

AMENDED IN ASSEMBLY APRIL 19, 2021

AMENDED IN ASSEMBLY MARCH 4, 2021

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 822

Introduced by Assembly Member Rodriguez

February 16, 2021

An act to amend Section 14021 of add Section 14021.1 to the Welfare and Institutions Code, relating to Medi-Cal.

LEGISLATIVE COUNSEL'S DIGEST

AB 822, as amended, Rodriguez. ~~Observation services—Medi-Cal: psychiatric emergency medical conditions.~~

Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services, and under which qualified low-income individuals receive health care services, which are delivered through various delivery systems, including fee-for-service and managed care. The Medi-Cal program is, in part, governed and funded by federal Medicaid program provisions.

Existing law requires the department to implement managed mental health care for Medi-Cal beneficiaries through contracts with mental health plans. Under existing law, mental health plans are responsible for providing specialty mental health services to enrollees, and Medi-Cal managed care plans deliver nonspecialty mental health services to enrollees. Under existing law, emergency services and care, mental health benefits, substance use disorder benefits, and specialty mental health services are covered under the Medi-Cal program.

This bill would specify that observation services for a psychiatric emergency medical condition, as defined, are covered under the

Medi-Cal program, consistent with coverage under the above provisions and any other applicable law. Under the bill, the scope of coverage of those services would include facility services for observation services provided within the emergency department, or an onsite or offsite observation unit, as defined, of a general acute care hospital to a Medi-Cal beneficiary with a confirmed or suspected psychiatric emergency medical condition.

Existing law imposes certain requirements on mental health plans and Medi-Cal managed care plans, including network adequacy standards and a requirement to enter into a memorandum of understanding if the 2 plans serve some of the same Medi-Cal recipients.

This bill would require the applicable mental health plan and Medi-Cal managed care plan to notify each other within 24 hours from notification by a general acute care hospital of a Medi-Cal beneficiary with a condition as described above. The bill would require the memorandum of understanding to include a process to coordinate the provision of the above services, as specified.

The bill would require disputes between a mental health plan and a Medi-Cal managed care plan, or between mental health plans, regarding the responsibility to pay for the charges for those services to be resolved pursuant to certain processes under existing law. The bill would require that the mental health plan be responsible for observation services for a psychiatric emergency medical condition. If those services are provided to a Medi-Cal fee-for-service beneficiary, the bill would require the department to reimburse the hospital using a specified formula. The bill would also exempt from the observation services billing requirements for emergency psychiatric services a hospital campus with a psychiatric observation unit that has been designated as a crisis stabilization unit by a mental health plan.

The bill would, for purposes of meeting certain network adequacy standards under existing law, require agreements between a mental health plan and a general acute care hospital that is not licensed to provide inpatient psychiatric care to include provisions governing the coordination between the hospital and the plan for the provision of the above-described services. The bill would authorize the plan and the hospital to agree to rates of reimbursement other than the above-described fee-for-service rate.

The bill would condition implementation of these provisions on any necessary federal approvals being obtained and the availability of federal financial participation. The bill would require the department

to seek any necessary federal approvals for implementation of these provisions.

Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services, and under which qualified low-income individuals receive health care services, such as mental health and substance use disorder services, which are delivered through various delivery systems, including fee-for-service and managed care. Under existing law, mental health plans provide specialty mental health services, and Medi-Cal managed health care plans and the fee-for-service Medi-Cal program provide nonspecialty mental health services. The Medi-Cal program is, in part, governed and funded by federal Medicaid program provisions.

To the extent funds are made available in the annual Budget Act, this bill would expand mental health services to include observation services, as defined, for emergency psychiatric treatment when provided in an observation unit, as defined, subject to utilization controls. The bill would provide that observation services are not specialty mental health services, and would require a Medi-Cal managed health care plan or the fee-for-service Medi-Cal program to reimburse the provider for rendering those services. The bill would authorize the department to implement these provisions by various means, including provider bulletin, without taking regulatory action, and would condition the implementation of these provisions to the extent permitted by federal law, the availability of federal financial participation, and the department securing federal approval.

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 14021.1 is added to the Welfare and
2 Institutions Code, to read:

3 14021.1. (a) (1) Observation services for a psychiatric
4 emergency medical condition are covered under the Medi-Cal
5 program, consistent with coverage under paragraph (2) of
6 subdivision (b) of Section 14132, Sections 14197.1 and 14684,
7 and any other applicable law.

8 (2) The scope of coverage of observation services for a
9 psychiatric emergency medical condition as provided pursuant to
10 paragraph (1) shall include, but not be limited to, facility services

1 *for observation services provided within the emergency department,*
2 *or an onsite or offsite observation unit, of a general acute care*
3 *hospital to a Medi-Cal beneficiary with a confirmed or suspected*
4 *psychiatric emergency medical condition. Those facility services*
5 *include services provided pursuant to an observation treatment*
6 *plan ordered by a qualified health care professional.*

7 (b) (1) *Upon notification by a general acute care hospital of a*
8 *Medi-Cal beneficiary with a confirmed or suspected psychiatric*
9 *emergency medical condition in its emergency department or*
10 *observation unit, the mental health plan for the county of residence*
11 *of the beneficiary shall within 24 hours notify the applicable*
12 *Medi-Cal managed care plan in which the beneficiary is an*
13 *enrollee.*

14 (2) *Upon notification by a general acute care hospital of a*
15 *Medi-Cal beneficiary with a confirmed or suspected psychiatric*
16 *emergency medical condition in its emergency department or*
17 *observation unit, the Medi-Cal managed care plan in which the*
18 *beneficiary is an enrollee shall within 24 hours notify the mental*
19 *health plan for the county of residence of the beneficiary.*

20 (3) *Each memorandum of understanding entered into by a*
21 *mental health plan and a Medi-Cal managed care plan pursuant*
22 *to Section 14715 shall include a process to coordinate the provision*
23 *of timely and appropriate observation services for a Medi-Cal*
24 *beneficiary with a confirmed or suspected psychiatric emergency*
25 *medical condition in the emergency department or observation*
26 *unit of a general acute care hospital.*

27 (c) (1) *If the observation services as described in subdivision*
28 *(a) are provided to a Medi-Cal fee-for-service beneficiary, the*
29 *department shall reimburse the general acute care hospital for*
30 *the facility charges at a rate that is not less than 80 percent of the*
31 *Medicare rate for Healthcare Common Procedure Coding System*
32 *(HCPCS) code G0378 with revenue code 900.*

33 (2) *Disputes between a mental health plan and a Medi-Cal*
34 *managed care plan regarding the responsibility to pay for the*
35 *charges for observation services as described in subdivision (a)*
36 *shall be resolved pursuant to the processes described in Article 5*
37 *(commencing with Section 1850.505) of Subchapter 5 of Chapter*
38 *11 of Division 1 of Title 9 of the California Code of Regulations.*
39 *The mental health plan shall be responsible for observation*
40 *services for a psychiatric emergency medical condition. The*

1 *Medi-Cal managed care plan shall be responsible for observation*
2 *services for a suspected psychiatric emergency medical condition*
3 *that is subsequently determined not to be a psychiatric emergency*
4 *medical condition. The mental health plan shall be responsible*
5 *for providing or arranging and paying for the charges for*
6 *observation services as described in subdivision (a) until the*
7 *dispute is resolved.*

8 (3) *The applicable mental health plan or Medi-Cal managed*
9 *care plan shall satisfy its obligation under Section 438.114 of Title*
10 *42 of the Code of Federal Regulations for observation services as*
11 *described in subdivision (a) and shall provide payment to a*
12 *noncontract general acute care hospital for the charges for*
13 *observation services as described in subdivision (a) consistent*
14 *with Section 1396u-2(b)(2)(D) of Title 42 of the United States*
15 *Code. The amounts that a noncontract general acute care hospital*
16 *may collect if the beneficiary received medical assistance other*
17 *than through enrollment in a mental health plan or Medi-Cal*
18 *managed care plan pursuant to Section 1396u-2(b)(2)(D) of Title*
19 *42 of the United States Code shall be the rate described in*
20 *paragraph (1).*

21 (4) *Disputes between mental health plans regarding the*
22 *responsibility to pay for the charges for observation services as*
23 *described in subdivision (a) shall be resolved pursuant to the*
24 *processes described in Article 4 (commencing with Section*
25 *1850.405) of Subchapter 5 of Chapter 11 of Division 1 of Title 9*
26 *of the California Code of Regulations.*

27 (5) *Observation services billing for emergency psychiatric*
28 *services shall not apply to hospital campuses with a psychiatric*
29 *observation unit that has been designated as a crisis stabilization*
30 *unit by the mental health plan under Sections 1810.210, 1840.338,*
31 *and 1840.348 of Title 9 of the California Code of Regulations, and*
32 *reimbursed by the mental health plan under Medi-Cal mental*
33 *health specialty services code S9484, Crisis Stabilization-ER. A*
34 *facility may have either psychiatric observation services*
35 *reimbursement or crisis stabilization services reimbursement, but*
36 *not both.*

37 (d) *In meeting the requirements set forth in paragraph (2) of*
38 *subdivision (b) of Section 14197, network agreements between a*
39 *mental health plan and a general acute care hospital that is not*
40 *licensed to provide inpatient psychiatric care shall include*

1 provisions governing the coordination between the general acute
2 care hospital and the mental health plan for the provision of timely
3 and appropriate observation services to a Medi-Cal beneficiary
4 with a confirmed or suspected psychiatric emergency medical
5 condition in the emergency department or observation unit of that
6 hospital. The mental health plan and the general acute care
7 hospital may agree to rates of reimbursement other than the rate
8 described in paragraph (1) of subdivision (c).

9 (e) This section shall be implemented only to the extent that any
10 necessary federal approvals have been obtained and federal
11 financial participation is available. The department shall seek any
12 necessary federal approvals for implementation of this section.

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

14 (1) "General acute care hospital" has the same meaning as set
15 forth in Section 1250 of the Health and Safety Code.

16 (2) "Medi-Cal managed care plan" means a managed care
17 plan, excluding any dental managed care plans, under contract
18 with the department to provide services to enrolled Medi-Cal
19 beneficiaries pursuant to any of the following:

20 (A) Article 2.8 (commencing with Section 14087.5).

21 (B) Article 2.81 (commencing with Section 14087.96).

22 (C) Article 2.82 (commencing with Section 14087.98).

23 (D) Article 2.91 (commencing with Section 14089).

24 (E) Chapter 8 (commencing with Section 14200).

25 (F) Chapter 3 (commencing with Section 101675) of Part 4 of
26 Division 101 of the Health and Safety Code.

27 (3) "Mental health plan" means a plan under contract with the
28 department to provide mental health care services to Medi-Cal
29 beneficiaries pursuant to Chapter 8.9 (commencing with Section
30 14700).

31 (4) "Observation services" has the same meaning as set forth
32 in Section 1253.7 of the Health and Safety Code.

33 (5) "Observation unit" has the same meaning as set forth in
34 Section 1253.7 of the Health and Safety Code.

35 (6) "Psychiatric emergency medical condition" means a mental
36 disorder that manifests itself by acute symptoms of sufficient
37 severity that it renders the patient as being either of the following:

38 (A) An immediate danger to themselves or to others.

39 (B) Immediately unable to provide for, or utilize, food, shelter,
40 or clothing, due to the mental disorder.

1 (g) For purposes of this section, any applicable successor to a
2 federal or state regulation that is specified in this section applies
3 to the corresponding provision within this section.

4 SECTION 1. Section 14021 of the Welfare and Institutions
5 Code is amended to read:

6 14021. Notwithstanding any other provision of this chapter,
7 health care shall include the following mental health and substance
8 use disorder services:

9 (a) Mental health services provided by a county or a city.
10 (b) Mental health services provided in a community mental
11 health service or in a community mental health center organized
12 under the federal Community Mental Health Centers Act of 1963.
13 No amount shall be paid for that portion of the total costs of care
14 and services in a federally funded community mental health center
15 which may be compensated by the United States government under
16 the federal Community Mental Health Centers Act of 1963. No
17 amount shall be paid to a community mental health service or a
18 federally funded community mental health center unless the
19 community mental health service or the federally funded
20 community mental health center participates in a county or city
21 mental health performance contract pursuant to Section 5650.

22 (c) Drug Medi-Cal outpatient substance use disorder services
23 under the jurisdiction of the department provided by a county
24 provider certified under this chapter or a private provider certified
25 under this chapter that has an approved contract with the county
26 or with the department to provide covered substance use disorder
27 services.

28 (d) (1) Inpatient hospital services in an institution for mental
29 diseases to persons of all ages, provided that the institution for
30 mental diseases is certified as a psychiatric hospital under Title
31 XVIII of the federal Social Security Act and regulations issued
32 thereunder.

33 (2) Notwithstanding Section 14157, no money in the State
34 Health Care Deposit Fund shall be expended for the purposes of
35 this section unless the Legislature specifically appropriates money
36 for the purposes of this section.

37 (3) The amendment of this subdivision enacted at the 1972
38 Regular Session of the Legislature does not constitute a change
39 in, but is declaratory of, the preexisting law.

1 (e) (1) Other diagnostic, screening, preventive, or remedial
2 rehabilitative services for the maximum restoration of an individual
3 to the best possible functional level.

4 (2) Paragraph (1) includes any medical or remedial services
5 provided in a facility, home, or other setting, that are recommended
6 by a physician or other licensed practitioner of the healing arts
7 within the scope of their practice under state law.

8 (f) (1) (A) To the extent funds are made available in the annual
9 Budget Act for this express purpose, and for purposes of providing
10 mental health treatment, observation services, as defined under
11 subdivision (a) of Section 1253.7 of the Health and Safety Code,
12 for emergency psychiatric treatment when provided in an
13 observation unit, as defined in subdivision (e) of Section 1253.7
14 of the Health and Safety Code, are covered under the Medi-Cal
15 program, subject to utilization controls.

16 (B) Observation services shall not be considered specialty mental
17 health services. If the patient is enrolled in a Medi-Cal managed
18 health care plan, that plan shall reimburse the provider who renders
19 these services. If the patient is not enrolled in a plan, the provider
20 shall be reimbursed by the fee-for-service Medi-Cal program.

21 (2) Notwithstanding Chapter 3.5 (commencing with Section
22 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
23 the department may implement this section by means of a provider
24 bulletin or similar instruction, without taking regulatory action.

25 (3) For purposes of implementing this section, the department
26 shall seek any necessary federal approvals, including approvals of
27 any state plan amendments or federal waivers, by the federal
28 Centers for Medicare and Medicaid Services.

29 (4) (A) This section shall only be implemented to the extent
30 permitted by federal law.

31 (B) This section shall be implemented only to the extent that
32 federal financial participation is available and any necessary federal
33 approvals have been obtained.