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Oversight Hearing Examining Provider Moratoriums in Fee-For-Service Medi-Cal Wednesday, February 18, 2015, 1:30 p.m. State Capitol, Room 4203

Purpose

This Senate Health Committee oversight hearing will examine the Department of Health Care Services (DHCS) current fee-for-service (FFS) Medi-Cal provider moratoriums.

Under existing law, DHCS is authorized to implement a 180-day moratorium on the enrollment of new providers in FFS Medi-Cal to safeguard public funds or to maintain the fiscal integrity of the Medi-Cal program. DHCS has three enrollment moratoriums currently in effect relating to certain types of pharmacies in Los Angeles County, durable medical equipment (DME) providers in several Southern California counties, and clinical laboratories statewide.

In 2013, SB 1212 (Walters) would have exempted a clinical laboratory from the moratorium if the lab had an existing relationship with the Medi-Cal program as a provider of benefits through a contract with a Medi-Cal managed care plan. That bill was held in the Committee with a commitment to hold an oversight hearing on the Medi-Cal provider moratoriums.

The Committee members and the public will hear from DHCS and affected stakeholders regarding the following:

- An overview of existing law relating to Medi-Cal provider moratoriums;
- The purpose of the current moratoriums;
- The health care providers currently subject to a moratoriums;
- The evidence used by DHCS to place providers on a moratorium, and to renew a provider moratorium, including an explanation of random claim reviews, targeted data reviews, and data mining;
- How providers can seek an exemption from the moratorium;
- How exemptions from the moratorium are established by DHCS;
- Whether the moratoriums affect access to care or services in the Medi-Cal program, and if so, how;
- Whether the provider moratoriums should be changed, and if so, why;

- Whether the moratoriums effectively reduce fraud, and the risk of removing the moratorium;
- What measures the state should take to prevent fraud in Medi-Cal in the absence of moratoriums.

A list of questions from Committee staff and DHCS' responses are included in the briefing material, with copies of the three moratoriums currently in effect.

Background

Providers seeking to enroll to provide goods, supplies or merchandise in the Medi-Cal program are required, with specified exceptions, to submit an application to the DHCS Provider Enrollment Division (PED). PED is responsible for the enrollment and re-enrollment of FFS health care service providers into the Medi-Cal program. Under existing state law, if there is a moratorium on the enrollment of providers in the specific provider of service category or subgroup of the category to which the provider belongs, the existence of the moratorium bars further processing of the application package.

Under federal regulations, state Medicaid agencies must screen all initial applications, including applications for a new practice location, and any applications received in response to a re-enrollment or revalidation of enrollment based on a categorical risk level of "limited," "moderate," or "high." If a provider fits within more than one risk level, the highest level of screening is applicable. A state Medicaid agency must adjust the categorical risk level from "limited" or "moderate" to "high" when it or the federal Centers for Medicare and Medicaid Services lifts a temporary moratorium for the particular provider type in the previous six months and the provider applies at any time within six months from the date the moratorium was lifted.

Under existing state law, DHCS is authorized to implement a 180-day moratorium on the enrollment of new providers in FFS Medi-Cal when the director determines this action is necessary to safeguard public funds or to maintain the fiscal integrity of the Medi-Cal program.

DHCS can place a moratorium on a specific category of provider, on a statewide basis or within a geographic area, and DHCS can extend or repeat a moratorium. The authority for DHCS to impose a moratorium was implemented via the health budget trailer bill of 1999 through AB 1107 (Cedillo), Chapter 146, Statutes of 1999.

DHCS has three enrollment moratoriums currently in effect:

- Clinical laboratories (statewide);
- Durable medical equipment providers located in Los Angeles, Orange, Riverside, and San Bernardino Counties, and out-of-state; and,
- Non-chain, non-pharmacist owned pharmacies in Los Angeles County.

The moratoriums are limited to providers' ability to bill FFS Medi-Cal. The moratorium statute does not prevent providers subject to the moratorium from providing services through contracts with Medi-Cal managed care plans, although some plans reportedly require contracting providers to have gone through DHCS PED process. Since 2007–08, Medi-Cal managed care has

overtaken and surpassed FFS as the primary Medi-Cal service delivery system, and the Governor's 2014-15 budget assumes more than 70 percent of Medi-Cal enrollment will be in managed care. Since the initial moratoriums were enacted, DHCS has administratively established exemptions from the moratoriums while extending each moratoriums to the present day.

Clinical Laboratory Moratorium

The statewide clinical laboratory moratorium was originally issued in March 2001. The current clinical laboratory moratorium applies to:

- The enrollment of all clinical laboratories in the Medi-Cal program; and,
- The change or expansion of provider of service categories by a clinical laboratory provider that was allowed to enroll in the Medi-Cal program after March 2001.

The current clinical laboratory moratorium has 16 exemptions. One of the exemptions allows a Clinical Laboratory Improvement Amendments-approved and state licensed clinical laboratory that, as of the date of the application, performs a test or examination that is not performed or available through an existing Medi-Cal provider. Under this exemption, reimbursement is limited to the tests and examinations that form the basis of this exemption and that have been prior authorized by DHCS.

This current clinical laboratory moratorium expires on April 6, 2015.

Durable Medical Equipment Moratorium

The DME moratorium was originally issued in October 1999 and applied statewide. Since that time, the DME moratorium has been revised to apply to DME providers who are located outside of California, and DME providers in the Counties of Los Angeles, Orange, Riverside, and San Bernardino. The DME moratorium also applies to changes or an expansion of provider of service categories by DME providers in the Counties of Los Angeles, Orange, Riverside, San Bernardino that have been allowed to enroll in the Medi-Cal program after October 12, 1999.

The current DME moratorium has 12 exemptions. One of the exemptions allows DME providers that are the only person or entity in the United States that provides a specific product or service that is a Medi-Cal covered benefit, while another exemption allows any applicant offering services or replacement parts not available from an enrolled Medi-Cal provider on the date of application for a Medi-Cal-covered device.

The DME moratorium expires on March 16, 2015.

Los Angeles County Pharmacy Moratorium

The Los Angeles pharmacy moratorium was originally issued in May 2002. The current Los Angeles pharmacy moratorium applies to non-chain, non-pharmacist owned pharmacy providers located in Los Angeles County. The moratorium defines a chain pharmacy as an entity with 11 or more service locations. There are six exemptions from the existing pharmacy moratorium. One of the exemptions allows applicants that are the exclusive persons or entities in the United States to provide a specific product or service that is a Medi-Cal covered benefit.

The Los Angeles County pharmacy moratorium expires on March 30, 2015.

SB 1212 (Walters)

SB 1212 (Walters) of 2014 proposed to change the Medi-Cal provider moratorium for clinical laboratories that contract with a Medi-Cal managed care plan. SB 1212 required DHCS, if a moratorium is implemented on the enrollment of clinical laboratories, to exempt from the moratorium a clinical laboratory provider that has an existing relationship with the Medi-Cal program as a provider of benefits through a contract with a Medi-Cal managed care plan. This would allow labs meeting this contracting criteria that to go through the DHCS PED process to enroll as Medi-Cal providers and bill FFS Medi-Cal.

In support of the bill, former Senator and now Congresswoman Mimi Walters argued DHCS instituted a moratorium on clinical laboratories participating in the FFS Medi-Cal in 2001, and since that time, a moratorium on new providers has been renewed with seemingly little change every six months. The consistent approval of the same moratorium, dating back 13 years, has severely limited the ability for various clinical laboratories to do business in California. Although DHCS has limited exemptions in place, then-Senator Walters argued they are far too narrow, such as requiring a provider to be “the only approved clinical laboratory in the United States to perform that test or examination.” Rather than fine tune the overly broad moratorium, then-Senator Walters argued DHCS is actually sending business to out-of-state vendors with limited opportunities in place for California-based companies to compete (DHCS data for 2014 indicate \$3.9 million in expenditures for out-of-state clinical laboratories). SB 1212 was supported by Ambry Genetics, a clinical laboratory based in Orange County. Ambry argued SB 1212 would have encouraged economic growth in California's lab industry, but would also benefit the state by keeping much needed tax dollars in-state and lowering unemployment.

The California Society of Pathologists (CSP) took a “support if amended” position on SB 1212, writing that the measure was not sufficient to address clinical laboratory provider concerns with the specifics of the current moratorium and how it has been implemented. CSP wrote that the moratorium has effectively stopped new and emerging testing technologies by innovative labs from being able to serve Medi-Cal enrollees. CSP stated one of the most onerous provisions of the moratorium is the provision that applies to any laboratory that was enrolled as a Medi-Cal provider after March 2001 as that prevents labs from being allowed to expand service categories or add specialty codes or services in Medi-Cal. CSP wrote that it would be better to reform the moratorium, rather than exempt certain clinical laboratories.

Medi-Cal Payment Error Studies

DHCS conducts Medi-Cal Payment Error Studies (MPES), and uses the results to determine where Medi-Cal is at the greatest risk for payment errors. Payment error occurs when DHCS reimburses a provider for a Medi-Cal claim for which that provider either billed Medi-Cal incorrectly or by which the provider intended to commit fraud, waste, or abuse. The most recent study, released in 2014 and based on 2011 data, found that 93.95 percent of payments to FFS Medi-Cal providers in 2011 were billed appropriately and paid accurately, meaning the FFS program had a payment error rate of 6.05 percent, which represents \$1.25 billion in total payments made in error. MPES 2011 findings reveal that of the 6.05 percent, 2.28 percent of the

total payments in the Medi-Cal FFS medical and dental programs were for claims that disclosed characteristics of potential fraud, which is equivalent to nearly \$473 million in potential fraud.

The 2011 MPES findings are based upon a random sample of 1,168 Medi-Cal claims paid during the second quarter of 2011 (April 1 through June 30) and is organized by major provider type (stratum). There are eight provider types in the sample: Adult Day Health Care (ADHC), Dental, DME, Inpatient Services, Laboratory, Physician Services, Other Services, and Pharmacy.

Because MPES is designed to measure payment errors in the Medi-Cal program, the stratum that has the greatest impact on the error rate is Inpatient Services, which accounted for the highest share (47.2 percent) of payments in the sample. That is because Inpatient claims have the highest cost per claim, \$2,847, on average. Physician Services and Pharmacy were second and third with 22.2 percent and 19 percent, respectively. The remaining five strata (ADHC, DME, Dental, Lab, and Others Services) each accounted for five percent or less of the sample payments.

In the 2011 MPES sample of 1,168 claims, DME providers had 50 claims, Laboratory providers had 73 claims and Pharmacy providers had 383 claims. DME providers had a payment error rate of 13.18 percent and Laboratory providers had a payment error rate of 2.59 percent, and Pharmacy providers had a payment error rate of 9.73 percent.

Department of Health Care Services

DHCS did not take a position on SB 1212. In response to questions from Committee staff regarding the establishment and renewal of moratoriums, DHCS indicates it utilizes information gathered from random claim reviews, targeted data reviews and data mining to identify potentially problematic providers to establish a moratorium. DHCS indicates its moratoriums renewal process includes a review every six months to determine and evaluate any possible access to care issues, or any recommended amendments to the moratoriums. Amendments to moratoriums can include adding new exemptions, modifying or removing current exemptions, or changing the scope of the moratoriums in any way. The assessment process utilizes information gathered from random claim reviews, targeted data reviews and data mining to identify potentially problematic providers. DHCS indicates that during the moratorium renewal process, it analyzes access issues through ongoing communication with provider associations, provider organizations, and stakeholders.

DHCS states maintaining all of the current moratorium ensures that DHCS keeps a proven tool to protect and maintain the progress made in its efforts to curtail fraudulent providers. DHCS does not view other credentialing or bonding criteria as addressing or allaying DHCS' fraud concerns from particular groups of providers. With regard to the clinical laboratory moratorium, DHCS indicates it does not see a need to lift this moratorium as it believes the lab moratorium plays a critical role in keeping the error rate low and helps minimize waste. DHCS indicates the low payment error rate for laboratory services indicates the moratorium has helped to reduce fraud on the front end and relieves the pressure of conducting "pay and chase" audits of new, inexperienced clinical laboratories. DHCS also notes that the federal Medicare program has had questionable billing by laboratory providers.

Policy questions for discussion:

1. Does statutorily overriding the current moratoriums increase the risk of fraud in Medi-Cal?
2. Given the movement of Medi-Cal beneficiaries into managed care, are Medi-Cal FFS moratoriums still needed?
3. Should statutory exemptions from moratoriums apply to all provider types subject to the moratoriums?
4. Why is the current DHCS Provider Enrollment Process for FFS Medi-Cal providers inadequate to prevent fraud?
5. Are there other tools or criteria that DHCS can use to prevent fraud other than moratoriums, such as prior authorization, on-site inspections, bonding or accreditation requirements?
6. Do the current moratoriums limit competition in FFS Medi-Cal and act as a barrier to entry to new businesses seeking to provide services to Medi-Cal beneficiaries?
7. Do the current moratoriums prevent new clinical labs, and clinical labs that became Medi-Cal providers after March 2001, from offering potentially new or higher quality services to Medi-Cal beneficiaries?
8. Does the provision in the current clinical laboratory moratorium that limits the change or expansion of provider of service categories by labs who have been allowed to enter the program after March 2001 effectively prevent new and emerging testing technologies from being provided to Medi-Cal beneficiaries?