

AMENDED IN ASSEMBLY APRIL 5, 2021

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 563

**Introduced by Assembly Members ~~Berman and Berman~~, O'Donnell,
and Ramos**

(Coauthors: Senators Eggman and Stern)

February 11, 2021

An act to add Article 14 (commencing with Section 32445) to Chapter 3 of Part 19 of Division 1 of Title 1 of the Education Code, and to amend Section 14115.8 of the Welfare and Institutions Code, relating to school health.

LEGISLATIVE COUNSEL'S DIGEST

AB 563, as amended, Berman. School-based health programs.

Existing law provides for the Medi-Cal program, which is 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 by, and funded pursuant to, federal Medicaid program provisions. Existing law establishes the Administrative Claiming process under which the department is authorized to contract with local governmental agencies and local educational consortia for the purpose of obtaining federal matching funds to assist with the performance of administrative activities relating to the Medi-Cal program that are provided by a local governmental agency or local educational agency (LEA). Existing law also provides that specified services provided by LEAs are covered Medi-Cal benefits and are reimbursable on a fee-for-service basis under the LEA Medi-Cal billing option.

Existing law requires the department to engage in specified activities relating to the LEA Medi-Cal billing option, such as amending the Medicaid state plan to ensure that schools are reimbursed for all eligible services and examining methodologies for increasing school participation in the LEA Medi-Cal billing option. Existing law requires that these activities be funded and staffed by proportionately reducing federal Medicaid payments allocable to LEAs for the provision of benefits funded by federal Medicaid program payments under the LEA Medi-Cal billing option in an amount not to exceed \$1,500,000 annually.

This bill would require the State Department of Education to, no later than July 1, 2022, establish an Office of School-Based Health Programs for the purpose of administering current health-related programs under the purview of the State Department of Education and advising it on issues related to the delivery of school-based Medi-Cal services in the state. The bill would require the office to, among other things, provide technical assistance, outreach, and informational materials to LEAs on allowable services and on the submission of claims. The bill would authorize the office to form advisory groups, as specified, and, to the extent necessary, would require the State Department of Health Care Services to make available to the office any information on other school-based dental, health, and mental health programs, and school-based health centers, that may receive Medi-Cal funding. The bill would require the office to be supported through an interagency agreement with the State Department of Health Care Services, and would authorize the office to receive additional funds from grants and other sources.

The bill would increase the annual funding limit for the activities of the State Department of Health Care Services that support the LEA Medi-Cal billing option to \$2,000,000, and would require that \$500,000 of that amount be available for transfer to the State Department of Education to support the office pursuant to that interagency agreement, with any unexpended funds to be returned.

The bill would require the State Department of Health Care Services to collaborate with the office, as specified, and would require a certain summary of activities prepared by the State Department of Health Care Services to include, among other things, activities conducted in coordination with the office.

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) The Local Educational Agency (LEA) Medi-Cal Billing
4 Option Program (BOP) was established in 1993 and since then has
5 provided Medicaid funds to LEAs for health-related services
6 provided to special education students.

7 (b) In December 2014, the federal Centers for Medicare and
8 Medicaid Services (CMS) issued new guidance that allows LEAs
9 to serve all Medi-Cal-eligible students, whether or not they are a
10 special education student.

11 (c) California has ranked in the bottom quartile of states by
12 funding received through BOPs.

13 (d) CMS guidance states that an interagency agreement,
14 describing and defining the relationships between the state
15 Medicaid agency, the state department of ~~education~~ *education*, or
16 the school district or local entity conducting the School-Based
17 Medicaid Administrative Activities, needs to be in place in order
18 to administer the activities and LEA BOPs.

19 (e) Establishing an Office of School-Based Health Programs
20 will improve academic outcomes for all eligible students in
21 California by supporting LEAs to increase student access to
22 school-based health programs and services.

23 (f) All students should have access to the treatment needed to
24 address behavioral issues, learning disabilities, and trauma. When
25 poorly treated, physical and mental health conditions can have a
26 devastating impact on school attendance, behavior, and academic
27 achievement.

28 (g) It is the intent of the Legislature to adequately address the
29 needs of the whole child, by facilitating greater coordination
30 between the State Department of Education and the State
31 Department of Health Care Services.

32 SEC. 2. Article 14 (commencing with Section 32445) is added
33 to Chapter 3 of Part 19 of Division 1 of Title 1 of the Education
34 Code, to read:

1 Article 14. Office of School-Based Health Programs

2
3 32445. For purposes of this article the following definitions
4 shall apply:

5 (a) “Department” means the State Department of Education.

6 (b) “Office” means the Office of School-Based Health Programs
7 established within the State Department of Education that is
8 dedicated to expanding access to school-based health programs
9 pursuant to this article.

10 32447. (a) The department shall, no later than July 1, 2022,
11 establish an Office of School-Based Health Programs for the
12 purpose of administering current health-related programs under
13 the purview of the department and advising the department on
14 issues related to the delivery of school-based Medi-Cal services
15 in the state. The scope of the office shall include collaborating
16 with the State Department of Health Care Services on proposals
17 for the expansion of school-based health services. The scope of
18 the office shall also include assisting local educational agencies
19 (LEAs) with information on, and participation in, the following
20 school-based health programs:

21 (1) The Administrative Claiming process described in Section
22 14132.47 of the Welfare and Institutions Code.

23 (2) The LEA Medi-Cal billing option program described in
24 Section 14132.06 of the Welfare and Institutions Code.

25 (3) All other programs under the federal Early and Periodic
26 Screening, Diagnostic, and Treatment (EPSDT) services
27 entitlement supporting the provision of health services to eligible
28 students, including screening, diagnostic, and treatment services
29 to prevent, identify, or address physical and behavioral health
30 needs.

31 (b) The office shall advise the department on opportunities for
32 effective coordination between health and education systems at
33 the state, regional, and local levels to advance school-based health
34 programs, and on strategies to leverage school-based Medi-Cal
35 programs to sustain school-based health services.

36 (c) The office shall consider opportunities for expanding
37 services, simplifying the administration of school-based health
38 programs, increasing LEA participation, and maximizing allowable
39 federal financial participation in the school-based health programs.

40 These considerations shall include the benefits, costs, and the

1 feasibility associated with the proposed opportunities to expand
2 services.

3 (d) The office shall provide technical assistance, outreach, and
4 informational materials to LEAs on allowable services and on the
5 submission of claims. The office shall not otherwise provide
6 informational materials related to the State Department of Health
7 Care Services' school-based health programs that have not been
8 approved by the State Department of Health Care ~~Services.~~
9 *Services, as the State Department of Health Care Services is the*
10 *only state agency with authority from the federal Centers for*
11 *Medicare and Medicaid Services to define allowable services and*
12 *compliant submission of claims.*

13 (e) The office may form advisory groups for technical assistance,
14 for support in establishing the office, and other purposes as deemed
15 necessary.

16 (f) To the extent necessary, the State Department of Health Care
17 Services shall make available to the office any information on
18 other school-based dental, health, and mental health programs,
19 and school-based health centers, that may receive Medi-Cal
20 funding.

21 (g) The office shall be supported through an interagency
22 agreement with the State Department of Health Care Services as
23 authorized by paragraph (1) of subdivision (g) of Section 14115.8
24 of the Welfare and Institutions Code. Additional funds from grants
25 and other sources may be used to support the office.

26 (h) (1) This section shall not prohibit the department from using
27 an existing branch or division within the department to serve as
28 the office, in lieu of establishing a new office, for purposes of
29 implementing this section.

30 (2) This section shall not limit or modify Section 14132.06 of
31 the Welfare and Institutions Code.

32 SEC. 3. Section 14115.8 of the Welfare and Institutions Code
33 is amended to read:

34 14115.8. (a) (1) The department shall amend the Medicaid
35 state plan with respect to the billing option for services by local
36 educational agencies (LEAs), to ensure that schools shall be
37 reimbursed for all eligible services that they provide that are not
38 precluded by federal requirements.

1 (2) The department shall examine methodologies for increasing
2 school participation in the Medi-Cal billing option for LEAs so
3 that schools can meet the health care needs of their students.

4 (3) The department shall, to the extent possible, simplify
5 claiming processes for LEA billing.

6 (4) The department shall eliminate and modify state plan and
7 regulatory requirements that exceed federal requirements when
8 they are unnecessary.

9 (5) (A) The department shall, in consultation with the LEA Ad
10 Hoc Workgroup established pursuant to subdivision (c), and
11 consistent with any applicable federal requirements, issue and
12 regularly maintain a program guide for the LEA Medi-Cal Billing
13 Option program. The program guide shall contain fiscal and
14 programmatic compliance information regarding processes,
15 documentation, and guidance necessary for the proper submission
16 of claims, and auditing of LEAs, charter schools, and community
17 colleges, as required under the LEA Medi-Cal Billing Option
18 program.

19 (B) The program guide described in subparagraph (A) shall
20 include, but not be limited to, state plan amendments, Frequently
21 Asked Questions, policy and procedure letters, trainings, provider
22 manuals, and all other types of instructional materials relevant to
23 the LEA Medi-Cal Billing Option program.

24 (C) The department shall distribute the program guide to all
25 participating LEAs, charter schools, and community colleges by
26 January 1, 2020. Distribution of the program guide may occur by
27 electronic mail or by notification by electronic mail of the posting
28 of the guide on the department's internet website.

29 (D) The department shall only adopt a revision of the program
30 guide after providing 30 calendar days' written notification of the
31 revision, including a statement of justification, to the LEA Ad Hoc
32 Workgroup and all other participating LEAs, charter schools, and
33 community colleges. The department may provide written notice
34 by electronic mail. Under extraordinary circumstances, when
35 revisions are necessary to reflect changes required by state or
36 federal law or otherwise mandated by the federal Centers for
37 Medicare and Medicaid Services and those changes require
38 immediate action, the department may provide less than 30 calendar
39 days' written notice.

1 (E) The department shall conduct an audit of a Medi-Cal billing
2 option claim consistent with, but not limited to, all of the following:

3 (i) The program guide and any revisions made pursuant to
4 subparagraph (D), including any revisions that are necessary to
5 reflect changes required by state or federal law or otherwise
6 mandated by the federal Centers for Medicare and Medicaid
7 Services, that are in effect at the time the service was provided.

8 (ii) Generally accepted accounting principles.

9 (iii) Federal audit regulations, as set forth in Part 200
10 (commencing with Section 200.0) of Title 2 of the Code of Federal
11 Regulations (Uniform Administrative Requirements, Cost
12 Principles, and Audit Requirements for Federal Awards), or its
13 successor.

14 (iv) Reasonable cost principles under the federal Medicare
15 Program, as set forth in Part 413 (commencing with Section 413.1)
16 of Title 42 of the Code of Federal Regulations, or its successor.

17 (v) The federal Centers for Medicare and Medicaid Services
18 Provider Reimbursement Manual Part 1 (CMS Publication 15-1).

19 (vi) Any and all applicable federal or state statutes and
20 regulations.

21 (F) For purposes of this paragraph, an audit shall refer to the
22 audit and cost recovery process described in Section 14170.

23 (G) Notwithstanding Chapter 3.5 (commencing with Section
24 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
25 the department may issue and regularly maintain the program guide
26 described in this paragraph without taking regulatory action.

27 (b) If a rate study for the LEA Medi-Cal billing option is
28 completed pursuant to Section 52 of Chapter 171 of the Statutes
29 of 2001, the department, in consultation with the entities named
30 in subdivision (c), shall implement the recommendations from the
31 study, to the extent feasible and appropriate.

32 (c) In order to assist the department in formulating the state plan
33 amendments required by subdivisions (a) and (b), the department
34 shall regularly consult with the State Department of Education,
35 including the Office of School-Based Health Programs established
36 pursuant to Section 32447 of the Education Code, and with
37 representatives of urban, rural, large, and small school districts,
38 and county offices of education, the local education consortium,
39 and local educational agencies. It is the intent of the Legislature
40 that the department also consult with staff from Region IX of the

1 federal Centers for Medicare and Medicaid Services, experts from
2 the fields of both health and education, and state legislative staff.

3 (d) Notwithstanding any other law, or any other contrary state
4 requirement, the department shall take whatever action is necessary
5 to ensure that, to the extent there is capacity in its certified match,
6 an LEA shall be reimbursed retroactively for the maximum period
7 allowed by the federal government for any department change that
8 results in an increase in reimbursement to local educational agency
9 providers.

10 (e) The department may undertake all necessary activities to
11 recoup matching funds from the federal government for
12 reimbursable services that have already been provided in the state's
13 public schools. The department shall prepare and take whatever
14 action is necessary to implement all regulations, policies, state
15 plan amendments, and other requirements necessary to achieve
16 this purpose.

17 (f) The department shall file an annual report with the
18 Legislature that shall include at least all of the following:

19 (1) A copy of the annual comparison required by subdivision
20 (i).

21 (2) A state-by-state comparison of school-based Medicaid total
22 and per eligible child claims and federal revenues. The comparison
23 shall include a review of the most recent two years for which
24 completed data is available.

25 (3) A summary of department activities and an explanation of
26 how each activity contributed toward narrowing the gap between
27 California's per eligible student federal fund recovery and the per
28 student recovery of the top three states. The summary of activities
29 shall include activities conducted in coordination with the Office
30 of School-Based Health Programs, established pursuant to Section
31 32447 of the Education Code.

32 (4) A listing of all school-based services, activities, and
33 providers approved for reimbursement by the federal Centers for
34 Medicare and Medicaid Services in other state plans that are not
35 yet approved for reimbursement in California's state plan and the
36 service unit rates approved for reimbursement.

37 (5) The official recommendations made to the department by
38 the entities named in subdivision (c) and the action taken by the
39 department regarding each recommendation.

1 (6) A one-year timetable for state plan amendments and other
2 actions necessary to obtain reimbursement for those items listed
3 in paragraph (4).

4 (7) Identification of any barriers to local educational agency
5 reimbursement, including those specified by the entities named in
6 subdivision (c), that are not imposed by federal requirements, and
7 a description of the actions that have been, and will be, taken to
8 eliminate them.

9 (g) (1) These activities shall be funded and staffed by
10 proportionately reducing federal Medicaid payments allocable to
11 LEAs for the provision of benefits funded by the federal Medicaid
12 program under the billing option for services by LEAs specified
13 in this section. Moneys collected as a result of the reduction in
14 federal Medicaid payments allocable to LEAs shall be deposited
15 into the Local Educational Agency Medi-Cal Recovery Fund,
16 which is hereby established in the Special Deposit Fund established
17 pursuant to Section 16370 of the Government Code. These funds
18 shall be used, upon appropriation by the Legislature, only to
19 support the department to meet all the requirements of this section.
20 If at any time this section is repealed, it is the intent of the
21 Legislature that all funds in the Local Educational Agency
22 Medi-Cal Recovery Fund be returned proportionally to all LEAs
23 whose federal Medicaid funds were used to create this fund. The
24 annual amount funded pursuant to this paragraph shall not exceed
25 two million dollars (\$2,000,000). Of this amount, five hundred
26 thousand dollars (\$500,000) shall be available for transfer through
27 an interagency agreement to the State Department of Education
28 for the support of the Office of School-Based Health Programs
29 established pursuant to Section 32447 of the Education Code. To
30 the extent that any transferred funds exceed actual, identifiable
31 expenditures, the State Department of Education shall promptly
32 return the unexpended funds proportionally to all LEAs whose
33 funds were used.

34 (2) Moneys collected under paragraph (1) shall be
35 proportionately reduced from federal Medicaid payments to all
36 participating LEAs so that no one LEA loses a disproportionate
37 share of its federal Medicaid payments.

38 (h) (1) The department may enter into a sole source contract
39 to comply with the requirements of this section.

1 (2) The level of additional staff to comply with the requirements
2 of this section, including, but not limited to, staff for which the
3 department has contracted for pursuant to paragraph (1), shall be
4 limited to that level that can be funded with revenues derived
5 pursuant to subdivision (g).

6 (i) The activities of the department shall include all of the
7 following:

8 (1) An annual comparison of the school-based Medicaid systems
9 in comparable states.

10 (2) Efforts to improve communications with the federal
11 government, the State Department of Education, and local
12 educational agencies.

13 (3) The development and updating of written guidelines to local
14 educational agencies regarding best practices to avoid audit
15 exceptions, as needed.

16 (4) The establishment and maintenance of a local educational
17 agency user-friendly, interactive internet website.

18 (5) Collaboration with the State Department of Education,
19 including the Office of School-Based Health Programs, established
20 pursuant to Section 32447 of the Education Code, to help ensure
21 LEA compliance with state and federal Medicaid requirements
22 and to help improve LEA participation in the Medi-Cal billing
23 option for LEAs.