

**Second Extraordinary Session
Conference Committee on SBX2 2 and ABX2 1**

PROPOSED CONFERENCE REPORT No. 1

Bill No: SBX2 2
Author: Hernandez
Amended: 9/4/15

SUBJECT: Medi-Cal: Managed care organization provider tax.

DIGEST: Imposes a three-year managed care organization provider tax (MCO tax) on health plans, with different taxing tiers and based on enrollment assessed during a base year period of October 1, 2014 through September 30, 2015. Continuously appropriates funds from the MCO tax for purposes of funding the nonfederal share of Medi-Cal managed care rates. Reduces the amount of the Corporate or Gross Premium taxes that specified health plans and insurers are required to pay for the three years of the MCO tax assessment. Sunsets these provisions June 30, 2020.

ANALYSIS:

Existing law: Establishes the Medi-Cal program, administered by the Department of Health Care Services (DHCS), under which health care services are provided to approximately 13 million qualified, low-income persons. Under existing law, one of the methods by which Medi-Cal services are provided is through contracts with various types of managed care organizations (MCOs). Existing law imposes a 3.9 % tax on the total revenue of Medi-Cal MCOs until July 1, 2016. The Department of Managed Health Care (DMHC) licenses and regulates health care service plans (health plans) and the California Department of Insurance (CDI), regulates insurers, including health insurers. Depending upon the structure, a health plan or insurer will pay either the Corporation Tax Law, which applies a tax rate of 8.84% on the apportioned net income of a corporation with a taxable nexus to California, or a minimum franchise tax of \$800, whichever is more; or a Gross Premiums Tax (GPT) at a rate of 2.35% of gross premium income, in lieu of all other taxes, except for real estate taxes, motor vehicle license fees, and retaliatory exactions.

This bill:

- 1) Establishes a new MCO tax, to be administered by DHCS, for three fiscal years (FYs) 2016-17, 2017-18, and 2018-19.
- 2) Assesses the MCO tax on health plans and entities contracted with DHCS to provide Medi-Cal services (county organized health services are contracted to provide Medi-Cal services but are not all licensed as health plans). Excludes from the MCO tax a health plan that provides only specialized or discount services, international plans, as specified, and a plan owned and operated by a nonprofit hospital or health system or multiple hospitals or health systems, headquartered in Sacramento or San Diego County, as specified.

- 3) Defines as the base year for purposes of assessing the MCO tax the 12-month period of October 1, 2014 through September 30, 2015.
- 4) Defines for purposes of assessing the MCO tax, countable enrollee as an individual enrolled in a health plan, as defined, during a month of the base year according to the base data source. Countable enrollee does not include an individual enrolled in a Medicare plan, a plan-to-plan enrollee, as defined, or an individual enrolled in a Federal Employee Health Plan (FEHP), to the extent the imposition of the tax under this bill is preempted, as specified.
- 5) Establishes applicable taxing tiers and per enrollee tax amounts for FYs 2016-17, 2017-18, and 2018-19 for health plans and an alternate health care service plan (AHCS), defined as, a non-profit health plan with at least four million enrollees statewide, that owns or operates pharmacies, and provides professional medical services to enrollees in specific geographic regions through an exclusive contract with a single medical group in each specific geographic regions in which it is licensed.
- 6) Prohibits DHCS from collecting the MCO tax until DHCS receives approval from federal Centers for Medicare and Medicaid Services (CMS) that this is a permissible health care-related tax, as specified in federal regulations. Requires, on October 1, 2016, or the date DHCS receives such federal approval from CMS, whichever is later, certain activities to occur, such as certification by DHCS that approval was obtained and notification to the affected plans of the approval, payment schedule and other details related to the payment of the tax.
- 7) Requires DHCS to determine for each health plan, other than excluded plans, using the base data source all of the following:
 - a) Total cumulative enrollment for the base year;
 - b) Total Medicare cumulative enrollment for the base year;
 - c) Total Medi-Cal cumulative enrollment for the base year;
 - d) Total plan-to-plan cumulative enrollment for the base year;
 - e) Total cumulative enrollment through the FEHP for the base year; and,
 - f) Total other cumulative enrollment for the base year that is not otherwise counted in b) through e), inclusive.
- 8) Requires, in the event of a merger, acquisition, establishment, or any other similar transaction that results in the transfer of health plan responsibility for all countable enrollees from a health plan to another health plan or similar entity, and that occurs at any time during which this MCO tax is operative, the resultant health plan or similar entity to be responsible for paying the full tax amount provided in this bill that would have been the responsibility of the health plan to which that full tax amount was assessed, upon the effective date of any transaction. Specifies that if a transaction transfers responsibility for some of a health plan's countable enrollees but not all countable enrollees, the full tax amount as provided in this bill remains the responsibility of that health plan to which that full tax amount was assessed.
- 9) Permits DHCS to modify or make adjustments to any methodology, tax amount, taxing tier, or other similar provision to the extent necessary to meet the requirements of federal law or

regulation, obtain federal approval, or to ensure federal financial participation is available provided the modification or adjustment does not otherwise conflict with this bill's purposes.

- 10) Requires any modification or adjustment that would result in more than the following aggregate tax amounts for the other enrollees and AHCS enrolees combined, to be considered in conflict with the purposes of this bill:
 - a) \$266 million in the 2016-17 FY.
 - b) \$287 million in the 2017-18 FY.
 - c) \$309 million in the 2018-19 FY.
- 11) Authorizes DHCS in implementing any modification or adjustment, to only make an adjustment that would result in lowering the amounts in 10). States that this does not limit DHCS' authority to make an adjustment that does not impact the amount in 10).
- 12) Establishes the Health and Human Services Fund (fund) in the State Treasury, and requires all revenues, less refunds, derived from the MCO tax to be deposited to the credit of the fund. Requires interest and dividends to be retained in the fund. Requires a continuous appropriation, without regard to fiscal year, for purposes of funding the nonfederal share of Medi-Cal managed care rates for health care services furnished to children, adults, seniors and persons with disabilities, and persons dually eligible for Medi-Cal and Medicare.
- 13) Requires DHCS to provide an annual report to all health plans accounting for the funds deposited in and expended from the fund in a time and manner as deemed appropriate by the director. Requires the report to identify the MCO tax imposed on each health plan, and to provide an itemized accounting of expenditures.
- 14) Permits DHCS to implement this bill by means of provider bulletins, all-plan letters, or other similar instructions, without taking regulatory action. Requires DHCS to notify the Joint Legislative Budget Committee and the Senate Committees on Appropriations, Budget and Fiscal Review, and Health, and the Assembly Committees on Appropriations, Budget, and Health within 10 business days after approval from CMS has been obtained, and also in the event of a modification or adjustment.
- 15) Makes the MCO tax provisions operative on July 1, 2016 and inoperative on July 1, 2019. Repeals the MCO provisions on June 30, 2020. Requires, notwithstanding this provision, the MCO tax and any applicable interest and penalties imposed under this bill to continue to be due and payable until the tax and any applicable interest and penalties are fully paid.
- 16) Excludes the income of a health plan subject to the MCO tax, as defined, for Corporation Tax purposes. Specifically, the measure excludes the health plan's income properly accrued with respect to enrollment or services occurring between July 1, 2016 and June 30, 2019. To be eligible for the exclusion, the revenue must be associated with the plan's operation, and subject to current requirements for the plan to report to DMHC, as specified, including:
 - a) Premiums (commercial);
 - b) Co-payments, COB, Subrogation;

- c) Medicaid;
 - d) Point-of-Service premiums;
 - e) Risk pool revenue;
 - f) Capitation payments;
 - g) Medicare;
 - h) Fee-for-service;
 - i) Interest, and,
 - j) Aggregate write-ins for other revenues, including capital gains and other investment income.
- 17) Excludes health plans whose entire income is excluded by the bill from the \$800 minimum franchise tax.
- 18) Requires DMHC to provide specified information to FTB regarding each plan subject to the MCO tax by December 1, 2016, and annually thereafter. Allows FTB to prescribe rules, guidelines, or procedures to implement the bill, which are exempt from the Administrative Procedures Act.
- 19) States the intent of the Legislature that FTB Legal Ruling 2006-01 apply to apportionment factors attributable to income excluded by the bill.
- 20) Sets a GPT rate of zero on premiums received for the provision of health insurance, as defined. Limits the zero rate only to insurers that provide health insurance that has a corporate affiliate that is a health plan, meaning the insurer is directly or indirectly, controlled by, under common control with, or controls a health plan, and, that is:
- a) Licensed by DMHC, or who contracts with DHCS to provide Medi-Cal services,
 - b) Had at least one enrollee enrolled in the health plan in the base year, not including Medicare plan enrollees, individuals who receive health care services under subcontract with another plan, or enrollees under the Federal Employees Health Benefits Act, and,
 - c) Subject to the MCO tax.
- 21) Directs the Commissioner not to consider the zero GPT rate as part of any determination to impose or enforce a retaliatory insurance tax.
- 22) Requires the provisions of this bill to cease to be operative for each taxable year beginning on or after the date the DHCS director, in consultation with the Director of Finance, determines the taxes have not met the intent for purposes of providing funding for health care and prevention or the state does not have federal approval necessary for receipt of federal financial participation; or on or after the effective date of a final judicial determination made by any court of appellate jurisdiction that the provisions of this bill cannot be implemented. Requires the director to post notification to this effect.
- 23) Provides that this bill's changes to the GPT and Corporation Tax become effective and operative on the latter of July 1, 2016, or the effective date certified in writing by the DHCS director of federal approval of the MCO tax. The director must post certification of federal

approval on DHCS's website, and send notice to the Secretary of State, Secretary of the Senate, the Chief Clerk of the Assembly, Legislative Counsel, the State Board of Equalization, CDI, and FTB's Executive Officer.

- 24) Renders the tax provisions in effect until December 1, 2019, and repeals them on June 30, 2020.

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