance use disorder benefits are provided in compliance with those revised federal regulations. The bill would require the department to implement, interpret, or make specific this provision by means of all-county letters, plan letters, or plan or provider bulletins, or similar instructions until regulations are adopted, and would require the department to adopt regulations by July 1, 2018. The bill would require, on an annual basis and when requested by the department, a Medi-Cal managed care plan, as defined, to demonstrate to the department its compliance with these

mental health parity requirements, and would require the department to make an annual compliance report available on its Internet Web site.

(3)

(5) Existing law requires specified percentages of newly eligible beneficiaries, such as childless adults under 65 years of age, to be assigned to public hospital health systems in an eligible county, if applicable, until the county public hospital health system meets its enrollment target, as defined. Existing law also requires, subject to specified criteria, Medi-Cal managed care plans serving newly eligible beneficiaries to pay county public hospital health systems for providing and making available services to newly eligible beneficiaries of the Medi-Cal managed care plan in amounts that are no less than the cost of providing those services, and requires the capitation rates paid to Medi-Cal managed care plans for newly eligible beneficiaries to be determined based on its obligations to provide supplemental payments to those county public hospital health systems providing services to newly eligible beneficiaries. Existing law requires the department to pay Medi-Cal managed care plans specified rate range increases, and requires those Medi-Cal managed care plans to pay all of the rate range increases as additional payments to county public hospital health systems, as specified. Existing law authorizes a designated public hospital system or affiliated governmental entity to voluntarily provide intergovernmental transfers to provide support for the nonfederal share of risk-based payments to managed care health plans to enable those plans to compensate designated public hospital systems in an amount to preserve and strengthen the availability and quality of services provided by those hospitals.

These federal regulations generally prohibit states from directing managed care plans' expenditures under a managed care contract. The federal regulations authorize states to direct managed care plans' expenditures for provider payment through the managed care contracts in a manner based on the delivery of services, utilization, and the outcomes and quality of the delivered services.

This bill, commencing with the 2017–18 state fiscal year, would require the department to require each Medi-Cal managed care plan, as defined, to enhance contract services ~~payments~~ *payments, as defined*, to designated public hospital systems, as defined, by ~~a uniform percentage applied uniformly across an amount determined under a prescribed uniform distribution methodology to be developed by the department, and would authorize these directed payments to separately~~

account for inpatient and noninpatient hospital services and require these directed payments to be developed and applied separately for and uniformly within specified classes of designated public hospital systems in accordance with a prescribed methodology. ~~systems.~~ The bill would require a Medi-Cal managed care plan to annually provide to the department an accounting of the amount paid or payable to a designated public hospital system to demonstrate its compliance with the directed payment requirements. The bill would authorize the ~~department~~ *department, after providing notice of its determination to the affected Medi-Cal managed care plan and allowing a reasonable period to cure the deficiencies,* to reduce the default assignment into a Medi-Cal managed care plan by up to ~~25%~~ *25% in the applicable county,* as specified, if the Medi-Cal managed care plan is not in compliance with the directed payment requirements.

The bill, commencing with the 2017–18 state fiscal year, would require the department, in consultation with the designated public hospital systems and ~~each Medi-cal applicable Medi-Cal managed care plan, plans,~~ to establish a program under which a designated public hospital system may earn performance-based quality incentive payments from Medi-Cal managed care plans, as specified, and would require payments to be earned by each designated public hospital system based on its performance in achieving identified targets for quality of care. The bill would require the department to establish uniform performance measures and parameters for the designated public hospital systems to select the applicable measures, and would require these performance measures to advance at least one goal identified in the state's Medicaid quality strategy.

The bill would authorize a designated public hospital system and their affiliated governmental entities, or other public entities, to voluntarily provide the nonfederal share of the portion of the capitation rates associated with the directed payments and for the quality incentive payments through an intergovernmental transfer. The bill would authorize the department to accept these elective funds and, in its discretion, to deposit the transfer in the Medi-Cal Inpatient Payment Adjustment Fund, a continuously appropriated fund, thereby making an appropriation.

The bill would prohibit the department *or a Medi-Cal managed care plan* from being required to make any payment ~~to a Medi-Cal managed care plan~~ pursuant to the provisions described in (3) for any state fiscal year in which these provisions are implemented, as specified.

The bill would authorize the department to implement, interpret, or make specific these provisions by means of all-county letters, plan letters, provider bulletins, or other similar instructions without taking regulatory action.

The bill would require these provisions to be implemented only to the extent that any necessary federal approvals are obtained and federal financial participation is available and is not otherwise jeopardized, and would require the department to seek any necessary federal approvals.

The bill would provide that these provisions shall cease to be operative on the first day of the state fiscal year beginning on or after the date the department determines, after consultation with the designated public hospital systems, that implementation of these provisions is no longer financially and programmatically supportive of the Medi-Cal program, as specified. The bill would require the department to post notice of the determination on its Internet Web site, and to provide written notice of the determination to the Secretary of State, the Secretary of the Senate, the Chief Clerk of the Assembly, and the Legislative Counsel.

(6) 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: yes. Fiscal committee: yes.
State-mandated local program: ~~no~~-yes.

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

1 SECTION 1. It is the intent of the Legislature to implement
2 the revisions to federal regulations governing Medicaid managed
3 care plans at Parts 431, 433, 438, 440, 457, and 495 of Title 42 of
4 the Code of Federal Regulations, as amended May 6, 2016, as
5 published in the Federal Register (81 Fed. Reg. 27498).

6 SEC. 2. Section 1367.035 of the Health and Safety Code is
7 amended to read:

8 1367.035. (a) As part of the reports submitted to the
9 department pursuant to subdivision (f) of Section 1367.03 and
10 regulations adopted pursuant to that section, a health care service
11 plan shall submit to the department, in a manner specified by the

1 department, data regarding network adequacy, including, but not
2 limited to, the following:

3 (1) Provider office location.

4 (2) Area of specialty.

5 (3) Hospitals where providers have admitting privileges, if any.

6 (4) Providers with open practices.

7 (5) The number of patients assigned to a primary care provider
8 or, for providers who do not have assigned enrollees, information
9 that demonstrates the capacity of primary care providers to be
10 accessible and available to enrollees.

11 (6) Grievances regarding network adequacy and timely access
12 that the health care service plan received during the preceding
13 calendar year.

14 (b) A health care service plan that uses a network for its
15 Medi-Cal managed care product line that is different from the
16 network used for its other product lines shall submit the data
17 required under subdivision (a) for its Medi-Cal managed care
18 product line separately from the data submitted for its other product
19 lines.

20 (c) A health care service plan that uses a network for its
21 individual market product line that is different from the network
22 used for its small group market product line shall submit the data
23 required under subdivision (a) for its individual market product
24 line separate from the data submitted for its small group market
25 product line.

26 (d) The department shall review the data submitted pursuant to
27 this section for compliance with this chapter.

28 (e) (1) In submitting data under this section, a health care
29 service plan that provides services to Medi-Cal beneficiaries
30 pursuant to Chapter 7 (commencing with Section 14000) or Chapter
31 8 (commencing with Section 14200) of Part 3 of Division 9 of the
32 Welfare and Institutions Code shall provide the same data to the
33 State Department of Health Care Services pursuant to Section
34 14456.3 of the Welfare and Institutions Code.

35 (2) *A health care service plan that provides services to Medi-Cal*
36 *beneficiaries also shall provide to the department, in a manner*
37 *specified by the department, data regarding the standards set forth*
38 *in Section 14197 of the Welfare and Institutions Code.*

39 (f) In developing the format and requirements for reports, data,
40 or other information provided by plans pursuant to subdivision

1 (a), the department shall not create duplicate reporting
2 requirements, but, instead, shall take into consideration all existing
3 relevant reports, data, or other information provided by plans to
4 the department. This subdivision does not limit the authority of
5 the department to request additional information from the plan as
6 deemed necessary to carry out and complete any enforcement
7 action initiated under this chapter.

8 (g) If the department requests additional information or data to
9 be reported pursuant to subdivision (a), which is different or in
10 addition to the information required to be reported in paragraphs
11 (1) to (6), inclusive, of subdivision (a), the department shall provide
12 health care service plans notice of that change by November 1 of
13 the year prior to the change.

14 (h) A health care service plan may include in the provider
15 contract provisions requiring compliance with the reporting
16 requirements of Section 1367.03 and this section.

17 *SEC. 3. Section 10950 of the Welfare and Institutions Code is*
18 *amended to read:*

19 10950. (a) If any applicant for or recipient of public social
20 services is dissatisfied with any action of the county department
21 relating to his or her application for or receipt of public social
22 services, if his or her application is not acted upon with reasonable
23 promptness, or if any person who desires to apply for public social
24 services is refused the opportunity to submit a signed application
25 therefor, and is dissatisfied with that refusal, he or she shall, in
26 person or through an authorized representative, without the
27 necessity of filing a claim with the board of supervisors, upon
28 filing a request with the State Department of Social Services or
29 the State Department of Health Care Services, whichever
30 department administers the public social service, be accorded an
31 opportunity for a state hearing.

32 (b) (1) The requirements of Sections 100506.2 and 100506.4
33 of the Government Code apply to state hearings regarding
34 eligibility for or enrollment in an insurance affordability program
35 administered by the State Department of Health Care Services to
36 the extent that those sections conflict with the state hearing
37 requirements under this chapter.

38 (2) Notwithstanding Chapter 3.5 (commencing with Section
39 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
40 the department, without taking any further regulatory action, shall

1 implement, interpret, or make specific this subdivision by means
2 of all-county letters, plan letters, plan or provider bulletins, or
3 similar instructions until the time regulations are adopted. The
4 department shall adopt regulations by July 1, 2017, in accordance
5 with the requirements of Chapter 3.5 (commencing with Section
6 11340) of Part 1 of Division 3 of Title 2 of the Government Code.
7 Notwithstanding Section 10231.5 of the Government Code,
8 beginning July 1, 2015, the department shall provide a semiannual
9 status report to the Legislature, in compliance with Section 9795
10 of the Government Code, until regulations have been adopted.

11 (3) This subdivision shall be implemented only to the extent it
12 does not conflict with federal law.

13 (c) Priority in setting and deciding cases shall be given in those
14 cases in which aid is not being provided pending the outcome of
15 the hearing. This priority shall not be construed to permit or excuse
16 the failure to render decisions within the time allowed under federal
17 and state law.

18 (d) Notwithstanding any other provision of this code, there is
19 no right to a state hearing when either (1) state or federal law
20 requires automatic grant adjustments for classes of recipients unless
21 the reason for an individual request is incorrect grant computation,
22 or (2) the sole issue is a federal or state law requiring an automatic
23 change in services or medical assistance which adversely affects
24 some or all recipients.

25 (e) For the purposes of administering health care services and
26 medical assistance, the Director of Health Care Services shall have
27 those powers and duties conferred on the Director of Social
28 Services by this chapter to conduct state hearings in order to secure
29 approval of a state plan under applicable federal law.

30 (f) The Director of Health Care Services may contract with the
31 State Department of Social Services for the provisions of state
32 hearings in accordance with this chapter.

33 (g) As used in this chapter, ~~“recipient”~~ *the following terms have*
34 *the following meanings:*

35 (1) *“Adverse benefit determination” means, in the case of a*
36 *Medi-Cal managed care plan, any of the following:*

37 (A) *The denial or limited authorization of a requested service,*
38 *including determinations based on the type or level of service,*
39 *requirements for medical necessity, appropriateness, setting, or*
40 *effectiveness of a covered benefit.*

1 (B) The reduction, suspension, or termination of a previously
2 authorized service.

3 (C) The denial, in whole or in part, of payment for a service.

4 (D) The failure to provide services in a timely manner, as
5 defined by the State Department of Health Care Services.

6 (E) The failure of a Medi-Cal managed care plan to act within
7 the timeframes provided in Section 438.408(b)(1) of Title 42 of
8 the Code of Federal Regulations regarding the standard resolution
9 of grievances and appeals.

10 (F) For a resident of a rural area with only one Medi-Cal
11 managed care plan, the denial of an enrollee's request to exercise
12 his or her right under Section 438.52(b)(2)(i) of Title 42 of the
13 Code of Federal Regulations to obtain services outside the network.

14 (G) The denial of an enrollee's request to dispute a financial
15 liability, including cost sharing, copayments, premiums,
16 deductibles, coinsurance, and other enrollee financial liabilities.

17 (2) "Medi-Cal managed care plan" means any individual,
18 organization, or entity that enters into a contract with the
19 department to provide services to enrolled Medi-Cal beneficiaries
20 pursuant to any of the following:

21 (A) Article 2.7 (commencing with Section 14087.3) of Chapter
22 7 of Part 3, including dental managed care programs developed
23 pursuant to Section 14087.46.

24 (B) Article 2.8 (commencing with Section 14087.5) of Chapter
25 7 of Part 3.

26 (C) Article 2.81 (commencing with Section 14087.96) of Chapter
27 7 of Part 3.

28 (D) Article 2.9 (commencing with Section 14088) of Chapter 7
29 of Part 3.

30 (E) Article 2.91 (commencing with Section 14089) of Chapter
31 7 of Part 3.

32 (F) Chapter 8 (commencing with Section 14200) of Part 3,
33 including dental managed care plans.

34 (G) Chapter 8.9 (commencing with Section 14700) of Part 3.

35 (H) A county Drug Medi-Cal organized delivery system
36 authorized under the California Medi-Cal 2020 Demonstration,
37 Number 11-W-00193/9, as approved by the federal Centers for
38 Medicare and Medicaid Services and described in the Special
39 Terms and Conditions. For purposes of this subdivision, "Special

1 *Terms and Conditions*” shall have the same meaning as set forth
2 in subdivision (o) of Section 14184.10.

3 (3) “Recipient” means an applicant for or recipient of public
4 social services except aid exclusively financed by county funds or
5 aid under Article 1 (commencing with Section 12000) to Article
6 6 (commencing with Section 12250), inclusive, of Chapter 3 of
7 Part 3, and under Article 8 (commencing with Section 12350) of
8 Chapter 3 of Part 3, or those activities conducted under Chapter 6
9 (commencing with Section 18350) of Part 6, and shall include any
10 individual who is an approved adoptive parent, as described in
11 subdivision (C) of Section 8708 of the Family Code, and who
12 alleges that he or she has been denied or has experienced delay in
13 the placement of a child for adoption solely because he or she lives
14 outside the jurisdiction of the department.

15 ~~SEC. 2.~~

16 *SEC. 4.* Section 10951 of the Welfare and Institutions Code is
17 amended to read:

18 10951. (a) (1) A person is not entitled to a hearing pursuant
19 to this chapter unless he or she files his or her request for the same
20 within 90 days after the order or action complained of.

21 (2) Notwithstanding paragraph (1), a person shall be entitled to
22 a hearing pursuant to this chapter if he or she files the request more
23 than 90 days after the order or action complained of and there is
24 good cause for filing the request beyond the 90-day period. The
25 director may determine whether good cause exists. *The department*
26 *shall not grant a request for a hearing for good cause if the request*
27 *is filed more than 180 days after the order or action complained*
28 *of.*

29 (b) (1) Notwithstanding subdivision (a), a person who is
30 enrolled in a Medi-Cal managed care plan and who has received
31 an adverse benefit determination from the Medi-Cal managed care
32 plan shall, to the extent required by federal law or regulation,
33 appeal the adverse benefit determination to the Medi-Cal managed
34 care plan before requesting a state fair hearing pursuant to this
35 chapter. After appealing to the Medi-Cal managed care plan, the
36 enrollee may request a hearing pursuant to this chapter involving
37 a Medi-Cal managed care plan within 120 calendar days after the
38 ~~order or action complained of.~~ *either of the following:*

1 (A) Receiving verbal or written notice from the Medi-Cal
2 managed care plan that the adverse benefit determination is upheld
3 or the appeal or expedited appeal is denied.

4 (B) When the enrollee's appeal is deemed exhausted because
5 the Medi-Cal managed care plan failed to comply with state or
6 federal requirements for notice and timeliness related to the
7 disputed action or the appeal, including when a Medi-Cal managed
8 care plan fails to respond to an appeal within 30 days as required
9 pursuant to subdivision (b) of Section 14197.2 or asks the enrollee
10 or his or her treating provider for more information to resolve the
11 appeal solely for purposes of delaying a decision.

12 (2) Notwithstanding paragraph (1), a person shall be entitled to
13 a hearing pursuant to this chapter if he or she files the request more
14 than 120 calendar days after ~~the order or action complained of~~
15 *receiving notice from the Medi-Cal managed care plan that the*
16 *adverse benefit determination is upheld* and there is good cause
17 for filing the request beyond the 120-calendar day period. The
18 director may determine whether good cause exists. *The department*
19 *shall not grant a request for a hearing for good cause if the request*
20 *is filed more than 180 days after receipt of the notice from the*
21 *Medi-Cal managed care plan that the adverse benefit determination*
22 *is upheld.*

23 (c) For purposes of this section, "good cause" means a
24 substantial and compelling reason beyond the party's control,
25 considering the length of the delay, the diligence of the party
26 making the request, and the potential prejudice to the other party.
27 The inability of a person to understand an adequate and
28 language-compliant notice, in and of itself, shall not constitute
29 good cause. ~~The department shall not grant a request for a hearing~~
30 ~~for good cause if the request is filed more than 180 days after the~~
31 ~~order or action complained of.~~

32 (d) This section shall not preclude the application of the
33 principles of equity jurisdiction as otherwise provided by law.

34 (e) Notwithstanding the Administrative Procedure Act (Chapter
35 3.5 (commencing with Section 11340) of Part 1 of Division 3 of
36 Title 2 of the Government Code), the department shall implement
37 this section through an all-county information notice. The
38 department may also provide further instructions through training
39 notes.

1 (f) Notwithstanding subdivision (e), the department shall
2 implement the amendments made to this section by the act that
3 added this subdivision by adopting any necessary rules and
4 regulations in accordance with the Administrative Procedure Act
5 (Chapter 3.5 (commencing with Section 11340) of Part 1 of
6 Division 3 of Title 2 of the Government Code). Until July 1, 2018,
7 any rules and regulations necessary to implement the amendments
8 made to this section by the act that added this subdivision may be
9 adopted as emergency regulations in accordance with the
10 Administrative Procedure Act. The adoption of emergency
11 regulations pursuant to this subdivision shall be deemed to be an
12 emergency and necessary for the immediate preservation of the
13 public peace, health and safety, or general welfare.

14 SEC. 5. Section 10959.5 is added to the Welfare and Institutions
15 Code, to read:

16 10959.5. (a) Notwithstanding Sections 10952 and 10959, for
17 a beneficiary of a Medi-Cal managed care plan who meets the
18 criteria for an expedited resolution of an appeal as set forth in
19 subdivision (c) of Section 14197.2, the department shall take final
20 administrative action as expeditiously as the individual's health
21 condition requires, but no later than three working days after the
22 department receives, from the Medi-Cal managed care plan, the
23 case file and information for any appeal of a denial of a service
24 that, as indicated by the Medi-Cal managed care plan, meets either
25 of the following criteria:

26 (1) Meets the criteria for expedited resolution as set forth in
27 Section 438.410 (a) of Title 42 of the Code of Federal Regulations,
28 but was not resolved within the timeframe for expedited resolution.

29 (2) Was resolved within the timeframe for expedited resolution,
30 but reached a decision wholly or partially adverse to the
31 beneficiary.

32 (b) Upon notice from the department that a Medi-Cal managed
33 care plan's beneficiary has requested a state fair hearing, the
34 Medi-Cal managed care plan shall provide to the department a
35 copy of the following information within three business days of
36 the Medi-Cal managed care plan's receipt of the department's
37 notice of a request by a beneficiary for a state fair hearing:

38 (1) The case file.

(2) Any information for any appeal of a denial of a service that, as indicated by the Medi-Cal managed care plan, meets either of the criteria described in paragraph (1) or (2) of subdivision (a).

~~SEC. 3.~~

SEC. 6. Article 6.3 (commencing with Section 14197) is added to Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:

Article 6.3. Medi-Cal Managed Care Plans

14197. (a) It is the intent of the Legislature that the department implement the time and distance requirements set forth in Sections 438.68, 438.206, and 438.207 of Title 42 of the Code of Federal Regulations, to ensure that all *Medi-Cal covered* services are available and accessible to enrollees of Medi-Cal managed care plans in a timely manner, as those standards were enacted in May 2016.

(b) The department, in consultation with the Department of Managed Health Care, shall develop all of the following:

(1) Time and distance standards for the following provider types, as specified in Section 438.68(b)(1) of Title 42 of the Code of Federal Regulations, to ensure that *covered and* medically necessary ~~covered~~ services are accessible to enrollees of Medi-Cal managed care plans.

(A) Primary care, adult and pediatric.

(B) Obstetrics and gynecology.

(C) Behavioral health, including mental health and substance use disorder, adult and pediatric.

(D) Specialist, adult and pediatric.

(E) Hospital.

(F) Pharmacy.

(G) Pediatric dental.

(H) Additional provider types when it promotes the objectives of the Medicaid program, as determined by the federal Centers for Medicare and Medicaid Services, for the provider type to be subject to time and distance access standards.

(2) For those Medi-Cal managed care plans that cover long-term services and supports (LTSS), both of the following:

(A) Time and distance standards for LTSS provider types in which an enrollee must travel to the provider to receive services.

1 (B) Network adequacy standards other than time and distance
2 standards for LTSS provider types that travel to the enrollee to
3 deliver services.

4 (3) Standards to ensure that all *covered and medically necessary*
5 services are available and accessible to enrollees of Medi-Cal
6 managed care plans in a timely manner.

7 (c) The standards developed by the department pursuant to this
8 section shall, at a minimum, do ~~both~~ *all* of the following:

9 (1) ~~Meet or exceed~~ existing time and distance standards
10 ~~developed pursuant to Section 1367.03 of the Health and Safety~~
11 ~~Code set forth in Section 1300.51 of Title 28 of the California Code~~
12 ~~of Regulations~~ and the standards set forth in Medi-Cal managed
13 care contracts entered into with the department as of January 1,
14 2016. *In the event of a conflict between the time and distance*
15 *standards set forth in Section 1300.51 of Title 28 of the California*
16 *Code of Regulations and the Medi-Cal managed care contracts*
17 *entered into within the department as of January 1, 2016, the*
18 *standard that requires a shorter travel time or less distance shall*
19 *prevail.*

20 (2) ~~Meet or exceed~~ the appointment time standards developed
21 pursuant to Section 1367.03 of the Health and Safety ~~Code Code~~,
22 *Section 1300.67.2.2 of Title 28 of the California Code of*
23 *Regulations*, and the standards set forth in contracts entered into
24 between the department and Medi-Cal managed care plans.

25 (3) *Take into consideration the requirements of subdivision (c)*
26 *of Section 438.68 of Title 42 of the Code of Federal Regulations.*

27 (d) In developing the time and distance standards, if the
28 department elects a county standard for time and distance, the
29 department shall categorize counties into at least five or more
30 county categories, one of which is a rural county category.

31 (e) The department may have varying standards for the same
32 provider type based on geographic areas, subject to the
33 requirements of this section.

34 (f) (1) The department, upon request of a Medi-Cal managed
35 care plan, may allow alternative access standards if the requesting
36 Medi-Cal managed care plan has exhausted all other reasonable
37 options to obtain providers to meet either time and distance or
38 timely access standards, and, if the Medi-Cal managed care plan
39 is licensed as a health care service plan under the Knox-Keene
40 Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing

1 with Section 1340) of Division 2 of the Health and Safety Code),
2 has obtained approval from the Department of Managed Health
3 Care. The department shall post any approved alternative access
4 standards on its Internet Web site.

5 (2) The department may allow for the use of telecommunications
6 technology as a means of alternative access to care, including
7 ~~telemedicine~~, *telehealth consistent with the requirements of Section*
8 *2290.5 of the Business and Professions Code*, e-visits, or other
9 evolving and innovative technological solutions that are used to
10 provide care from a distance.

11 (g) The department may permit standards other than time and
12 distance if the health care provider travels to the beneficiary or to
13 a community-based setting to deliver services.

14 (h) (1) A Medi-Cal managed care plan shall, ~~on-at least an~~
15 ~~annual-basis~~, *basis and when requested by the department*,
16 demonstrate to the department its compliance with the time and
17 distance and ~~timeliness~~ *appointment wait time* standards developed
18 pursuant to this section. *The report shall measure compliance*
19 *separately for adult and pediatric services for primary care,*
20 *behavioral health, and core specialist services. A Medi-Cal*
21 *managed care plan licensed under the Knox-Keene Health Care*
22 *Service Plan Act of 1975 (Chapter 2.2 (commencing with Section*
23 *1340) of Division 2 of the Health and Safety Code) shall also, on*
24 *an annual basis, demonstrate to the Department of Managed*
25 *Health Care its compliance with the time and distance and*
26 *appointment wait time standards developed pursuant to this*
27 *section.*

28 (2) The department shall annually publish on its Internet Web
29 site a report for each Medi-Cal managed care plan that specifies
30 any areas where the Medi-Cal managed care plan was found to
31 be out of compliance and the Medi-Cal managed care plan's
32 corrective action plan.

33 (i) The department shall consult with Medi-Cal managed care
34 plans, including mental health plans, health care providers,
35 consumers, providers and consumers of LTSS, and organizations
36 representing Medi-Cal beneficiaries in the implementation of the
37 requirements of this section.

38 ~~(i) (1)~~

39 (j) For purposes of this section, "Medi-Cal managed care plan"
40 means any individual, organization, or entity that enters into a

1 contract with the department to provide services to enrolled
2 Medi-Cal beneficiaries pursuant to any of the following:

3 ~~(A)~~

4 ~~(1)~~ Article 2.7 (commencing with Section 14087.3), including
5 dental managed care programs developed pursuant to Section
6 ~~14087.46~~. 14087.46.

7 ~~(B)~~

8 ~~(2)~~ Article 2.8 (commencing with Section 14087.5).

9 ~~(C)~~

10 ~~(3)~~ Article 2.81 (commencing with Section 14087.96).

11 ~~(D)~~

12 ~~(4)~~ Article 2.9 (commencing with Section 14088).

13 ~~(E)~~

14 ~~(5)~~ Article 2.91 (commencing with Section 14089).

15 ~~(F)~~

16 ~~(6)~~ Chapter 8 (commencing with Section 14200), including
17 dental managed care plans.

18 ~~(G)~~

19 ~~(7)~~ Chapter 8.9 (commencing with Section 14700).

20 ~~(H)~~

21 ~~(8)~~ A county Drug Medi-Cal organized delivery system
22 authorized under the California Medi-Cal 2020 Demonstration,
23 Number 11-W-00193/9, as approved by the federal Centers for
24 Medicare and Medicaid Services and described in the Special
25 Terms and Conditions. For purposes of this subdivision, "Special
26 Terms and Conditions" shall have the same meaning as set forth
27 in subdivision (o) of Section 14184.10.

28 ~~(I)~~

29 ~~(k)~~ Notwithstanding Chapter 3.5 (commencing with Section
30 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
31 the department, without taking any further regulatory action, shall
32 implement, interpret, or make specific this section by means of
33 all-county letters, plan letters, plan or provider bulletins, or similar
34 instructions until the time regulations are adopted. The department
35 shall adopt regulations by July 1, 2019, in accordance with the
36 requirements of Chapter 3.5 (commencing with Section 11340) of
37 Part 1 of Division 3 of Title 2 of the Government Code.
38 Commencing July 1, 2018, the department shall provide a status
39 report to the Legislature on a semiannual basis, in compliance with

1 Section 9795 of the Government Code, until regulations are
2 adopted.

3 14197.1. (a) *The department shall ensure that all covered*
4 *mental health and substance use disorder benefits are provided*
5 *in compliance with Parts 438, 440, 456, and 457 of Title 42 of the*
6 *Code of Federal Regulations, as amended March 30, 2016, as*
7 *published in the Federal Register (81 Fed. Reg. 18390), and any*
8 *subsequent amendment to those regulations, and any associated*
9 *federal policy guidance issued by the federal Centers for Medicare*
10 *and Medicaid Services.*

11 (b) *Notwithstanding Chapter 3.5 (commencing with Section*
12 *11340) of Part 1 of Division 3 of Title 2 of the Government Code,*
13 *the department, without taking any further regulatory action, shall*
14 *implement, interpret, or make specific this subdivision by means*
15 *of all-county letters, plan letters, plan or provider bulletins, or*
16 *similar instructions until the time regulations are adopted. In doing*
17 *so, the director shall consult with managed care plans and*
18 *consumer advocates. By July 1, 2018, the department shall adopt*
19 *regulations in accordance with the requirements of Chapter 3.5*
20 *(commencing with Section 11340) of Part 1 of Division 3 of Title*
21 *2 of the Government Code.*

22 (c) *A Medi-Cal managed care plan, on an annual basis and*
23 *when requested by the department, shall demonstrate compliance*
24 *with this section. The department shall make an annual compliance*
25 *report available on its Internet Web site.*

26 (d) *For purposes of this section, "Medi-Cal managed care plan"*
27 *means any individual, organization, or entity that enters into a*
28 *contract with the department to provide services to enrolled*
29 *Medi-Cal beneficiaries pursuant to any of the following:*

30 (1) *Article 2.7 (commencing with Section 14087.3), excluding*
31 *dental managed care programs developed pursuant to Section*
32 *14087.46.*

33 (2) *Article 2.8 (commencing with Section 14087.5).*

34 (3) *Article 2.81 (commencing with Section 14087.96).*

35 (4) *Article 2.91 (commencing with Section 14089).*

36 (5) *Chapter 8 (commencing with Section 14200), excluding*
37 *dental managed care plans.*

38 (6) *Chapter 8.9 (commencing with Section 14700).*

39 (7) *A county Drug Medi-Cal organized delivery system*
40 *authorized under the California Medi-Cal 2020 Demonstration,*

1 *Number 11-W-00193/9, as approved by the federal Centers for*
2 *Medicare and Medicaid Services and described in the Special*
3 *Terms and Conditions. For purposes of this subdivision, "Special*
4 *Terms and Conditions" shall have the same meaning as set forth*
5 *in subdivision (o) of Section 14184.10.*

6 ~~14197.1.~~

7 14197.2. (a) This section implements the state option in
8 subdivision (j) of Section 438.8 of Title 42 of the Code of Federal
9 Regulations.

10 (b) A Medi-Cal managed care plan shall comply with a
11 minimum 85 percent medical loss ratio (MLR) consistent with
12 Section 438.8 of Title 42 of the Code of Federal Regulations. The
13 ratio shall be calculated and reported for each MLR reporting year
14 by the Medi-Cal managed care plan consistent with Section 438.8
15 of Title 42 of the Code of Federal Regulations.

16 (c) A Medi-Cal managed care plan shall provide a remittance
17 for an MLR reporting year if the ratio for that MLR reporting year
18 does not meet the minimum MLR standard of 85 percent.

19 (d) *Except as otherwise required under this section, the*
20 *requirements under this section do not apply to a health care*
21 *service plan under a subcontract with a Medi-Cal managed care*
22 *plan to provide covered health care services to Medi-Cal*
23 *beneficiaries enrolled in the Medi-Cal managed care plan.*

24 (e) *The department shall post on its Internet Web site all of the*
25 *following information:*

26 (1) *The aggregate MLR of all Medi-Cal managed care plans.*

27 (2) *The MLR of each Medi-Cal managed care plan.*

28 (3) *Any required remittances owed by each Medi-Cal managed*
29 *care plan.*

30 ~~(d)~~

31 (f) For purposes of this section, the following definitions apply:

32 (1) "Medical loss ratio (MLR) reporting year" shall have the
33 same meaning as that term is defined in Section 438.8 of Title 42
34 of the Code of Federal Regulations.

35 (2) (A) "Medi-Cal managed care plan" means any individual,
36 organization, or entity that enters into a contract with the
37 department to provide services to enrolled Medi-Cal beneficiaries
38 pursuant to any of the following:

39 (i) Article 2.7 (commencing with Section 14087.3).

40 (ii) Article 2.8 (commencing with Section 14087.5).

1 (iii) Article 2.81 (commencing with Section 14087.96).

2 ~~(iv) Article 2.9 (commencing with Section 14088).~~

3 ~~(v)~~

4 (iv) Article 2.91 (commencing with Section 14089).

5 ~~(vi)~~

6 (v) Article 1 (commencing with Section 14200) of Chapter 8.

7 ~~(vii)~~

8 (vi) Article 7 (commencing with Section 14490) of Chapter 8.

9 (B) ~~“Medi-Cal~~ *For purposes of the remittance requirement*
10 *described in subdivision (c), “Medi-Cal managed care plan” does*
11 *not include dental managed care plans that contract with the*
12 *department pursuant to this chapter or Chapter 8 (commencing*
13 *with Section 14200).*

14 ~~(e)~~

15 (g) Notwithstanding Chapter 3.5 (commencing with Section
16 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
17 the department, without taking any further regulatory action, shall
18 implement, interpret, or make specific this section by means of
19 all-county letters, plan letters, plan or provider bulletins, or similar
20 instructions until the time any regulations are adopted. The
21 department shall adopt regulations by July 1, 2019, in accordance
22 with the requirements of Chapter 3.5 (commencing with Section
23 11340) of Part 1 of Division 3 of Title 2 of the Government Code.
24 Commencing July 1, 2018, the department shall provide a status
25 report to the Legislature on a semiannual basis, in compliance with
26 Section 9795 of the Government Code, until regulations are
27 adopted.

28 14197.3. (a) *A Medi-Cal managed care plan shall give a*
29 *beneficiary timely and adequate notice of an adverse benefit*
30 *determination in writing consistent with the requirements in*
31 *Sections 438.404, 438.408, and 438.10 of Title 42 of the Code of*
32 *Federal Regulations. For purposes of this subdivision, “adverse*
33 *benefit determination” means either of the following:*

34 (1) *Any action described in Section 10950.*

35 (2) *Any health care service eligible for coverage and payment*
36 *under a Medi-Cal managed care plan contract that has been*
37 *denied, modified, or delayed by a decision of the Medi-Cal*
38 *managed care plan, or by one of its contracting providers.*

1 (b) Except as provided in subdivision (c), a Medi-Cal managed
2 care plan shall resolve an appeal no more than 30 calendar days
3 from the day the Medi-Cal managed care plan receives the appeal.

4 (c) A Medi-Cal managed care plan shall resolve an expedited
5 appeal no longer than 72 hours after the Medi-Cal managed care
6 plan receives the appeal. A Medi-Cal managed care plan shall
7 establish and maintain an expedited review process for a
8 beneficiary or the beneficiary's provider to request an expedited
9 resolution of an appeal based on either of the following
10 circumstances:

11 (1) If the Medi-Cal managed care plan determines, for a request
12 from the beneficiary, or the provider indicates, in making the
13 request on the beneficiary's behalf or supporting the beneficiary's
14 request, that taking the time for a standard resolution under the
15 timeframe described in subdivision (b) could seriously jeopardize
16 the beneficiary's life, physical or mental health, or ability to attain,
17 or regain, maximum function.

18 (2) When the beneficiary's condition is such that the beneficiary
19 faces an imminent and serious threat to his or her health, including,
20 but not limited to, the potential loss of life, limb, or other major
21 bodily function, or the timeframe described in subdivision (b)
22 would be detrimental to the beneficiary's life or health or could
23 jeopardize the beneficiary's ability to regain maximum function.

24 (d) For purposes of this section, "Medi-Cal managed care plan"
25 means any individual, organization, or entity that enters into a
26 contract with the department to provide services to enrolled
27 Medi-Cal beneficiaries pursuant to any of the following:

28 (1) Article 2.7 (commencing with Section 14087.3), including
29 dental managed care programs developed pursuant to Section
30 14087.46.

31 (2) Article 2.8 (commencing with Section 14087.5).

32 (3) Article 2.81 (commencing with Section 14087.96).

33 (4) Article 2.9 (commencing with Section 14088).

34 (5) Article 2.91 (commencing with Section 14089).

35 (6) Chapter 8 (commencing with Section 14200), including
36 dental managed care plans.

37 (7) Chapter 8.9 (commencing with Section 14700).

38 (8) A county Drug Medi-Cal organized delivery system
39 authorized under the California Medi-Cal 2020 Demonstration,
40 Number 11-W-00193/9, as approved by the federal Centers for

1 *Medicare and Medicaid Services and described in the Special*
2 *Terms and Conditions. For purposes of this subdivision, "Special*
3 *Terms and Conditions" shall have the same meaning as set forth*
4 *in subdivision (o) of Section 14184.10.*

5 ~~14197.2.~~

6 14197.4. (a) The Legislature finds and declares all of the
7 following:

8 (1) Designated public ~~hospitals~~ *hospital* systems play an
9 essential role in the Medi-Cal program, providing high-quality
10 care to a disproportionate number of low-income Medi-Cal and
11 uninsured populations in the state. Because Medi-Cal covers
12 approximately one-third of the state's population, the strength of
13 these essential public health care systems is of critical importance
14 to the health and welfare of the people of California.

15 (2) Designated public hospital systems provide comprehensive
16 health care services to low-income patients and ~~life-saving~~
17 *lifesaving* trauma, burn, and disaster-response services for entire
18 communities, and train the next generation of doctors and other
19 health care professionals, such as nurses and paramedical
20 professionals, who are critical to new team-based care models that
21 achieve more efficient and patient-centered care.

22 (3) The Legislature intends to continue to provide levels of
23 support for designated public hospital systems in light of their
24 reliance on Medi-Cal funding to provide quality care to everyone,
25 regardless of insurance status, ability to pay, or other circumstance,
26 the significant proportion of Medi-Cal services provided under
27 managed care by these public hospital systems, and new federal
28 requirements related to Medicaid managed care.

29 (4) It is the intent of the Legislature that Medi-Cal managed
30 care plans and designated public hospital systems *that may enter*
31 *into contracts to provide services for Medi-Cal beneficiaries* shall
32 in good faith negotiate for, and implement, contract rates, the
33 provision and arrangement of services and member assignment
34 that are sufficient to ensure continued participation by *Medi-Cal*
35 *managed care plans* and designated public hospital systems and
36 to maintain access to services for Medi-Cal managed care
37 beneficiaries and other low-income patients.

38 (5) *It is the intent of the Legislature that, in order to ensure both*
39 *the financial viability of Medi-Cal managed care plans and support*
40 *the participation of designated public hospital systems in Medi-Cal*

1 *managed care, the department shall provide Medi-Cal managed*
2 *care plans timely notice of and actuarially sound rates reflecting*
3 *the enhanced contract services payments implemented to comply*
4 *with the new federal requirements relating to Medicaid managed*
5 *care.*

6 (b) Commencing with the 2017–18 state fiscal year, and for
7 each state fiscal year thereafter, and notwithstanding any other
8 law, the department shall require each Medi-Cal managed care
9 plan to enhance contract services payments to the designated public
10 hospital systems ~~by a uniform percentage~~ *by amounts determined*
11 *under a uniform methodology that meets federal requirements and*
12 *as described in this subdivision. The enhancements may be*
13 *determined and applied as distributions from directed enhanced*
14 *payment pools, as a uniform percentage increase, or other basis,*
15 *and may incorporate acuity adjustments or other factors.*

16 (1) ~~The applicable percentage for purposes of the directed~~
17 ~~payments shall be uniformly applied across all~~ *The directed*
18 *payments may separately account for inpatient hospital services*
19 *and noninpatient hospital services and shall be developed and*
20 *applied separately for and uniformly within each of the following*
21 *classes of designated public hospital systems:*

22 (A) Designated public hospital systems owned and operated by
23 the University of California.

24 (B) *Designated public hospital systems that hold a risk-based*
25 *per member per month capitated contract with one or more*
26 *Medi-Cal managed care plans that includes capitation for the*
27 *provision of inpatient hospital services.*

28 ~~(B)~~

29 (C) Designated public hospital systems not identified in
30 subparagraph (A) or (B) that include a designated public hospital
31 with a level 1 or level 2 trauma designation.

32 ~~(C)~~

33 (D) Designated public hospital systems not identified in
34 subparagraph ~~(A) or (B)~~ *(A), (B), or (C).*

35 (2) *To the extent permitted by federal law and to meet the*
36 *objectives identified in subdivisions (a) and (d), the department*
37 *shall develop and implement the directed payment program in*
38 *consultation with designated public hospital systems or Medi-Cal*
39 *managed care plans, or both, as follows:*

40 ~~(2)~~

1 (A) The department, in consultation with the designated public
2 hospital systems, shall annually determine the applicable uniform
3 ~~percentages for each class identified in paragraph (1) on a~~
4 *prospective basis the aggregate amount of payments that will be*
5 *directed to each class of designated public hospitals systems*
6 *pursuant to this subdivision and the classification of each*
7 *designated public hospital system. Once the department determines*
8 *the classification for each designated public hospital system for a*
9 *particular state fiscal year, that classification shall not be eligible*
10 *to change until no sooner than the subsequent state fiscal year. To*
11 *For state fiscal years following the 2017–18 state fiscal year, the*
12 *aggregate amounts of payments to a class of designated public*
13 *hospital systems shall include an increase for the rate of inflation*
14 *to the aggregate amounts available during the prior state fiscal*
15 *year, subject to any modifications to account for changes in the*
16 *classification of designated public hospital systems, changes*
17 *required by federal law, changes to account for the size of the*
18 *payments made pursuant to subdivision (c), or other material*
19 *changes.*

20 (B) The department, in consultation with the designated public
21 hospital systems, shall develop the methodologies for determining
22 the required directed payments for each designated public hospital
23 system.

24 (C) To the extent necessary to meet the objectives identified in
25 subdivisions (a) and (d) or to comply with federal requirements,
26 the department may, in consultation with the designated public
27 hospital systems, adjust or modify ~~the applicable percentages or~~
28 ~~the classifications. The the amounts of the aggregate directed~~
29 *payments for any class of designated public hospital systems, the*
30 *method for determining the distribution of the directed payment*
31 *amounts within any class of designated public hospital systems,*
32 *and may modify, consolidate, or subdivide the classes of designated*
33 *public hospital systems described in paragraph (1).*

34 (D) After the aggregate amounts and the distribution
35 methodology of directed payments for each designated public
36 hospital system class have been established, the department shall
37 consult with the designated public hospital systems and each
38 affected Medi-Cal managed care plan with regard to the impact
39 on the Medi-Cal managed care plan capitation ratesetting process
40 and implementation of the directed payment requirements once

1 ~~these payment levels have been established: requirements,~~
2 ~~including applicable interim and final payment processes, to ensure~~
3 ~~that 100 percent of the aggregate amounts are paid to the~~
4 ~~applicable designated public hospital system.~~

5 (3) ~~The required directed payment amounts shall be determined~~
6 ~~by multiplying the applicable percentage developed pursuant to~~
7 ~~paragraph (2) by the total amount of contract services payments.~~
8 ~~Performance-based incentive payments, amounts earned pursuant~~
9 ~~to the quality incentive program described in subdivision (c), and~~
10 ~~amounts paid pursuant to Sections 14301.4 and 14301.5 shall not~~
11 ~~be subject to the required directed payments. Nothing in this~~
12 ~~subdivision shall prevent a Medi-Cal managed care plan from~~
13 ~~making additional payments to a designated public hospital system~~
14 ~~in amounts exceeding the directed payment amounts required under~~
15 ~~this subdivision, or, at the sole option and request of a designated~~
16 ~~public hospital system, from working with the designated public~~
17 ~~hospital system to develop risk-sharing arrangements consistent~~
18 ~~with the intent and purposes of this subdivision. paid by the~~
19 ~~Medi-Cal managed care plans as adjustments to the total amounts~~
20 ~~of contract services payments otherwise paid to the designated~~
21 ~~public hospital systems in accordance with the department's~~
22 ~~directions and methodologies established pursuant to this~~
23 ~~subdivision.~~

24 (4) ~~The directed payments required under this subdivision shall~~
25 ~~be implemented and documented by each Medi-Cal managed care~~
26 ~~plan and designated public hospital system in accordance with all~~
27 ~~of the following parameters and any guidance issued by the~~
28 ~~department:~~

29 (A) ~~A Medi-Cal managed care plan and the designated public~~
30 ~~hospital systems shall determine the manner, timing, and amount~~
31 ~~of payment for contract services, including through fee-for-service,~~
32 ~~capitation, or other permissible manner. The rates of payment for~~
33 ~~contract services agreed upon by the Medi-Cal managed care plan~~
34 ~~and the designated public hospital system shall be established and~~
35 ~~documented without regard to the directed payments and quality~~
36 ~~incentive payments required by this section.~~

37 (B) ~~A Medi-Cal managed care plan and a designated public~~
38 ~~hospital system shall, for the directed payment amounts determined~~
39 ~~pursuant to paragraph (3), determine the manner of their~~
40 ~~distribution, including the frequency and amount of each~~

1 ~~distribution through arrangements that may include, but are not~~
2 ~~limited to, a per-claim enhancement, per-capitation enhancement,~~
3 ~~monthly or quarterly lump-sum enhancement, or other permissible~~
4 ~~arrangement.~~

5 ~~(E)~~

6 (B) The required directed payment enhancements provided
7 pursuant to this subdivision shall not supplant amounts that would
8 otherwise be payable by a Medi-Cal managed care plan to a
9 designated public hospital system for an applicable state fiscal
10 ~~year. year, and the Medi-Cal managed care plan shall not impose~~
11 ~~a fee or retention amount that would result in a direct or indirect~~
12 ~~reduction to the amounts required under this subdivision.~~

13 ~~(D) A Medi-Cal managed care plan shall not terminate a contract~~
14 ~~with a designated public hospital system for the purpose of~~
15 ~~circumventing the directed payment obligations under this~~
16 ~~subdivision.~~

17 (C) A contract between a Medi-Cal managed care plan and a
18 designated public hospital system shall not be terminated by either
19 party for the specific purpose of circumventing or otherwise
20 impacting the payment obligations implemented pursuant to this
21 subdivision.

22 ~~(E)~~

23 (D) In the event a Medi-Cal managed care plan subcontracts or
24 otherwise delegates responsibility to a separate entity for either or
25 both the arrangement or payment of services, the Medi-Cal
26 managed care plan shall ~~ensure that~~ be responsible for paying the
27 designated public hospital system ~~receives~~ the directed payment
28 enhancements described in this subdivision with respect to the
29 services it provides that are covered by that arrangement, regardless
30 of whether the Medi-Cal managed care plan subcontracted or
31 delegated responsibility for payment of the directed payment
32 amounts to the subcontracted or delegated entity, and shall be
33 liable for any unpaid amounts. A Medi-Cal managed care plan
34 shall require reporting of amounts paid or payable pursuant to that
35 subcontracted or delegated arrangements as necessary to calculate
36 the amount of those directed payment enhancements. ~~arrangement.~~
37 The designated public hospital system and the applicable
38 subcontractor or delegated entity shall together work with the
39 Medi-Cal managed care plan to provide the information necessary

1 *to facilitate the Medi-Cal managed care plan's compliance with*
2 *the payments requirements under this subdivision.*

3 (5) Each year, a Medi-Cal managed care plan shall provide to
4 the department, at the times and in the form and manner specified
5 by the department, an accounting of amounts paid or payable to
6 the designated public hospital systems it contracts with, including
7 both contract rates and the directed payments, to demonstrate
8 compliance with this subdivision. To the extent the department
9 ~~determines, in its sole discretion,~~ *determines* that a Medi-Cal
10 managed care plan is not in compliance with the requirements of
11 this subdivision, or is otherwise circumventing the purposes
12 thereof, to the material detriment of an applicable designated public
13 ~~hospital system, and, independent of any remedy available to the~~
14 ~~designated public hospital system, the department may~~ *system, the*
15 *department may, after providing notice of its determination to the*
16 *affected Medi-Cal managed care plan and allowing a reasonable*
17 *period for the Medi-Cal managed care plan to cure the specified*
18 *deficiencies, reduce the default assignment into the Medi-Cal*
19 *managed care plan with respect to all Medi-Cal managed care*
20 *beneficiaries by up to 25 percent, percent in the applicable county,*
21 *so long as the other Medi-Cal managed care plan or Medi-Cal*
22 *managed care plans in the applicable county have the capacity to*
23 *receive the additional default membership. The department's*
24 ~~determination, whether to exercise discretion under this paragraph,~~
25 ~~shall not be subject to judicial review.~~ *Nothing in this paragraph*
26 *shall be construed to preclude or otherwise limit the right of any*
27 *Medi-Cal managed care plan or designated public hospital system*
28 *to pursue a breach of contract action, or any other available*
29 *remedy as appropriate, in connection with the requirements of*
30 *this subdivision.*

31 (6) Capitation rates paid by the department to a Medi-Cal
32 managed care plan shall *be actuarially sound and* account for the
33 Medi-Cal managed care plan's obligation to pay the directed
34 payments to designated public hospital systems in accordance with
35 this subdivision. The department may require Medi-Cal managed
36 care plans and the designated public hospital systems to submit
37 information regarding contract rates and expected *or actual*
38 utilization of services, at the times and in the form and manner
39 specified by the department. To the extent consistent with federal
40 law and actuarial standards of practice, the department shall utilize

1 the most recently available ~~data~~, *data and reasonable projections*,
2 as determined by the department, when accounting for the directed
3 payments required under this subdivision, and *shall account for*
4 *additional clinics, practices, or other health care providers added*
5 *to a designated public hospital system. In implementing the*
6 *requirements of this section, including the Medi-Cal managed care*
7 *plan ratesetting process, the department may additionally account*
8 *for material adjustments, as appropriate under federal law and*
9 *actuarial standards, as described above, and as determined by the*
10 *department, to contracts entered into between a Medi-Cal managed*
11 *care plan or applicable subcontracted or delegated entity and a*
12 *designated public hospital system.*

13 (c) Commencing with the 2017–18 state fiscal year, and for
14 each state fiscal year thereafter, the department, in consultation
15 with the designated public hospital systems and ~~each applicable~~
16 *Medi-Cal managed care plan, plans*, shall establish a program
17 under which a designated public hospital system may earn
18 performance-based quality incentive payments from the Medi-Cal
19 managed care plan they contract with in accordance with this
20 subdivision.

21 (1) Payments shall be earned by each designated public hospital
22 system based on its performance in achieving identified targets
23 for quality of care.

24 (A) The department, in consultation with the designated public
25 hospital systems and ~~each applicable~~ *Medi-Cal managed care plan,*
26 *plans*, shall establish and provide a method for updating uniform
27 performance measures for the performance-based quality incentive
28 payment program and parameters for the designated public hospital
29 systems to select the applicable measures. The performance
30 measures shall advance at least one goal identified in the state's
31 Medicaid quality strategy. Measures shall not duplicate measures
32 utilized in the PRIME program established pursuant to Section
33 14184.50.

34 (B) Each designated public hospital system shall submit reports
35 to the department containing information required to evaluate its
36 performance on all applicable performance measures, at the times
37 and in the form and manner specified by the department. A
38 Medi-Cal managed care plan shall assist a designated public
39 hospital system in collecting information necessary for these
40 reports.

1 (2) The department, in consultation with each designated public
2 hospital system, shall determine a maximum amount that each
3 class identified in paragraph (1) of subdivision (b) may earn in
4 quality incentive payments for the state fiscal year.

5 (3) The department shall calculate the amount earned by each
6 designated public hospital system based on its performance score
7 established pursuant to paragraph (1).

8 (A) This amount shall be paid to the designated public hospital
9 system by each of its contracted Medi-Cal managed care plans. If
10 a designated public hospital system contracts with multiple
11 Medi-Cal managed care plans, the department shall identify each
12 Medi-Cal managed care plan's proportionate amount of the
13 designated public hospital system's payment. The timing and
14 amount of the distributions and any related reporting requirements
15 for interim payments shall be established and agreed to by the
16 designated public hospital system and each of the applicable
17 Medi-Cal managed care plans.

18 ~~(B) A Medi-Cal managed care plan shall not terminate a contract~~
19 ~~with a designated public hospital system for the purpose of~~
20 ~~circumventing the payment obligations under this subdivision.~~

21 *(B) A contract between a Medi-Cal managed care plan and*
22 *designated public hospital system shall not be terminated by either*
23 *party for the specific purpose of circumventing or otherwise*
24 *impacting the payment obligations implemented pursuant to this*
25 *subdivision.*

26 (C) Each Medi-Cal managed care plan shall be responsible for
27 payment of the quality incentive payments described in this
28 ~~subdivision.~~ *subdivision, subject to funding by the department*
29 *pursuant to paragraph (4).*

30 ~~(4) Nothing in this subdivision shall be construed to replace or~~
31 ~~otherwise prevent the continuation of prior quality incentive or~~
32 ~~pay-for-performance payment mechanisms or the establishment~~
33 ~~of new payment programs by any Medi-Cal managed care plan~~
34 ~~and their contracted designated public hospital systems.~~

35 ~~(5)~~

36 (4) The department shall provide appropriate funding to each
37 Medi-Cal managed care plan, to account for and to enable them
38 to make the quality incentive payments described in this
39 subdivision, through the incorporation into actuarially sound
40 capitation rates or any other federally permissible method. The

1 amounts designated by the department for the quality incentive
2 payments made pursuant to this subdivision shall be reserved for
3 the purposes of the performance-based quality incentive payment
4 program.

5 (d) (1) In determining the ~~uniform percentages~~ *amount of the*
6 *required directed payments* described in paragraph (2) of
7 subdivision (b), and the aggregate size of the quality incentive
8 payment program described in paragraph (2) of subdivision (c),
9 the department shall consult with designated public hospital
10 systems to establish levels for these payments that, in combination
11 with one another, are projected to result in aggregate payments
12 that will advance the quality and access objectives reflected in
13 prior payment enhancement mechanisms for designated public
14 hospital systems. To the extent necessary to meet these objectives
15 or to comply with any federal requirements, the department may,
16 in consultation with the designated public hospital systems, adjust
17 or modify either or both the ~~applicable percentages~~ *or directed*
18 *payments or* quality incentive payment program. *Once these*
19 *payment levels are established, the department shall consult with*
20 *the designated public hospital systems and the Medi-Cal managed*
21 *care plans in the development of the Medi-Cal managed care rates*
22 *needed for the directed payments and the structure of the quality*
23 *incentive payment program.*

24 (2) *For the state fiscal year 2017–18, the department shall*
25 *provide written notice of the directed payment and quality incentive*
26 *payment amounts established pursuant to this section. For each*
27 *annual determination thereafter, the department shall provide*
28 *written notice at least 90 days in advance to each affected*
29 *Medi-Cal managed care plan and designated public hospital system*
30 *of the applicable Medi-Cal managed care plan's directed payment*
31 *amounts, the classification of designated public hospital systems,*
32 *quality incentive payment amounts, and any other information*
33 *deemed necessary for the Medi-Cal managed care plan to fulfill*
34 *its payment obligations under subdivisions (b) and (c). If the*
35 *modification of either or both directed payment amounts or quality*
36 *incentive payment amounts is necessary after receipt of the written*
37 *notification, the department shall notify the Medi-Cal managed*
38 *care plan and designated public hospital system in writing of the*
39 *revised amounts prior to implementation of the revised amounts.*

1 (3) *A Medi-Cal managed care plan's obligation to pay the*
2 *directed payments and quality incentive payments required under*
3 *subdivisions (b) and (c) to a designated public hospital shall be*
4 *contingent upon receipt of notice from the department that the*
5 *department is in receipt of the necessary federal approvals*
6 *pursuant to paragraph (1) of subdivision (g).*

7 (e) The provisions of paragraphs ~~(3) and (4)~~ (3), (4), and (5) of
8 subdivision (a), ~~and paragraphs (3) and (4) of subdivisions (b)~~
9 ~~and (e) (c), and paragraph (3) of subdivision (d)~~ shall be deemed
10 incorporated into each contract between a designated public
11 hospital system and a Medi-Cal managed care plan, and its
12 subcontractor or designee, as applicable, and any claim for breach
13 of those provisions may be brought *by the designated public*
14 *hospital system or the Medi-Cal managed care plan* directly in a
15 court of competent jurisdiction.

16 (f) (1) The nonfederal share of the portion of the capitation
17 rates specifically associated with directed payments to designated
18 public hospital systems required under subdivision (b) and for the
19 quality incentive payments established pursuant to subdivision (c)
20 may consist of voluntary intergovernmental transfers of funds
21 provided by designated public hospitals and their affiliated
22 governmental entities, or other public entities, pursuant to Section
23 14164. Upon providing any intergovernmental transfer of funds,
24 each transferring entity shall certify that the transferred funds
25 qualify for federal financial participation pursuant to applicable
26 federal Medicaid laws, and in the form and manner specified by
27 the department. Any intergovernmental transfer of funds made
28 pursuant to this section shall be considered voluntary for purposes
29 of all federal laws. Notwithstanding any other law, the department
30 shall not assess the fee described in subdivision (d) of Section
31 14301.4 or any other similar fee.

32 (2) When applicable for voluntary intergovernmental transfers;
33 *transfers described in paragraph (1), the department, in*
34 *consultation with the designated public hospital systems, shall*
35 *develop and maintain a protocol to determine the available funding*
36 *for the nonfederal share associated with payments for each public*
37 *entity's intergovernmental transfer amount in an applicable state*
38 *fiscal year for purposes of funding the nonfederal share associated*
39 *with payments pursuant to this section. The protocol developed*
40 *and maintained pursuant to this paragraph shall account for any*

1 applicable contributions made by public entities to the nonfederal
2 share of Medi-Cal managed care expenditures, including, but not
3 limited to, contributions previously made *by those specific public*
4 *entities for the 2015–16 state fiscal year* pursuant to Section
5 14182.15 or ~~14199.2~~; 14199.2, *but excluding any contributions*
6 *made pursuant to Sections 14301.4 and 14301.5.* Nothing in this
7 section shall be construed to limit or otherwise alter any existing
8 authority of the department to accept intergovernmental transfers
9 for purposes of funding the nonfederal share of Medi-Cal managed
10 care expenditures.

11 (g) (1) This section shall be implemented only to the extent
12 that any necessary federal approvals are obtained and federal
13 financial participation is available and is not otherwise jeopardized.

14 (2) For any state fiscal year in which this section is implemented,
15 in whole or in part, and notwithstanding any other law, the
16 department *or a Medi-Cal managed care plan* shall not be required
17 *to make any payment to a Medi-Cal managed care plan* pursuant
18 *to Section 14182.15, 14199.2, or 14301.5. Nothing in this section*
19 *shall be construed to preclude or otherwise impose limitations on*
20 *payment amounts or arrangements that may be negotiated and*
21 *agreed to between the relevant parties, including, but not limited*
22 *to, the continuation of existing or the creation of new quality*
23 *incentive or pay-for-performance programs in addition to the*
24 *quality incentive payment program described in subdivision (c)*
25 *and contract services payments that may be in excess of the*
26 *directed payment amounts required under subdivision (b).*

27 (h) (1) The department shall seek any necessary federal
28 approvals for the directed payments and the quality incentive
29 payments set forth in this section.

30 (2) The department shall consult with the designated public
31 hospital systems with regard to the development ~~and~~
32 ~~implementation~~ of the directed payment levels and the *size of the*
33 *quality incentive payments established pursuant to this section.*
34 *section, and shall consult with both the designated public hospital*
35 *systems and Medi-Cal managed care plans with regards to the*
36 *implementation of payments under this section.*

37 (3) The director, after consultation with the designated public
38 ~~hospital systems,~~ *systems and Medi-Cal managed care plans,* may
39 modify the requirements set forth in this section to the extent
40 necessary to meet federal requirements or to maximize available

1 federal financial participation. In the event federal approval is only
2 available with significant limitations or modifications, or in the
3 event of changes to the federal Medicaid program that result in a
4 loss of funding currently available to the designated public hospital
5 systems, the department shall consult with the designated public
6 hospitals *and Medi-Cal managed care plans* to consider alternative
7 methodologies.

8 (i) Notwithstanding Chapter 3.5 (commencing with Section
9 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
10 the department may implement, interpret, or make specific this
11 section by means of all-county letters, plan letters, provider
12 bulletins, or other similar instructions, without taking regulatory
13 action. The department shall make use of appropriate processes to
14 ensure that affected designated public hospital systems and
15 Medi-Cal managed care plans are timely informed of, and have
16 access to, applicable guidance issued pursuant to this authority,
17 and that this guidance remains publicly available until all payments
18 made pursuant to this section are finalized.

19 (j) *(1) This section shall cease to be operative on the first day*
20 *of the state fiscal year beginning on or after the date the*
21 *department determines, after consultation with the designated*
22 *public hospital systems, that implementation of this section is no*
23 *longer financially and programmatically supportive of the*
24 *Medi-Cal program. This determination shall be based solely on*
25 *both of the following factors:*

26 (A) *The projected amount of nonfederal share funds available*
27 *is insufficient to support implementation of this section in the*
28 *subject state fiscal year.*

29 (B) *The degree to which the payment arrangements will no*
30 *longer materially advance the goals and objectives reflected in*
31 *this section and in the department's managed care quality strategy*
32 *drafted and implemented pursuant to Section 438.340 of Title 42*
33 *of the Code of Federal Regulations in the subject state fiscal year.*

34 (2) *In making its determination, the department shall consider*
35 *all reasonable options for mitigating the circumstances set forth*
36 *in paragraph (1), including, but not limited to, options for curing*
37 *projected funding shortfalls and options for program revisions*
38 *and strategy updates to better coordinate payment requirements*
39 *with the goals and objectives of this section and the managed care*
40 *quality strategy.*

1 (3) The department shall post notice of the determination on its
2 Internet Web site, and shall provide written notice of the
3 determination to the Secretary of State, the Secretary of the Senate,
4 the Chief Clerk of the Assembly, and the Legislative Counsel.

5 (k) The department, in consultation with the designated public
6 hospital systems and the Medi-Cal managed care plans, shall
7 provide the Legislature with the evaluation plan required in Section
8 438.6(c)(2)(I)(D) of Title 42 of the Code of Federal Regulations
9 to measure the degree to which the payments authorized under
10 this section advance at least one of the goals and objectives of the
11 department's managed care quality strategy. The department, in
12 consultation with the designated public hospital systems and the
13 Medi-Cal managed care plans, shall report to the Legislature the
14 results of this evaluation no earlier than January 1, 2021.

15 (j)

16 (l) For purposes of this section, the following definitions apply:

17 (1) "Contract services payments" means the amount paid or
18 payable to a designated public hospital system, including amounts
19 paid or payable under fee-for-service, ~~capitation~~, *capitation*
20 *amounts* prior to any adjustments for service payment withholds
21 or deductions, or *payments made on any* other basis, under a
22 *network provider* contract with a Medi-Cal managed care plan for
23 *medically necessary and covered* services, drugs, supplies or other
24 items provided to ~~a~~ *an eligible* Medi-Cal beneficiary enrolled in
25 the Medi-Cal managed care ~~plan~~ *plan*, *excluding services provided*
26 *to individuals who are dually eligible for both the Medicare and*
27 *Medi-Cal programs*. Contract services includes all covered
28 services, drugs, supplies, or other items the designated public
29 hospital system provides, or is responsible for providing, or
30 arranging or paying for, pursuant to a *network provider* contract
31 entered into with a Medi-Cal managed care plan. In the event a
32 Medi-Cal managed care plan subcontracts or ~~otherwise~~ delegates
33 responsibility to a separate entity for either or both the arrangement
34 or payment of services, "contract services payments" also include
35 amounts paid or payable for the services provided by, or otherwise
36 the responsibility of, the designated public hospital system that
37 are within the scope of services of the subcontracted or delegated
38 arrangement so long as the designated public hospital system holds
39 a *network provider* contract with the primary Medi-Cal managed
40 care plan.

1 (2) "Designated public hospital" shall have the same meaning
2 as set forth in subdivision (f) of Section 14184.10.

3 (3) "Designated public hospital system" means a designated
4 public hospital and its affiliated government entity clinics,
5 practices, and other health care providers, including the respective
6 affiliated hospital authority and county government entities
7 described in Chapter 5 (commencing with Section 101850) and
8 Chapter 5.5 (commencing with Section 101852), of Part 4 of
9 Division 101 of the Health and Safety Code.

10 (4) (A) "Medi-Cal managed care plan" means an applicable
11 organization or entity that enters into a contract with the department
12 pursuant to any of the following:

13 (i) Article 2.7 (commencing with Section 14087.3).

14 (ii) Article 2.8 (commencing with Section 14087.5).

15 (iii) Article 2.81 (commencing with Section 14087.96).

16 (iv) Article 2.91 (commencing with Section 14089).

17 (v) Chapter 8 (commencing with Section 14200).

18 (B) ~~"Medi-cal"~~ "Medi-Cal managed care plan" does not include
19 any of the following:

20 (i) A mental health plan contracting to provide mental health
21 care for Medi-Cal beneficiaries pursuant to Chapter 8.9
22 (commencing with Section 14700).

23 (ii) A plan not covering inpatient services, such as primary care
24 case management plans, operating pursuant to Section 14088.85.

25 (iii) A Program of All-Inclusive Care for the Elderly
26 organization operating pursuant to Chapter 8.75 (commencing
27 with Section 14591).

28 (5) *"Network provider" shall have the same meaning as that*
29 *term is defined in Section 438.2 of Title 42 of the Code of Federal*
30 *Regulations, and does not include arrangements where a*
31 *designated public hospital system provides or arranges for services*
32 *under an agreement intended to cover a specific range of services*
33 *for a single identified patient for a single inpatient admission,*
34 *including any directly related followup care, outpatient visit or*
35 *service, or other similar patient specific nonnetwork contractual*
36 *arrangement, such as a letter of agreement or single case*
37 *agreement, with a Medi-Cal managed care plan or subcontractor*
38 *of a Medi-Cal managed care plan.*

39 SEC. 7. *No reimbursement is required by this act pursuant to*
40 *Section 6 of Article XIII B of the California Constitution because*

1 *the only costs that may be incurred by a local agency or school*
2 *district will be incurred because this act creates a new crime or*
3 *infraction, eliminates a crime or infraction, or changes the penalty*
4 *for a crime or infraction, within the meaning of Section 17556 of*
5 *the Government Code, or changes the definition of a crime within*
6 *the meaning of Section 6 of Article XIII B of the California*
7 *Constitution.*

AMENDED IN ASSEMBLY JULY 13, 2017

AMENDED IN ASSEMBLY JUNE 26, 2017

AMENDED IN SENATE MAY 26, 2017

SENATE BILL

No. 249

Introduced by Senator Allen

February 7, 2017

An act to amend Sections 5090.10, 5090.11, 5090.15, 5090.24, 5090.30, 5090.31, 5090.32, 5090.34, 5090.35, 5090.43, 5090.61, and 5090.70 of, and to add Sections 5090.13, 5090.14, and 5090.39 to, the Public Resources Code, relating to state parks.

LEGISLATIVE COUNSEL'S DIGEST

SB 249, as amended, Allen. Off-highway motor vehicle recreation.

The Off-Highway Motor Vehicle Recreation Act of 2003 creates the Division of Off-Highway Motor Vehicle Recreation within the Department of Parks and Recreation. The act gives the division certain duties and responsibilities, including the planning, acquisition, development, conservation, and restoration of lands in state vehicular recreation areas. Existing law requires the division to develop and implement a grant and cooperative agreement program with other agencies funded from no more than $\frac{1}{2}$ of the revenues in the Off-Highway Vehicle Trust Fund, with specified percentages of these revenues to be available, upon appropriation, for various purposes related to off-highway vehicles. Existing law requires the remaining revenues in the Off-Highway Vehicle Trust Fund to be available for the support of the division and for the planning, acquisition, development, construction, maintenance, administration, operation,

restoration, and conservation of lands in state vehicular recreation areas and certain other areas. The act is repealed on January 1, 2018.

This bill would revise and recast various provisions of the act. The bill would expand the duties of the division by requiring it to, among other things, (1) prepare and submit program and strategic planning reports to the department and the Natural Resources Agency regarding units of the state park system, as specified, (2) post on the department's Internet Web site all plans, reports, and studies related to off-highway vehicle recreation or otherwise developed pursuant to the act's provisions, as specified, (3) in consultation with specified bodies and departments, update the 2008 Soil Conservation Standard and Guidelines to establish a generic and measurable soil conservation standard by December 31, 2020, and review and, as appropriate, update that standard every 5 years thereafter, (4) implement a monitoring program, as defined, to evaluate the condition of soils, wildlife, and vegetation habitats in each state vehicular recreation area each year, as specified, and (5) identify and protect natural, cultural, and archaeological resources within state vehicular recreation areas. The bill would require the division to take other specified measures to protect natural and cultural ~~preserves~~ resources within state vehicular recreation areas, including measures to mitigate harmful impacts to these areas and to protect them from off-highway vehicle recreation use, as specified. The bill would require the division, through a public process, to develop protocols and practices, no later than July 1, 2019, to ensure certain requirements relating to the Off-Highway Motor Vehicle Recreation Program are met. The bill would establish specified procedures for the review of the protocols and practices by the department and would, by July 1, 2020, require the director to determine whether they meet the requirements of the act and to modify any aspects that are inadequate. The bill would change the repeal date for the act to January 1, 2023, thereby extending the act's provisions until that date.

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

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

- 1 SECTION 1. Section 5090.10 of the Public Resources Code
- 2 is amended to read:
- 3 5090.10. "Conservation" and "conserve" mean activities,
- 4 practices, and programs that protect and sustain soils, plants,

1 wildlife, habitats, and cultural resources in accordance with the
2 standards adopted pursuant to Section 5090.35.

3 SEC. 2. Section 5090.11 of the Public Resources Code is
4 amended to read:

5 5090.11. "Restoration" and "restore" mean, upon closure of
6 the unit or any portion thereof, the restoration of land to the
7 contours, the plant communities, and the plant covers comparable
8 to those on surrounding lands or at least those that existed prior to
9 off-highway motor vehicle use.

10 SEC. 3. Section 5090.13 is added to the Public Resources Code,
11 to read:

12 5090.13. "Monitoring program" means a program adopted by
13 the department that provides periodic evaluations of monitoring
14 results to assess the adequacy of conservation and restoration
15 actions to inform adaptive management strategies. A monitoring
16 program includes, but is not limited to, all of the following at each
17 individual system unit:

18 (a) Surveys to determine the status of natural and cultural
19 resources.

20 (b) Periodic assessments of the effectiveness of protection and
21 restoration measures currently in place.

22 (c) Progress reports on the implementation of conservation and
23 restoration measures, the designation and management of sensitive
24 areas with cultural and natural resources, and alternative
25 management strategies.

26 (d) A schedule for conducting monitoring activities.

27 SEC. 4. Section 5090.14 is added to the Public Resources Code,
28 to read:

29 5090.14. "Adaptive management" means to use the results of
30 information gathered through a monitoring program or scientific
31 research and regulatory standards to adjust management strategies
32 and practices to ensure conservation and protection of natural and
33 cultural resources.

34 SEC. 5. Section 5090.15 of the Public Resources Code is
35 amended to read:

36 5090.15. (a) There is in the department the Off-Highway Motor
37 Vehicle Recreation Commission, consisting of nine members, five
38 of whom shall be appointed by the Governor and subject to Senate
39 confirmation, two of whom shall be appointed by the Senate

1 Committee on Rules, and two of whom shall be appointed by the
2 Speaker of the Assembly.

3 (b) Persons appointed to the commission shall have expertise,
4 or work or volunteer experience, or both, in one or more of the
5 following areas:

6 (1) Off-highway vehicle recreation.

7 (2) Biological or soil sciences.

8 (3) Practical experience with rural landownership and
9 management.

10 (4) Law enforcement.

11 (5) Environmental and cultural resource protection or
12 management.

13 (6) Nonmotorized outdoor recreation.

14 (c) It is the intent of the Legislature that appointees to the
15 commission represent all of the primary qualifications delineated
16 in paragraphs (1) to (6) of subdivision (b), inclusive, to the extent
17 possible, at all times. It is further the intent of the Legislature that
18 the commissioners reflect the geographic diversity of California
19 as well as the diversity of all Californians, including, but not
20 limited to, the special needs of Californians who participate in
21 off-highway vehicular recreation pursuant to this chapter.

22 SEC. 6. Section 5090.24 of the Public Resources Code is
23 amended to read:

24 5090.24. The commission has the following duties and
25 responsibilities:

26 (a) Be fully informed regarding all governmental activities
27 affecting the program.

28 (b) Meet at least four times per year at various locations
29 throughout the state to receive comments on the implementation
30 of the program. Establish an annual calendar of proposed meetings
31 at the beginning of each calendar year. The meetings shall include
32 a public meeting, before the beginning of each grant program cycle,
33 to collect public input concerning the program, recommendations
34 for program improvements, and specific project needs for the
35 system.

36 (c) Hold a public hearing to receive public comment regarding
37 any proposed substantial acquisition or development project at a
38 location in close geographic proximity to the project, unless a
39 hearing consistent with federal law or regulation has already been
40 held regarding the project.

1 (d) Consider, upon the request of any owner or tenant, whose
2 property is in the vicinity of any land in the system, any alleged
3 adverse impacts occurring on that person's property from the
4 operation of off-highway motor vehicles and recommend to the
5 division suitable measures for the prevention of any adverse impact
6 determined by the commission to be occurring, and suitable
7 measures for the restoration of adversely impacted property.

8 (e) Review and comment annually to the director on the
9 proposed budget of expenditures from the fund.

10 (f) Review and comment on all plans for new and expanded
11 local and regional vehicle recreation areas that have applied for
12 grant funds.

13 (g) Review and comment on strategic plans periodically
14 developed by the division.

15 (h) Prepare and submit a program report to the Governor and
16 the appropriate policy and fiscal committees of each house of the
17 Legislature on or before January 1, ~~2022~~ 2024. The report shall
18 be adopted by the commission after discussing the contents during
19 two or more public meetings. One of the public meetings shall be
20 held in northern California and one shall be held in southern
21 California. The report shall address the status of the program and
22 off-highway motor vehicle recreation, including all of the
23 following:

24 (1) A summary of the process and protocols developed pursuant
25 to subdivision (a) of Section 5090.39.

26 (2) The condition of natural and cultural resources of areas and
27 trails receiving state off-highway motor vehicle funds and the
28 resolution of conflicts of use in those areas and trails.

29 (3) The status and accomplishments of funds appropriated for
30 restoration pursuant to paragraph (2) of subdivision (b) of Section
31 5090.50.

32 (4) A summary of resource monitoring data compiled and
33 restoration work completed.

34 (5) Actions taken by the division and department since the last
35 program report to discourage and decrease trespass of off-highway
36 motor vehicles on private property.

37 (6) Other relevant program-related environmental issues that
38 have arisen since the last program report, including, but not limited
39 to, conflicts with federal and state Endangered Species Acts, local
40 air quality laws and regulations, federal Clean Water Act and

1 regional water board regulations or permits, and other
2 environmental protection requirements.

3 (i) Make other recommendations to the deputy director regarding
4 the off-highway motor vehicle recreation program.

5 SEC. 7. Section 5090.30 of the Public Resources Code is
6 amended to read:

7 5090.30. There is in the department the Division of
8 Off-Highway Motor Vehicle Recreation. Whenever any reference
9 is made to the Office of Off-Highway Motor Vehicle Recreation,
10 it shall be deemed to be a reference to, and to mean, the division.

11 SEC. 8. Section 5090.31 of the Public Resources Code is
12 amended to read:

13 5090.31. The division shall be under the direction of a deputy
14 director appointed by the director. The deputy director shall be
15 part of the department's management team.

16 SEC. 9. Section 5090.32 of the Public Resources Code is
17 amended to read:

18 5090.32. Under the general direction of the director, the
19 division has the following duties and responsibilities:

20 (a) Planning, acquisition, development, conservation, and
21 restoration of lands in the state vehicular recreation areas.

22 (b) Direct management, maintenance, administration, and
23 operation of lands in the state vehicular recreation areas.

24 (c) Provide for law enforcement and appropriate public safety
25 activities.

26 (d) Implementation of all aspects of the program.

27 (e) Ensure program compliance with the California
28 Environmental Quality Act (Division 13 (commencing with Section
29 21000)) in state vehicular recreation areas.

30 (f) Provide staff assistance to the commission.

31 ~~(g) Prepare, implement, and periodically update~~ *Prepare and*
32 *implement* plans for lands in, or proposed to be included in, state
33 vehicular recreation areas, including new state vehicular recreation
34 areas. However, a plan ~~need~~ *shall* not be prepared ~~or updated~~ in
35 any instance specified in subdivision (c) of Section 5002.2. ~~For~~
36 ~~purposes of subdivision (c) of Section 5002.2 and this subdivision,~~
37 ~~unauthorized or otherwise unintended off-highway trails that were~~
38 ~~not created for the purpose of emergency repair or restoration work~~
39 ~~authorized by the division, or expansion areas shall not be~~
40 ~~considered an existing facility or use.~~

1 (h) Conduct, or cause to be conducted, surveys, and prepare, or
2 cause to be prepared, studies that are necessary or desirable for
3 implementing the program.

4 (i) Recruit and utilize volunteers to further the objectives of the
5 program.

6 (j) Prepare and coordinate safety and education programs.

7 (k) Provide for the enforcement of Division 16.5 (commencing
8 with Section 38000) of the Vehicle Code and other laws regulating
9 the use or equipment of off-highway motor vehicles in all areas
10 acquired, maintained, or operated by funds from the fund; however,
11 the Department of the California Highway Patrol shall have
12 responsibility for enforcement on highways.

13 (l) Ensure protection of natural and cultural resources, including
14 by setting unit capacity limits pursuant to Sections 5001.96 and
15 5019.5.

16 (m) Prepare and submit program and strategic planning reports
17 to the department and the Natural Resources Agency, including
18 annually reporting the number and type of injuries and accidents
19 and the number and type of citations and other enforcement actions
20 taken at system units, disaggregated by individual unit.

21 (n) Post on the department's Internet Web site all plans, reports,
22 and studies related to off-highway vehicle recreation or otherwise
23 developed pursuant to this chapter, including those regarding
24 conservation, restoration, monitoring, and adaptive management
25 of system units, disaggregated by individual unit.

26 (o) Report on any closure implemented pursuant to Section
27 5090.35 at the next commission meeting following the closure.

28 (p) Complete other duties as determined by the director.

29 SEC. 10. Section 5090.34 of the Public Resources Code is
30 amended to read:

31 5090.34. (a) In cooperation with the commission, the division
32 shall make available on the division's Internet Web site information
33 regarding off-highway motor vehicle recreation opportunities,
34 pertinent laws and regulations, and responsible use of the system.
35 ~~At a minimum,~~ *Where practical,* the Internet Web site shall include
36 the following:

37 (1) The text of laws and regulations relating to the program and
38 operation of off-highway vehicles.

39 (2) A statewide map and regional maps of federal, state, and
40 local off-highway vehicle recreation areas and facilities in the

1 state, including links to maps of federal off-highway vehicle routes
2 resulting from the route designation process.

3 (3) Information concerning safety, education, and trail etiquette.

4 (4) Information to prevent trespass, damage to public and private
5 property, and damage to natural resources, including penalties and
6 liability associated with trespass and damage caused.

7 (b) The division shall create, and update when appropriate, a
8 guidebook of federal, state, and local off-highway vehicle
9 recreation opportunities that includes information where current
10 specific maps and information for each facility can be located.
11 Contact information shall be provided and shall include available
12 Internet Web site addresses, telephone numbers, and addresses of
13 offices where maps can be accessed. The guidebook shall also
14 include the address of the Internet Web site where the information
15 in subdivision (a) may be found. The division may publish the
16 guidebook when funds are provided in the annual budget process.

17 SEC. 11. Section 5090.35 of the Public Resources Code is
18 amended to read:

19 5090.35. (a) The protection of public safety, the appropriate
20 utilization of lands, and the conservation of ~~natural and cultural~~
21 resources are of the highest priority in the management of the state
22 vehicular recreation areas and ~~other areas in the system~~, *when*
23 *providing grant funding to agencies responsible for portions of*
24 *the system*, as defined in Section 5090.09. Accordingly, the division
25 shall promptly repair and continuously maintain areas and trails,
26 anticipate and prevent erosion and other impacts, and restore lands
27 damaged by erosion and other impacts. The division shall take
28 steps necessary to prevent damage to natural and cultural resources
29 in these areas. When damage occurs in any portion of a state
30 vehicular recreation area that is inconsistent with natural and
31 cultural resources protection plans or this section, the division shall
32 undertake protective and restoration measures which may include
33 closure. Any area or portion of an area that is closed shall remain
34 closed until it is repaired and effective adaptive management
35 measures are implemented to prevent repeated or continuous
36 damage.

37 (b) (1) The division, in consultation with the United States
38 Natural Resource Conservation Service, the United States
39 Geological Survey, the United States Forest Service, the United
40 States Bureau of Land Management, ~~the United States Fish and~~

1 ~~Wildlife Service, the California~~ the Department of Fish and
2 Wildlife, and the ~~California~~ Department of Conservation shall
3 update the 2008 Soil Conservation Standard and Guidelines to
4 establish a generic and measurable soil conservation standard by
5 December 31, 2020, and shall review and, as appropriate, update
6 the standard at least every five years thereafter.

7 (2) If the division determines that the soil conservation standards
8 and habitat protection plans are not being met in any portion of
9 any state vehicular recreation area, the division shall temporarily
10 close the noncompliant portion to repair and prevent erosion, until
11 the soil conservation standards are met pursuant to subdivision
12 (a).

13 (3) If the division determines that the soil conservation standards
14 cannot be met in any portion of any state vehicular recreation area,
15 the division shall close and restore the noncompliant portion
16 pursuant to Section 5090.11.

17 (c) (1) In consultation with the Department of Fish and Wildlife,
18 by December 31, 2020, the division shall compile, and update at
19 least every five years thereafter, an inventory of wildlife and native
20 plant populations, including wildlife habitats and vegetation
21 communities in each state vehicular recreation area and shall
22 prepare a wildlife habitat protection plan to conserve a viable
23 species composition specific to each state vehicular recreation
24 area.

25 (2) If the division determines that the wildlife habitat protection
26 plan is not being met in any portion of any state vehicular
27 recreation area, the division shall close the noncompliant portion
28 temporarily until the wildlife habitat protection plan is met pursuant
29 to subdivision (a).

30 (3) If the division determines that the wildlife habitat protection
31 plan cannot be met in any portion of any state vehicular recreation
32 area, the division shall close and restore the noncompliant portion
33 pursuant to Section 5090.11.

34 (d) The division shall implement a monitoring program to
35 evaluate the condition of soils, wildlife, and vegetation habitats in
36 each state vehicular recreation area each year in order to determine
37 whether the soil conservation standards and wildlife habitat
38 protection plans are being met.

39 (e) The division shall not fund trail construction unless the trail
40 is capable of complying with the conservation specifications

1 prescribed in this section. The division shall not fund trail
2 construction where conservation is not feasible.

3 (f) The division shall identify and protect natural, cultural, and
4 archaeological resources within the state vehicular recreation areas.

5 SEC. 12. Section 5090.39 is added to the Public Resources
6 Code, to read:

7 5090.39. (a) The division shall ensure that the program meets
8 the requirements of this chapter. No later than July 1, 2019, the
9 division shall, through a public process, develop protocols and
10 practices to ensure all of the following:

11 (1) Soil conservation standards and measures are adequate to
12 minimize erosion damage.

13 (2) Wildlife and habitat assessment and inventory methodologies
14 incorporate the best available science.

15 (3) Soil conservation and habitat protection standards are capable
16 of protecting, conserving, and restoring natural and cultural
17 resources, including sensitive species.

18 (4) Monitoring and evaluation efforts comply with this chapter,
19 and adaptive management practices address reasonable foreseen
20 and unanticipated circumstances that may occur at units of the
21 system.

22 (5) Management plans and soil conservation and wildlife habitat
23 protection plans are consistent with other relevant resource
24 protection plans, including, but not limited to, the state wildlife
25 action plan, natural community conservation plans, regional
26 conservation investment strategies, and wildlife corridor plans.
27 Management plans and soil conservation and wildlife habitat
28 protection plans shall appropriately consider regional land use and
29 resource conservation plans prepared by a local agency pursuant
30 to state law.

31 (6) The acquisition of land intended for off-highway motor
32 vehicle use, to the maximum extent feasible, avoids lands on which
33 motorized recreation would be inconsistent with this chapter.

34 (b) As part of the public process referenced in subdivision (a),
35 the division shall conduct at least two public workshops, one in
36 northern California and one in southern California. Thirty days
37 prior to the workshop dates, the workshops shall be noticed on
38 both the department's and the commission's Internet Web sites.

39 (c) Not later than January 1, 2020, the department shall complete
40 a review of the practices and protocols developed pursuant to

1 subdivision (a). The director shall solicit and consider comments
2 and recommendations from the public, scientists with expertise in
3 related fields of investigation, and others. By July 1, 2020, the
4 director shall either determine in writing that the protocols and
5 practices are adequate to meet the requirements of this chapter or
6 the director shall modify any aspects of the protocols and practices
7 that are inadequate.

8 (d) The director shall ensure that Section 5090.35 is
9 implemented consistent with ~~the practices and protocols. this~~
10 *chapter*.

11 SEC. 13. Section 5090.43 of the Public Resources Code is
12 amended to read:

13 5090.43. (a) State vehicular recreation areas may be established
14 on lands where there are quality opportunities for off-highway
15 motor vehicle recreation and shall be managed in accordance with
16 the requirements of this chapter. Areas may be developed,
17 managed, and operated for the purpose of providing appropriate
18 public use of the outdoor recreational opportunities present while
19 protecting natural and cultural resources.

20 (b) Lands for state vehicular recreation areas shall be selected
21 for acquisition so as to minimize the need for establishing sensitive
22 areas to protect natural and cultural resources.

23 (c) All unavoidable impacts to natural or cultural resources in
24 new, expanded, and existing state vehicular recreation areas shall
25 be ~~fully~~ mitigated by implementing appropriate mitigation
26 measures, including permanently protecting lands that provide
27 comparable natural and cultural resources and values. State
28 vehicular recreation areas shall *fully* incorporate all mitigation and
29 ~~permit recommendations or~~ requirements of the Department of
30 Fish and Wildlife, the United States Fish and Wildlife Service,
31 and all other responsible or trustee agencies.

32 (d) The department shall manage, or collaborate with another
33 public entity or nonprofit organization to manage lands acquired
34 for state vehicular recreation areas that are determined to not be
35 appropriate for off-highway vehicle recreation. These lands shall
36 be managed for park purposes, open space purposes, or
37 conservation purposes. The department may dispose of, consistent
38 with applicable provisions of law, lands acquired for state vehicular
39 recreation areas that are determined to not be appropriate for
40 off-highway vehicle recreation. If lands are sold, any revenue that

1 results from the sale shall be reverted back to the fund originally
2 used to purchase the lands.

3 (e) After January 1, 1988, no new cultural or natural preserves
4 or state wildernesses shall be established within state vehicular
5 recreation areas. To ensure consistent protection of natural and
6 cultural resources across all state parks, including state vehicular
7 recreation areas, sensitive areas shall be established within state
8 vehicular recreation areas where determined by the division to be
9 necessary to protect natural and cultural resources. These sensitive
10 areas shall be managed by the division in accordance with Sections
11 5019.65, 5019.71, and 5019.74, which define the purpose and
12 management of natural and cultural preserves. The division shall
13 not create designations, other than sensitive areas, for lands
14 containing natural or cultural values that the division determines
15 need protection.

16 (f) If off-highway motor vehicle use results in damage to any
17 natural or cultural values or damage within sensitive areas,
18 appropriate measures shall be promptly taken to protect these lands
19 from any further damage. These measures shall include restoration
20 of damaged lands and resources and measures to prevent future
21 damage, which may include the erection of physical barriers.

22 SEC. 14. Section 5090.61 of the Public Resources Code is
23 amended to read:

24 5090.61. Moneys in the fund shall be available, upon
25 appropriation by the Legislature, as follows:

26 (a) An amount, not to exceed 50 percent of the annual revenues
27 to the fund, shall be available for grants and cooperative agreements
28 pursuant to Article 5 (commencing with Section 5090.50).

29 (b) (1) The remainder of the annual revenues to the fund shall
30 be available for the support of the division in implementing the
31 off-highway motor vehicle recreation program and for the planning,
32 acquisition, development, mitigation, construction, maintenance,
33 administration, operation, restoration, and conservation of lands
34 in the system.

35 (2) As used in this subdivision, "support of the division"
36 includes functions performed outside of the division by others on
37 behalf of the division, including a prorated share of the
38 department's common overhead and other costs incurred on behalf
39 of the division for personnel management and training, accounting,
40 and fiscal analysis, records, purchasing, public information

1 activities, consultation of professional scientists and reclamation
2 experts for the purposes of Section 5090.35, and legal services.

3 SEC. 15. Section 5090.70 of the Public Resources Code is
4 amended to read:

5 5090.70. This chapter shall remain in effect only until January
6 1, 2023, and as of that date is repealed, unless a later enacted statute
7 that is enacted before January 1, 2023, deletes or extends that date.

AMENDED IN SENATE APRIL 20, 2017

SENATE BILL

No. 438

Introduced by Senator Roth
(Principal coauthor: Assembly Member Waldron)
(Coauthor: Assembly Member Cervantes)

February 15, 2017

An act to amend Sections 360, 361.5, 366.21, 366.22, and 366.25 of the Welfare and Institutions Code, relating to juveniles.

LEGISLATIVE COUNSEL'S DIGEST

SB 438, as amended, Roth. Juveniles: legal guardianship: successor guardian.

Existing law establishes the jurisdiction of the juvenile court, which may adjudge children to be dependents of the court under certain circumstances, including when the child suffered or there is a substantial risk that the child will suffer serious physical harm, or a parent fails to provide the child with adequate food, clothing, shelter, or medical treatment. Existing law establishes the grounds for removal of a dependent child from the custody of his or her parents or guardian, and establishes procedures to determine temporary and permanent placement of a dependent child. Existing law prescribes various hearings, including specified review hearings, and other procedures for these purposes. Whenever a court orders a hearing to terminate parental rights to, or to establish legal guardianship of, a dependent child to be held, existing law requires the court to direct the agency supervising the child and the county adoption agency, or the State Department of Social Services when it is acting as an adoption agency, to prepare an assessment and requires this assessment to include, among other things, a preliminary

assessment of the eligibility and commitment of any identified prospective adoptive parent or legal guardian, as specified.

This bill would authorize this preliminary assessment of a legal guardian to include the development of a plan for a successor guardian in the case of *the* incapacity or death of the guardian. *The bill would authorize the court, in the event of the incapacity or death of an appointed guardian, to appoint an individual identified in the assessment as a successor guardian pursuant to the existing procedures that govern the appointment of a legal guardian.*

If the court finds that a child comes within the jurisdiction of the juvenile court and the parent has advised the court that the parent is not interested in family maintenance or reunifications services, existing law authorizes the juvenile court to order a legal guardianship, appoint a legal guardian, and issue letters of guardianship, in addition to or in lieu of adjudicating the child a dependent child of the court, if the court determines that a guardianship is in the best interest of the child, provided that the parent and the child agree to the guardianship, as specified. Existing law prohibits the court from appointing a legal guardian until a specified assessment is read and considered by the court.

This bill would authorize the court to consider, at this hearing, any plan for a successor guardian submitted to the court. *The bill would authorize the court, in the event of the incapacity or death of an appointed guardian, to appoint an individual identified in the assessment as a successor guardian pursuant to the existing procedures that govern the appointment of a legal guardian.*

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

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

- 1 SECTION 1. Section 360 of the Welfare and Institutions Code
- 2 is amended to read:
- 3 360. After receiving and considering the evidence on the proper
- 4 disposition of the case, the juvenile court may enter judgment as
- 5 follows:
- 6 (a) (1) Notwithstanding any other law, if the court finds that
- 7 the child is a person described by Section 300 and the parent has
- 8 advised the court that the parent is not interested in family
- 9 maintenance or family reunification services, it may, in addition

1 to or in lieu of adjudicating the child a dependent child of the court,
2 order a legal guardianship, appoint a legal guardian, and issue
3 letters of guardianship, if the court determines that a guardianship
4 is in the best interest of the child, provided the parent and the child
5 agree to the guardianship, unless the child's age or physical,
6 emotional, or mental condition prevents the child's meaningful
7 response. The court shall advise the parent and the child that no
8 reunification services will be provided as a result of the
9 establishment of a guardianship. The proceeding for the
10 appointment of a guardian shall be in the juvenile court.

11 (2) Any application for termination of guardianship shall be
12 filed in juvenile court in a form as may be developed by the Judicial
13 Council pursuant to Section 68511 of the Government Code.
14 Sections 366.4 and 388 shall apply to this order of guardianship.

15 (3) (A) A person shall not be appointed a legal guardian under
16 this section until an assessment as specified in subdivision (g) of
17 Section 361.5 is read and considered by the court and reflected in
18 the minutes of the court. The court may consider any plan for a
19 successor guardian submitted to the court.

20 (B) *In the event of the incapacity or death of an appointed*
21 *guardian, the court may appoint an individual identified in the*
22 *assessment submitted to the court under this paragraph as a*
23 *successor guardian pursuant to the procedures for the appointment*
24 *of a legal guardian in Section 366.26.*

25 (4) On and after the date that the director executes a declaration
26 pursuant to Section 11217, if the court appoints an approved
27 relative caregiver as the child's legal guardian, the child has been
28 in the care of that approved relative for a period of six consecutive
29 months under a voluntary placement agreement, and the child
30 otherwise meets the conditions for federal financial participation,
31 the child shall be eligible for aid under the Kin-GAP Program as
32 provided in Article 4.7 (commencing with Section 11385) of
33 Chapter 2. The nonfederally eligible child placed with an approved
34 relative caregiver who is appointed as the child's legal guardian
35 shall be eligible for aid under the state-funded Kin-GAP Program,
36 as provided for in Article 4.5 (commencing with Section 11360)
37 of Chapter 2.

38 (5) The person responsible for preparing the assessment may
39 be called and examined by any party to the guardianship
40 proceeding.

1 (b) If the court finds that the child is a person described by
2 Section 300, it may, without adjudicating the child a dependent
3 child of the court, order that services be provided to keep the family
4 together and place the child and the child's parent or guardian
5 under the supervision of the social worker for a time period
6 consistent with Section 301.

7 (c) If the family subsequently is unable or unwilling to cooperate
8 with the services being provided, the social worker may file a
9 petition with the juvenile court pursuant to Section 332 alleging
10 that a previous petition has been sustained and that disposition
11 pursuant to subdivision (b) has been ineffective in ameliorating
12 the situation requiring the child welfare services. Upon hearing
13 the petition, the court shall order either that the petition shall be
14 dismissed or that a new disposition hearing shall be held pursuant
15 to subdivision (d).

16 (d) If the court finds that the child is a person described by
17 Section 300, it may order and adjudge the child to be a dependent
18 child of the court.

19 SEC. 2. Section 361.5 of the Welfare and Institutions Code is
20 amended to read:

21 361.5. (a) Except as provided in subdivision (b), or when the
22 parent has voluntarily relinquished the child and the relinquishment
23 has been filed with the State Department of Social Services, or
24 upon the establishment of an order of guardianship pursuant to
25 Section 360, or when a court adjudicates a petition under Section
26 329 to modify the court's jurisdiction from delinquency jurisdiction
27 to dependency jurisdiction pursuant to subparagraph (A) of
28 paragraph (2) of subdivision (b) of Section 607.2 and the parents
29 or guardian of the ward have had reunification services terminated
30 under the delinquency jurisdiction, whenever a child is removed
31 from a parent's or guardian's custody, the juvenile court shall order
32 the social worker to provide child welfare services to the child and
33 the child's mother and statutorily presumed father or guardians.
34 Upon a finding and declaration of paternity by the juvenile court
35 or proof of a prior declaration of paternity by any court of
36 competent jurisdiction, the juvenile court may order services for
37 the child and the biological father, if the court determines that the
38 services will benefit the child.

39 (1) Family reunification services, when provided, shall be
40 provided as follows:

1 (A) Except as otherwise provided in subparagraph (C), for a
2 child who, on the date of initial removal from the physical custody
3 of his or her parent or guardian, was three years of age or older,
4 court-ordered services shall be provided beginning with the
5 dispositional hearing and ending 12 months after the date the child
6 entered foster care as provided in Section 361.49, unless the child
7 is returned to the home of the parent or guardian.

8 (B) For a child who, on the date of initial removal from the
9 physical custody of his or her parent or guardian, was under three
10 years of age, court-ordered services shall be provided for a period
11 of six months from the dispositional hearing as provided in
12 subdivision (e) of Section 366.21, but no longer than 12 months
13 from the date the child entered foster care, as provided in Section
14 361.49, unless the child is returned to the home of the parent or
15 guardian.

16 (C) For the purpose of placing and maintaining a sibling group
17 together in a permanent home should reunification efforts fail, for
18 a child in a sibling group whose members were removed from
19 parental custody at the same time, and in which one member of
20 the sibling group was under three years of age on the date of initial
21 removal from the physical custody of his or her parent or guardian,
22 court-ordered services for some or all of the sibling group may be
23 limited as set forth in subparagraph (B). For the purposes of this
24 paragraph, "a sibling group" shall mean two or more children who
25 are related to each other as full or half siblings.

26 (2) Any motion to terminate court-ordered reunification services
27 prior to the hearing set pursuant to subdivision (f) of Section 366.21
28 for a child described by subparagraph (A) of paragraph (1), or
29 prior to the hearing set pursuant to subdivision (e) of Section
30 366.21 for a child described by subparagraph (B) or (C) of
31 paragraph (1), shall be made pursuant to the requirements set forth
32 in subdivision (c) of Section 388. A motion to terminate
33 court-ordered reunification services shall not be required at the
34 hearing set pursuant to subdivision (e) of Section 366.21 if the
35 court finds by clear and convincing evidence one of the following:

36 (A) That the child was removed initially under subdivision (g)
37 of Section 300 and the whereabouts of the parent are still unknown.

38 (B) That the parent has failed to contact and visit the child.

39 (C) That the parent has been convicted of a felony indicating
40 parental unfitness.

1 (3) (A) Notwithstanding subparagraphs (A), (B), and (C) of
2 paragraph (1), court-ordered services may be extended up to a
3 maximum time period not to exceed 18 months after the date the
4 child was originally removed from physical custody of his or her
5 parent or guardian if it can be shown, at the hearing held pursuant
6 to subdivision (f) of Section 366.21, that the permanent plan for
7 the child is that he or she will be returned and safely maintained
8 in the home within the extended time period. The court shall extend
9 the time period only if it finds that there is a substantial probability
10 that the child will be returned to the physical custody of his or her
11 parent or guardian within the extended time period or that
12 reasonable services have not been provided to the parent or
13 guardian. In determining whether court-ordered services may be
14 extended, the court shall consider the special circumstances of an
15 incarcerated or institutionalized parent or parents, parent or parents
16 court-ordered to a residential substance abuse treatment program,
17 or a parent who has been arrested and issued an immigration hold,
18 detained by the United States Department of Homeland Security,
19 or deported to his or her country of origin, including, but not
20 limited to, barriers to the parent's or guardian's access to services
21 and ability to maintain contact with his or her child. The court
22 shall also consider, among other factors, good faith efforts that the
23 parent or guardian has made to maintain contact with the child. If
24 the court extends the time period, the court shall specify the factual
25 basis for its conclusion that there is a substantial probability that
26 the child will be returned to the physical custody of his or her
27 parent or guardian within the extended time period. The court also
28 shall make findings pursuant to subdivision (a) of Section 366 and
29 subdivision (e) of Section 358.1.

30 (B) When counseling or other treatment services are ordered,
31 the parent or guardian shall be ordered to participate in those
32 services, unless the parent's or guardian's participation is deemed
33 by the court to be inappropriate or potentially detrimental to the
34 child, or unless a parent or guardian is incarcerated or detained by
35 the United States Department of Homeland Security and the
36 corrections facility in which he or she is incarcerated does not
37 provide access to the treatment services ordered by the court, or
38 has been deported to his or her country of origin and services
39 ordered by the court are not accessible in that country. Physical
40 custody of the child by the parents or guardians during the

1 applicable time period under subparagraph (A), (B), or (C) of
2 paragraph (1) shall not serve to interrupt the running of the time
3 period. If at the end of the applicable time period, a child cannot
4 be safely returned to the care and custody of a parent or guardian
5 without court supervision, but the child clearly desires contact with
6 the parent or guardian, the court shall take the child's desire into
7 account in devising a permanency plan.

8 (C) In cases where the child was under three years of age on
9 the date of the initial removal from the physical custody of his or
10 her parent or guardian or is a member of a sibling group as
11 described in subparagraph (C) of paragraph (1), the court shall
12 inform the parent or guardian that the failure of the parent or
13 guardian to participate regularly in any court-ordered treatment
14 programs or to cooperate or avail himself or herself of services
15 provided as part of the child welfare services case plan may result
16 in a termination of efforts to reunify the family after six months.
17 The court shall inform the parent or guardian of the factors used
18 in subdivision (e) of Section 366.21 to determine whether to limit
19 services to six months for some or all members of a sibling group
20 as described in subparagraph (C) of paragraph (1).

21 (4) (A) Notwithstanding paragraph (3), court-ordered services
22 may be extended up to a maximum time period not to exceed 24
23 months after the date the child was originally removed from
24 physical custody of his or her parent or guardian if it is shown, at
25 the hearing held pursuant to subdivision (b) of Section 366.22,
26 that the permanent plan for the child is that he or she will be
27 returned and safely maintained in the home within the extended
28 time period. The court shall extend the time period only if it finds
29 that it is in the child's best interest to have the time period extended
30 and that there is a substantial probability that the child will be
31 returned to the physical custody of his or her parent or guardian
32 who is described in subdivision (b) of Section 366.22 within the
33 extended time period, or that reasonable services have not been
34 provided to the parent or guardian. If the court extends the time
35 period, the court shall specify the factual basis for its conclusion
36 that there is a substantial probability that the child will be returned
37 to the physical custody of his or her parent or guardian within the
38 extended time period. The court also shall make findings pursuant
39 to subdivision (a) of Section 366 and subdivision (e) of Section
40 358.1.

(B) When counseling or other treatment services are ordered, the parent or guardian shall be ordered to participate in those services, in order for substantial probability to be found. Physical custody of the child by the parents or guardians during the applicable time period under subparagraph (A), (B), or (C) of paragraph (1) shall not serve to interrupt the running of the time period. If at the end of the applicable time period, the child cannot be safely returned to the care and custody of a parent or guardian without court supervision, but the child clearly desires contact with the parent or guardian, the court shall take the child's desire into account in devising a permanency plan.

(C) Except in cases where, pursuant to subdivision (b), the court does not order reunification services, the court shall inform the parent or parents of Section 366.26 and shall specify that the parent's or parents' parental rights may be terminated.

(b) Reunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing evidence, any of the following:

(1) That the whereabouts of the parent or guardian are unknown. A finding pursuant to this paragraph shall be supported by an affidavit or by proof that a reasonably diligent search has failed to locate the parent or guardian. The posting or publication of notices is not required in that search.

(2) That the parent or guardian is suffering from a mental disability that is described in Chapter 2 (commencing with Section 7820) of Part 4 of Division 12 of the Family Code and that renders him or her incapable of utilizing those services.

(3) That the child or a sibling of the child has been previously adjudicated a dependent pursuant to any subdivision of Section 300 as a result of physical or sexual abuse, that following that adjudication the child had been removed from the custody of his or her parent or guardian pursuant to Section 361, that the child has been returned to the custody of the parent or guardian from whom the child had been taken originally, and that the child is being removed pursuant to Section 361, due to additional physical or sexual abuse.

(4) That the parent or guardian of the child has caused the death of another child through abuse or neglect.

1 (5) That the child was brought within the jurisdiction of the
2 court under subdivision (e) of Section 300 because of the conduct
3 of that parent or guardian.

4 (6) (A) That the child has been adjudicated a dependent
5 pursuant to any subdivision of Section 300 as a result of severe
6 sexual abuse or the infliction of severe physical harm to the child,
7 a sibling, or a half sibling by a parent or guardian, as defined in
8 this subdivision, and the court makes a factual finding that it would
9 not benefit the child to pursue reunification services with the
10 offending parent or guardian.

11 (B) A finding of severe sexual abuse, for the purposes of this
12 subdivision, may be based on, but is not limited to, sexual
13 intercourse, or stimulation involving genital-genital, oral-genital,
14 anal-genital, or oral-anal contact, whether between the parent or
15 guardian and the child or a sibling or half sibling of the child, or
16 between the child or a sibling or half sibling of the child and
17 another person or animal with the actual or implied consent of the
18 parent or guardian; or the penetration or manipulation of the
19 child's, sibling's, or half sibling's genital organs or rectum by any
20 animate or inanimate object for the sexual gratification of the
21 parent or guardian, or for the sexual gratification of another person
22 with the actual or implied consent of the parent or guardian.

23 (C) A finding of the infliction of severe physical harm, for the
24 purposes of this subdivision, may be based on, but is not limited
25 to, deliberate and serious injury inflicted to or on a child's body
26 or the body of a sibling or half sibling of the child by an act or
27 omission of the parent or guardian, or of another individual or
28 animal with the consent of the parent or guardian; deliberate and
29 torturous confinement of the child, sibling, or half sibling in a
30 closed space; or any other torturous act or omission that would be
31 reasonably understood to cause serious emotional damage.

32 (7) That the parent is not receiving reunification services for a
33 sibling or a half sibling of the child pursuant to paragraph (3), (5),
34 or (6).

35 (8) That the child was conceived by means of the commission
36 of an offense listed in Section 288 or 288.5 of the Penal Code, or
37 by an act committed outside of this state that, if committed in this
38 state, would constitute one of those offenses. This paragraph only
39 applies to the parent who committed the offense or act.

1 (9) That the child has been found to be a child described in
2 subdivision (g) of Section 300; that the parent or guardian of the
3 child willfully abandoned the child, and the court finds that the
4 abandonment itself constituted a serious danger to the child; or
5 that the parent or other person having custody of the child
6 voluntarily surrendered physical custody of the child pursuant to
7 Section 1255.7 of the Health and Safety Code. For the purposes
8 of this paragraph, "serious danger" means that without the
9 intervention of another person or agency, the child would have
10 sustained severe or permanent disability, injury, illness, or death.
11 For purposes of this paragraph, "willful abandonment" shall not
12 be construed as actions taken in good faith by the parent without
13 the intent of placing the child in serious danger.

14 (10) That the court ordered termination of reunification services
15 for any siblings or half siblings of the child because the parent or
16 guardian failed to reunify with the sibling or half sibling after the
17 sibling or half sibling had been removed from that parent or
18 guardian pursuant to Section 361 and that parent or guardian is
19 the same parent or guardian described in subdivision (a) and that,
20 according to the findings of the court, this parent or guardian has
21 not subsequently made a reasonable effort to treat the problems
22 that led to removal of the sibling or half sibling of that child from
23 that parent or guardian.

24 (11) That the parental rights of a parent over any sibling or half
25 sibling of the child had been permanently severed, and this parent
26 is the same parent described in subdivision (a), and that, according
27 to the findings of the court, this parent has not subsequently made
28 a reasonable effort to treat the problems that led to removal of the
29 sibling or half sibling of that child from the parent.

30 (12) That the parent or guardian of the child has been convicted
31 of a violent felony, as defined in subdivision (c) of Section 667.5
32 of the Penal Code.

33 (13) That the parent or guardian of the child has a history of
34 extensive, abusive, and chronic use of drugs or alcohol and has
35 resisted prior court-ordered treatment for this problem during a
36 three-year period immediately prior to the filing of the petition
37 that brought that child to the court's attention, or has failed or
38 refused to comply with a program of drug or alcohol treatment
39 described in the case plan required by Section 358.1 on at least

1 two prior occasions, even though the programs identified were
2 available and accessible.

3 (14) (A) That the parent or guardian of the child has advised
4 the court that he or she is not interested in receiving family
5 maintenance or family reunification services or having the child
6 returned to or placed in his or her custody and does not wish to
7 receive family maintenance or reunification services.

8 (B) The parent or guardian shall be represented by counsel and
9 shall execute a waiver of services form to be adopted by the
10 Judicial Council. The court shall advise the parent or guardian of
11 any right to services and of the possible consequences of a waiver
12 of services, including the termination of parental rights and
13 placement of the child for adoption. The court shall not accept the
14 waiver of services unless it states on the record its finding that the
15 parent or guardian has knowingly and intelligently waived the
16 right to services.

17 (15) That the parent or guardian has on one or more occasions
18 willfully abducted the child or child's sibling or half sibling from
19 his or her placement and refused to disclose the child's or child's
20 sibling's or half sibling's whereabouts, refused to return physical
21 custody of the child or child's sibling or half sibling to his or her
22 placement, or refused to return physical custody of the child or
23 child's sibling or half sibling to the social worker.

24 (16) That the parent or guardian has been required by the court
25 to be registered on a sex offender registry under the federal Adam
26 Walsh Child Protection and Safety Act of 2006 (42 U.S.C. Sec.
27 16913(a)), as required in Section 106(b)(2)(B)(xvi)(VI) of the
28 Child Abuse Prevention and Treatment Act of 2006 (42 U.S.C.
29 Sec. 5106a(2)(B)(xvi)(VI)).

30 (17) That the parent or guardian knowingly participated in, or
31 permitted, the sexual exploitation, as described in subdivision (c)
32 or (d) of Section 11165.1 of, or subdivision (c) of Section 236.1
33 of, the Penal Code, of the child. This shall not include instances
34 in which the parent or guardian demonstrated by a preponderance
35 of the evidence that he or she was coerced into permitting, or
36 participating in, the sexual exploitation of the child.

37 (c) (1) In deciding whether to order reunification in any case
38 in which this section applies, the court shall hold a dispositional
39 hearing. The social worker shall prepare a report that discusses
40 whether reunification services shall be provided. When it is alleged,

1 pursuant to paragraph (2) of subdivision (b), that the parent is
2 incapable of utilizing services due to mental disability, the court
3 shall order reunification services unless competent evidence from
4 mental health professionals establishes that, even with the provision
5 of services, the parent is unlikely to be capable of adequately caring
6 for the child within the time limits specified in subdivision (a).

7 (2) The court shall not order reunification for a parent or
8 guardian described in paragraph (3), (4), (6), (7), (8), (9), (10),
9 (11), (12), (13), (14), (15), (16), or (17) of subdivision (b) unless
10 the court finds, by clear and convincing evidence, that reunification
11 is in the best interest of the child.

12 (3) In addition, the court shall not order reunification in any
13 situation described in paragraph (5) of subdivision (b) unless it
14 finds that, based on competent testimony, those services are likely
15 to prevent reabuse or continued neglect of the child or that failure
16 to try reunification will be detrimental to the child because the
17 child is closely and positively attached to that parent. The social
18 worker shall investigate the circumstances leading to the removal
19 of the child and advise the court whether there are circumstances
20 that indicate that reunification is likely to be successful or
21 unsuccessful and whether failure to order reunification is likely to
22 be detrimental to the child.

23 (4) The failure of the parent to respond to previous services, the
24 fact that the child was abused while the parent was under the
25 influence of drugs or alcohol, a past history of violent behavior,
26 or testimony by a competent professional that the parent's behavior
27 is unlikely to be changed by services are among the factors
28 indicating that reunification services are unlikely to be successful.
29 The fact that a parent or guardian is no longer living with an
30 individual who severely abused the child may be considered in
31 deciding that reunification services are likely to be successful,
32 provided that the court shall consider any pattern of behavior on
33 the part of the parent that has exposed the child to repeated abuse.

34 (d) If reunification services are not ordered pursuant to
35 paragraph (1) of subdivision (b) and the whereabouts of a parent
36 become known within six months of the out-of-home placement
37 of the child, the court shall order the social worker to provide
38 family reunification services in accordance with this subdivision.

39 (e) (1) If the parent or guardian is incarcerated, institutionalized,
40 or detained by the United States Department of Homeland Security,

1 or has been deported to his or her country of origin, the court shall
2 order reasonable services unless the court determines, by clear and
3 convincing evidence, those services would be detrimental to the
4 child. In determining detriment, the court shall consider the age
5 of the child, the degree of parent-child bonding, the length of the
6 sentence, the length and nature of the treatment, the nature of the
7 crime or illness, the degree of detriment to the child if services are
8 not offered and, for children 10 years of age or older, the child's
9 attitude toward the implementation of family reunification services,
10 the likelihood of the parent's discharge from incarceration,
11 institutionalization, or detention within the reunification time
12 limitations described in subdivision (a), and any other appropriate
13 factors. In determining the content of reasonable services, the court
14 shall consider the particular barriers to an incarcerated,
15 institutionalized, detained, or deported parent's access to those
16 court-mandated services and ability to maintain contact with his
17 or her child, and shall document this information in the child's
18 case plan. Reunification services are subject to the applicable time
19 limitations imposed in subdivision (a). Services may include, but
20 shall not be limited to, all of the following:

21 (A) Maintaining contact between the parent and child through
22 collect telephone calls.

23 (B) Transportation services, when appropriate.

24 (C) Visitation services, when appropriate.

25 (D) (i) Reasonable services to extended family members or
26 foster parents providing care for the child if the services are not
27 detrimental to the child.

28 (ii) An incarcerated or detained parent may be required to attend
29 counseling, parenting classes, or vocational training programs as
30 part of the reunification service plan if actual access to these
31 services is provided. The social worker shall document in the
32 child's case plan the particular barriers to an incarcerated,
33 institutionalized, or detained parent's access to those
34 court-mandated services and ability to maintain contact with his
35 or her child.

36 (E) Reasonable efforts to assist parents who have been deported
37 to contact child welfare authorities in their country of origin, to
38 identify any available services that would substantially comply
39 with case plan requirements, to document the parents' participation
40 in those services, and to accept reports from local child welfare

1 authorities as to the parents' living situation, progress, and
2 participation in services.

3 (2) The presiding judge of the juvenile court of each county
4 may convene representatives of the county welfare department,
5 the sheriff's department, and other appropriate entities for the
6 purpose of developing and entering into protocols for ensuring the
7 notification, transportation, and presence of an incarcerated or
8 institutionalized parent at all court hearings involving proceedings
9 affecting the child pursuant to Section 2625 of the Penal Code.
10 The county welfare department shall utilize the prisoner locator
11 system developed by the Department of Corrections and
12 Rehabilitation to facilitate timely and effective notice of hearings
13 for incarcerated parents.

14 (3) Notwithstanding any other law, if the incarcerated parent is
15 a woman seeking to participate in the community treatment
16 program operated by the Department of Corrections and
17 Rehabilitation pursuant to Chapter 4.8 (commencing with Section
18 1174) of Title 7 of Part 2 of, Chapter 4 (commencing with Section
19 3410) of Title 2 of Part 3 of, the Penal Code, the court shall
20 determine whether the parent's participation in a program is in the
21 child's best interest and whether it is suitable to meet the needs of
22 the parent and child.

23 (f) If the court, pursuant to paragraph (2), (3), (4), (5), (6), (7),
24 (8), (9), (10), (11), (12), (13), (14), (15), (16), or (17) of subdivision
25 (b) or paragraph (1) of subdivision (e), does not order reunification
26 services, it shall, at the dispositional hearing, that shall include a
27 permanency hearing, determine if a hearing under Section 366.26
28 shall be set in order to determine whether adoption, guardianship,
29 placement with a fit and willing relative, or another planned
30 permanent living arrangement, or, in the case of an Indian child,
31 in consultation with the child's tribe, tribal customary adoption,
32 is the most appropriate plan for the child, and shall consider in-state
33 and out-of-state placement options. If the court so determines, it
34 shall conduct the hearing pursuant to Section 366.26 within 120
35 days after the dispositional hearing. However, the court shall not
36 schedule a hearing so long as the other parent is being provided
37 reunification services pursuant to subdivision (a). The court may
38 continue to permit the parent to visit the child unless it finds that
39 visitation would be detrimental to the child.

1 (g) (1) Whenever a court orders that a hearing shall be held
2 pursuant to Section 366.26, including, when, in consultation with
3 the child's tribe, tribal customary adoption is recommended, it
4 shall direct the agency supervising the child and the county
5 adoption agency, or the State Department of Social Services when
6 it is acting as an adoption agency, to prepare an assessment that
7 shall include:

8 (A) Current search efforts for an absent parent or parents and
9 notification of a noncustodial parent in the manner provided for
10 in Section 291.

11 (B) A review of the amount of and nature of any contact between
12 the child and his or her parents and other members of his or her
13 extended family since the time of placement. Although the
14 extended family of each child shall be reviewed on a case-by-case
15 basis, "extended family" for the purpose of this subparagraph shall
16 include, but not be limited to, the child's siblings, grandparents,
17 aunts, and uncles.

18 (C) An evaluation of the child's medical, developmental,
19 scholastic, mental, and emotional status.

20 (D) A preliminary assessment of the eligibility and commitment
21 of any identified prospective adoptive parent or guardian, including
22 a prospective tribal customary adoptive parent, particularly the
23 caretaker, to include a social history, including screening for
24 criminal records and prior referrals for child abuse or neglect, the
25 capability to meet the child's needs, and the understanding of the
26 legal and financial rights and responsibilities of adoption and
27 guardianship. If a proposed guardian is a relative of the minor, the
28 assessment shall also consider, but need not be limited to, all of
29 the factors specified in subdivision (a) of Section 361.3 and in
30 Section 361.4. The assessment of a legal guardian may also include
31 the development of a plan for a successor guardian in the case of
32 the incapacity or death of the guardian. *In the event of the*
33 *incapacity or death of an appointed guardian, the court may*
34 *appoint an individual identified in the assessment submitted to the*
35 *court as a successor guardian pursuant to the procedures for the*
36 *appointment of a legal guardian in Section 366.26.* As used in this
37 subparagraph, "relative" means an adult who is related to the minor
38 by blood, adoption, or affinity within the fifth degree of kinship,
39 including stepparents, stepsiblings, and all relatives whose status
40 is preceded by the words "great," "great-great," or "grand," or the

1 spouse of any of those persons even if the marriage was terminated
2 by death or dissolution. If the proposed permanent plan is
3 guardianship with an approved relative caregiver for a minor
4 eligible for aid under the Kin-GAP Program, as provided for in
5 Article 4.7 (commencing with Section 11385) of Chapter 2 of Part
6 3 of Division 9, "relative" as used in this section has the same
7 meaning as "relative" as defined in subdivision (c) of Section
8 11391.

9 (E) The relationship of the child to any identified prospective
10 adoptive parent or guardian, including a prospective tribal
11 customary parent, the duration and character of the relationship,
12 the degree of attachment of the child to the prospective relative
13 guardian or adoptive parent, the relative's or adoptive parent's
14 strong commitment to caring permanently for the child, the
15 motivation for seeking adoption or guardianship, a statement from
16 the child concerning placement and the adoption or guardianship,
17 and whether the child over 12 years of age has been consulted
18 about the proposed relative guardianship arrangements, unless the
19 child's age or physical, emotional, or other condition precludes
20 his or her meaningful response, and if so, a description of the
21 condition.

22 (F) An analysis of the likelihood that the child will be adopted
23 if parental rights are terminated.

24 (G) In the case of an Indian child, in addition to subparagraphs
25 (A) to (F), inclusive, an assessment of the likelihood that the child
26 will be adopted, when, in consultation with the child's tribe, a
27 tribal customary adoption, as defined in Section 366.24, is
28 recommended. If tribal customary adoption is recommended, the
29 assessment shall include an analysis of both of the following:

30 (i) Whether tribal customary adoption would or would not be
31 detrimental to the Indian child and the reasons for reaching that
32 conclusion.

33 (ii) Whether the Indian child cannot or should not be returned
34 to the home of the Indian parent or Indian custodian and the reasons
35 for reaching that conclusion.

36 (2) (A) A relative caregiver's preference for legal guardianship
37 over adoption, if it is due to circumstances that do not include an
38 unwillingness to accept legal or financial responsibility for the
39 child, shall not constitute the sole basis for recommending removal

1 of the child from the relative caregiver for purposes of adoptive
2 placement.

3 (B) Regardless of his or her immigration status, a relative
4 caregiver shall be given information regarding the permanency
5 options of guardianship and adoption, including the long-term
6 benefits and consequences of each option, prior to establishing
7 legal guardianship or pursuing adoption. If the proposed permanent
8 plan is guardianship with an approved relative caregiver for a
9 minor eligible for aid under the Kin-GAP Program, as provided
10 for in Article 4.7 (commencing with Section 11385) of Chapter 2
11 of Part 3 of Division 9, the relative caregiver shall be informed
12 about the terms and conditions of the negotiated agreement
13 pursuant to Section 11387 and shall agree to its execution prior to
14 the hearing held pursuant to Section 366.26. A copy of the executed
15 negotiated agreement shall be attached to the assessment.

16 (h) If, at any hearing held pursuant to Section 366.26, a
17 guardianship is established for the minor with an approved relative
18 caregiver and juvenile court dependency is subsequently dismissed,
19 the minor shall be eligible for aid under the Kin-GAP Program as
20 provided for in Article 4.5 (commencing with Section 11360) or
21 Article 4.7 (commencing with Section 11385), as applicable, of
22 Chapter 2 of Part 3 of Division 9.

23 (i) In determining whether reunification services will benefit
24 the child pursuant to paragraph (6) or (7) of subdivision (b), the
25 court shall consider any information it deems relevant, including
26 the following factors:

27 (1) The specific act or omission comprising the severe sexual
28 abuse or the severe physical harm inflicted on the child or the
29 child's sibling or half sibling.

30 (2) The circumstances under which the abuse or harm was
31 inflicted on the child or the child's sibling or half sibling.

32 (3) The severity of the emotional trauma suffered by the child
33 or the child's sibling or half sibling.

34 (4) Any history of abuse of other children by the offending
35 parent or guardian.

36 (5) The likelihood that the child may be safely returned to the
37 care of the offending parent or guardian within 12 months with no
38 continuing supervision.

39 (6) Whether or not the child desires to be reunified with the
40 offending parent or guardian.