Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

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Related Bills: See Legislative History | Telephone: 845-3410 | Introduced Date: 02/02/2000

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SUBJECT: Physicians Medi-Cal Reimbursement In-Lieu Credit

SUMMARY

Under the Personal Income Tax Law (PITL) and Bank and Corporation Tax Law (B&CTL), this bill would allow taxpayers to claim a tax credit for 100% of the amount that otherwise would be reimbursed by the Medi-Cal program for services provided by a physician or surgeon during the taxable or income year.

EFFECTIVE DATE

As a tax levy, this bill would become effective immediately upon enactment and would apply to income years beginning on or after January 1, 2000.

LEGISLATIVE HISTORY

AB 1107 (Stats. 1999, Ch. 146) authorizes the Department of Health Services (DHS), upon reliable evidence of fraud or willful misrepresentation by a provider (generally defined as those who provides services to Medi-Cal beneficiaries), to collect any overpayment identified through an audit or examination from any provider or withhold payment for any goods or services owing to the provider. It provides for disenrollment, in accordance with specified limitations, for providers and prohibits enrollment for provider applicants found to have committed fraud or abuse.

PROGRAM HISTORY/BACKGROUND

In California, the federal Medicaid Program is administered as the California Medical Assistance (Medi-Cal) Program. The Medi-Cal Program provides health care services, goods, supplies and merchandise to welfare recipients and other qualified low-income persons (primarily families with children and the aged, blind, and disabled). The Department of Health Services administers the Medi-Cal Program. Other state agencies, including the California Medical Assistance Commission and the Departments of Social Services, Mental Health, Developmental Services, and Alcohol and Drug programs, perform Medi-Cal functions under agreements with DHS. County governments verify beneficiary eligibility. Federal law requires the Medi-Cal Program to provide a core of basic services, and California has chosen to offer additional optional services.

Board Position:			Department Director	Date
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Generally, after individuals have been determined eligible for Medi-Cal benefits, they receive a Medi-Cal card, which they may use to obtain services from providers who agree to accept Medi-Cal patients. To remain eligible for Medi-Cal benefits, all beneficiaries must submit a quarterly report of income and assets. Medi-Cal uses two basic types of arrangements for health care —— fee-for-service and managed care.

Fee-for-service is the traditional arrangement for health care in which providers are paid for each examination, procedure, or other service that they furnish. Medi-Cal uses a variety of “utilization control” techniques (such as requiring prior authorization for some services) to avoid paying for medically unnecessary or duplicative services.

Under managed care, prepaid health plans generally provide managed care, and the plans receive monthly “capitation” payments from the Medi-Cal Program for each enrollee in return for providing all of the care needed by those enrollees. These plans are similar to health plans offered by many public and private employers.

Medi-Cal services are provided by various health care professionals and institutions. Providers must apply to the state to become authorized Medi-Cal providers to receive reimbursement under fee-for-service. Under fee-for-service, both the federal government and California regulate the amounts paid for each service.

DHS, in its Findings of Emergency for Regulation R-29-99E, included the following explanation for the necessity of AB 1107, the Medi-Cal Provider Anti-Fraud Program, and the regulation as follows:

“The Medi-Cal beneficiaries who receive services through the fee-for-service system are generally those who are medically fragile and whose medically complex conditions require appropriate and timely medical intervention to protect life, to prevent significant illness or significant disability, or to alleviate severe pain. However, some non-institutional Medi-Cal providers have been found to provide unnecessary or substandard items or services that are either in excess of the provider’s usual charges or costs for the items or services, or of a quality that fails to meet professionally recognized standards of health care. Still others are billing the Medi-Cal program for services, equipment, or supplies that are never provided to Medi-Cal beneficiaries.

“Recently enacted urgency legislation, AB 1107, (cite) added Article 1.3 (commencing with Section 14043) to Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code to establish requirements for applicants for initial enrollment, and providers for continuing enrollment, in the Medi-Cal program. These emergency regulations will enable [DHS] to tighten the applicant enrollment and provider continuing enrollment process, and to identify and screen out those applicants or providers with a prior history of claiming performance problems, thereby affording some additional protection to vulnerable Medi-Cal beneficiaries.”

SPECIFIC FINDINGS

Existing state and federal laws provide various tax credits that are designed to provide tax relief for taxpayers who must incur certain expenses (e.g., renter's credit) or to influence behavior, including business practices and decisions (e.g., research credits).

Neither state nor federal laws currently provide a credit for medical services in-lieu of any government-funded medical services reimbursement program.

This bill would allow a tax credit for medical services provided by a physician or surgeon to Medi-Cal beneficiaries as an alternative to a reimbursement payment from the Medi-Cal Program. To qualify for the credit, the services must otherwise qualify for reimbursement by the state. The amount of the credit would be equal to 100% of the reimbursable services provided by a physician or surgeon during the taxable or income year. This bill would create a permanent credit, and it does not specify a limit on the number of years for carryover of unused credit.

Policy Considerations

This bill raises the following policy considerations:

1. An essential tool for the continued operation of the Medi-Cal program is the ability of DHS to monitor the services provided by physicians through audits or examinations of any provider, to withhold payment for any goods or services owing to the provider, and to disenroll and prohibit enrollment of providers found to have committed fraud or abuse. This bill leaves unclear whether taxpayers would need to obtain verification from Medi-Cal that the services provided would qualify for Medi-Cal reimbursement, that the amount claimed as a credit is equal to the amount that would have been reimbursed, and that the physician or surgeon providing the services is eligible for Medi-Cal reimbursement. Without verification, this bill may circumvent all Medi-Cal procedures developed by DHS throughout the years, including those implementing AB 1107, because physicians and surgeons could claim the tax credit without complying with applicable Medi-Cal procedures.

   However, if the bill's provisions are interpreted as requiring Medi-Cal to verify that the services provided would qualify for Medi-Cal reimbursement, that the amount claimed is equal to the amount that would have been reimbursed, and that the provider is eligible for Medi-Cal reimbursement, using a tax credit in-lieu of the existing Medi-Cal reimbursement system may be an unnecessary complication for the taxpayer.

2. Under this bill, taxpayers would receive a tax credit for 100% of reimbursable Medi-Cal services instead of Medi-Cal reimbursement to which the taxpayer might be entitled. The Medi-Cal reimbursement is included in income subject to federal and state income tax. Since a state tax credit is not income, a taxpayer would not have to include the amount of the credit as income for federal and state tax purposes. Thus, not only would the taxpayer receive a state tax credit in lieu of the reimbursement income, but the taxpayer would not have to pay federal or state income tax on the credit amount.

3. This bill would provide a tax credit for Medi-Cal services provided by a physician or surgeon. Health care services eligible for reimbursement under the Medi-Cal program also are provided by various health care professionals other than physicians and surgeons. Medi-Cal reimbursable health care services include hospital inpatient and outpatient care, skilled nursing care, laboratory tests and X-rays, family planning, regular examinations for children, and 32 other health care services such as outpatient drugs and dental care. Under the bill, Medi-Cal reimbursable health care services provided by health care professionals other than physicians or surgeons would not be eligible for a tax credit as an alternative to Medi-Cal reimbursement.

4. This bill does not specify a repeal date or limit the number of years for the carryover. Credits typically are enacted with a repeal date to allow the Legislature to review their effectiveness. However, if a repeal date is added but the carryover remains unlimited, the department would be required to retain the carryover on the tax forms indefinitely. Recent credits have been enacted with a carryover limit since experience shows credits typically are used within eight years of being earned.

Implementation Considerations

Department staff has identified the following implementation considerations. These implementation considerations would make it very difficult, if not impossible, to properly implement this bill.

1. Because the bill does not otherwise limit its application, this bill would allow the credit to any taxpayer for reimbursable services provided by physicians and surgeons. This would include taxpayers who are themselves physicians or surgeons who file tax returns as sole proprietors, but also other taxpayers, such as hospitals or other taxable entities that employ physicians and surgeons who provide Medi-Cal reimbursable services. Further, the bill could be interpreted as allowing the credit to the patient who receives the services. To ensure proper interpretation, this bill should state that the credit is allowed to "qualified taxpayers" and specifically define that term to include only those to whom the credit is intended.

2. The amount that is reimbursable to a physician or surgeon under the Medi-Cal program varies greatly depending on a number of factors. Under the current Medi-Cal program, DHS determines, among other things, whether the procedure is medically necessary and provided to eligible beneficiaries, ensures that double billing does not occur, considers whether the patient has other forms of insurance (Medicare, workmen's compensation, private insurance, etc.), and examines the bills provided by each involved physician (primary surgeon, assistant surgeon, anesthesiologist, etc.) before offering the amount to be reimbursed on any particular procedure. In addition, an individual's eligibility for Medi-Cal reimbursable health care services is determined by each of 58 counties. This bill leaves unclear whether taxpayers would need to obtain from DHS verification that the services provided and the amount claimed would otherwise qualify for Medi-Cal reimbursement and that the physician or surgeon was a provider eligible for Medi-Cal reimbursement.

It is also unclear whether taxpayers would be required to obtain verification of patient eligibility for Medi-Cal reimbursed health care services. Without such verification, the department could not determine whether the services qualify for the credit or the correct amount that would qualify for the credit. To allow effective audit by the department, the bill needs to mandate that the taxpayer provide the department evidence that verifies the amount and reimbursability of the services provided, or that Medi-Cal directly provide this information to the department.

3. This bill does not define the terms "physician," "surgeon," or "Medi-Cal service." The lack of definitions could lead to disputes between taxpayers and the department regarding the correct interpretation of these terms.

4. This bill does not include recapture rules in the event the taxpayer later receives reimbursement for services for which a credit was allowed under this bill.

FISCAL IMPACT

Departmental Costs

The department's costs to administer this bill cannot be determined until implementation concerns have been resolved. Unless this bill is amended to include an appropriation or authorize a budget change proposal, the department would be required to redirect costs from other areas of its budget. The department will continue to assess the impact as this bill continues to move through the Legislature.

Tax Revenue Estimate

This proposal is estimated to impact revenue as shown in the following table.

Fiscal Year Cash Flow Tax Years Beginning After December 31, 1999 Enactment Assumed After June 30, 2000 $ Millions		
2000-01	2001-02	2002-03
-$250	-$290	-$310

Note: Estimates are based on current levels of reimbursable services. The possible impact of this 100% tax credit on additional fraudulent activity in this area is not known, but could result in much larger revenue losses.

This analysis does not consider the possible changes in employment, personal income, or gross state product that could result from this measure.

Revenue Discussion

The revenue impact for this bill will be determined by the amount of services provided by physicians and surgeons that would have otherwise been reimbursed by Medi-Cal and the amount of eligible credits that can be applied against available tax liabilities.

According to the California Department of Health Services, the total amount paid under the Medi-Cal program for fee services in California was approximately $1 billion for 1999. This number was grown 5% per year for normal growth, generating approximately $1.05 billion for 2000.

It is assumed that taxpayers who participate would greatly reduce or eliminate their tax liability by using this credit, leaving a minimum amount of unused credits to future years. Further, it is assumed that some taxpayers would still choose to receive reimbursement from Medi-Cal instead of claiming the credit. For instance, some taxpayers may claim only the amount of credit to eliminate their tax liability and would receive reimbursement from Medi-Cal for any remaining fee services provided to patients.

It is projected that in the first year, approximately 15% of Medi-Cal payments or approximately $158 million would be impacted by those taxpayers that would eliminate or reduce their state taxes. For 2001 and thereafter, it is projected 50% of Medi-Cal payments would be impacted. This impact allows for the additional revenue loss from taxpayers who would have otherwise reported payments received from Medi-Cal on their tax returns. The total revenue loss for tax year 2000 is projected to be $165 million. The 2000-01 fiscal year loss includes all of 2000 plus 30% of the 2001 loss due to reduced estimated tax payments.

BOARD POSITION

Pending.