SENATE COMMITTEE ON HEALTH
Senator Ed Hernandez, O.D., Chair

BILL NO: AB 1785
AUTHOR: Nazarian
VERSION: April 11, 2018
HEARING DATE: June 6, 2018
CONSULTANT: Scott Bain

SUBJECT: Medi-Cal eligibility: assets.

SUMMARY: Requires the principal and interest of a 529 savings plan to be excluded from consideration for purposes of any asset or resources test to determine eligibility for Medi-Cal benefits for an applicant or beneficiary whose eligibility is determined using non-Modified Adjusted Gross Income-based financial methods. Requires the qualified distributions from a 529 savings account to be excluded from consideration for purposes of any income test to determine eligibility for Medi-Cal benefits for an applicant or beneficiary.

Existing law:
1) Establishes the Medi-Cal program, administered by the Department of Health Care Services (DHCS), under which low income individuals are eligible for medical coverage. [WIC §14000, et seq.]

2) Makes adults and parents with incomes up to 138% of the federal poverty level (FPL) who are under age 65 eligible for Medi-Cal, and makes children with incomes up to 266% of the FPL eligible for Medi-Cal, including providing full-scope Medi-Cal benefits to undocumented children through age 18. [WIC §14005.60, 14005.64, 14005.27, 14005.64, and 14007.8]

3) Requires, when determining eligibility for Medi-Cal benefits, an applicant’s or beneficiary’s income and resources to be determined, counted, and valued in accordance with the requirements of a specified provision of federal Medicaid law added by the Affordable Care Act (ACA), which prohibits the use of an assets or resources test for individuals whose income eligibility is determined based on Modified Adjusted Gross Income (MAGI). [42 U.S. Code §1396(a), WIC §14005.64]

4) Requires, when determining the eligibility of applicants and beneficiaries using the MAGI-based financial methods, the five percent income disregard required under a specified provisions of the ACA to be applied. [42 U.S. Code §1396(a), WIC §14005.64]

5) Defines “MAGI-based financial methods” as income calculated using the financial methodologies described in a specified provision of federal Medicaid law added by the ACA. [Title 42 U.S. Code §1396(a), WIC §14005.64]

6) Requires DHCS to implement, interpret, or make specific the MAGI-related provisions described above by means of all-county letters, plan letters, plan or provider bulletins, or similar instructions until the time that regulations are adopted. Requires DHCS thereafter to adopt regulations in accordance with the requirements of the Administrative Procedure Act. [WIC §14005.64]

7) Requires, for purposes of determining Medi-Cal eligibility for medically needy persons, medically needy family persons, and state-only Medi-Cal persons, resources to be
AB 1785 (Nazarian)

This bill:
1) Requires the principal and interest of a Section 529 savings plan to be excluded from consideration for purposes of any asset or resources test to determine eligibility for Medi-Cal benefits for an applicant or beneficiary whose eligibility is determined using non-MAGI-based financial methods.

2) Requires the qualified distributions from a 529 savings account to be excluded from consideration for any income test to determine eligibility for Medi-Cal benefits for an applicant or beneficiary.

3) Requires DHCS to seek any necessary approvals from the federal Centers for Medicare and Medicaid Services to implement this bill.

4) Requires DHCS to implement this bill only in a manner that is consistent with federal Medicaid law and regulations, and only to the extent that the necessary approvals are obtained and federal financial participation is not jeopardized.

5) Makes legislative findings and declarations that the qualified tuition program, established under Section 529 of the Internal Revenue Code, is an important tax-advantaged investment vehicle designed to encourage families to save for the future education expenses of family members, that qualified education expenses include expenses related to tuition in connection with enrollment or attendance at an elementary or secondary public, private, or religious school, that research shows that children of families that maintain savings of any amount are more likely to attend and graduate from college, and the financial stability and economic mobility of all Californians, including low-income families, depends, in part, on access to education.

FISCAL EFFECT: According to the Assembly Appropriations Committee, minor costs to DHCS to make systems changes and seek necessary federal approvals (GF/federal). No substantive increase in the number of beneficiaries is expected, as DHCS states the number of applicants found ineligible due to funds in a 529 college savings accounts in excess of applicable property limit is negligible. In other words, persons to whom this bill applies are likely to be found eligible for Medi-Cal regardless of the bill.

PRIOR VOTES:
Assembly Floor: 71 - 0
Assembly Appropriations Committee: 17 - 0
Assembly Health Committee: 15 - 0

COMMENTS:
1) Author’s statement. According to the author, families who proactively save for a child’s post-secondary education should not be penalized with a reduction or loss of vital public benefits. While California does a good job of preventing asset limits from being a barrier to savings for low-income families on the whole, there is still one population of people who aren’t exempt. Those who are eligible for Medi-Cal using non-modified gross adjusted income—typically the elderly, disabled, or those in long-term care—are still subject to these limits. This bill simply helps to close the door on asset limits for this Medi-Cal population, not just
those determined by MAGI. This ensures that no one, especially grandparents facing decision about their health care, are penalized for investing in the future education of the young people in their lives.

2) **Medi-Cal eligibility rules on income and assets.** Medi-Cal eligibility is complex, and there are multiple different pathways to coverage. Some individuals are categorically eligible for Medi-Cal, meaning they are enrolled in Medi-Cal on the basis of being enrolled in another program, such as CalWORKS. Other individuals are eligible based on being low-income only (such as pregnant women, children, and adults age 19 to 64 with incomes below 138% of the FPL), and others based on being low-income and having limited assets and resources (such as aged and disabled individuals and medically needy persons). Examples of assets include bank accounts, retirement plans, cars, and a home. Some types of income and assets are exempt or not counted ("disregarded") for purposes of determining Medi-Cal eligibility. For example, MAGI income eligibility under federal law is 133% of the FPL, but federal law also requires a five percent income disregard, effectively making eligibility 138% of the FPL.

The ACA introduced a new income counting methodology for Medi-Cal and people applying for federal premium tax and cost-sharing subsidies known as MAGI. The MAGI rules apply to the newly eligible adults ("expansion adults" age 19 to 64, primarily adults without minor children), pregnant women, parents and caretaker relatives, and children, including the Childrens Health Insurance Program-funded Targeted Low-Income Children’s Program, advanced premium tax credits (APTC) and cost-sharing reductions (CSR) offered through Covered California; and Medi-Cal Access Program for pregnant women. The MAGI methodology does not consider assets or resources other than income. DHCS published guidance that indicates what is counted as income for purposes of MAGI Medi-Cal and for APTC and CSRs in Covered California.

If an individual does not qualify for Medi-Cal under the MAGI rules, the individual may nevertheless qualify for Medi-Cal because they are aged, blind, or disabled, a foster child or a former foster child, a refugee, or someone seeking care for a particular medical condition that is covered under a limited scope program. These programs are known collectively as “Non-MAGI Medi-Cal” and they have their own income rules, and, in some cases, no income limitations at all (such as former foster youth). Most non-MAGI programs that count income still have limits on what resources an individual may have besides income to qualify for Medi-Cal (often referred to as an “asset test”). However, the rules vary by the particular non-MAGI Medi-Cal program. For example, the Medicare Savings Programs have a countable resource limit of $4,000 for an individual and $6,000 for a married couple, while the 250% Working Disabled Program has a resource limit of $2,000 for an individual and $3,000 for a couple.

3) **Medi-Cal eligibility and 529 plans.** A 529 plan is an investment account that offers tax-free earnings growth and tax-free withdrawals when the funds are used to pay for qualified education expenses. This bill affects both MAGI and non-MAGI determinations of Medi-Cal eligibility.

The first part of this bill excludes the principal and interest of a 529 savings plan from consideration for any non-MAGI Medi-Cal eligibility-related asset or resources test. Currently, DHCS indicates the principal and interest of a 529 account are included in the non-MAGI Medi-Cal eligibility determination for both account owners (those who set up the account) and account beneficiaries (those who the funds are being saved for). For non-MAGI
Medi-Cal eligibility, principal is counted as property, and interest is counted as irregular income for Medi-Cal eligibility if it exceeds $60. For MAGI Medi-Cal eligibility, DHCS indicates 529 college savings accounts are already not countable income to account holders or beneficiaries so long as the funds are used for educational expenses and there is no asset test for MAGI, so this provision in effect codifies current practice for Medi-Cal MAGI eligibility determinations.

The second part of this bill excludes the qualified distributions from a 529 savings account from any income test to determine eligibility for Medi-Cal benefits for an applicant or beneficiary. This provision applies to both MAGI and non-MAGI Medi-Cal eligibility determinations.

DHCS indicates qualified distributions from a 529 plan are already not considered income for MAGI Medi-Cal. For non-MAGI Medi-Cal, DHCS indicates in some circumstances qualified distributions from a 529 plan are considered income. For example, if the designated beneficiary uses any portion of the qualified distribution from a 529 for a purpose other than for his or her educational expenses, or no longer intends to use the funds for educational expenses, the funds are considered income in the month the funds are used, or in the month the individual no longer intends to use the funds for educational expenses.

4) **Prior legislation.** AB X1 1 (Perez, Chapter 3, Statutes of 2013-14 First Extraordinary Session) implemented specified Medicaid provisions of the ACA, including the expansion of federal Medicaid coverage to low-income adults with incomes between 0 to 138% of the FPL. AB X1 1 also implemented a number of the Medicaid ACA provisions to simplify the eligibility, enrollment and renewal processes for Medi-Cal, including provisions requiring the use of MAGI.

5) **Support.** This bill is supported by consumer and legal aid groups who advocate on behalf of Medi-Cal beneficiaries. The East Bay Community Law Center (EBCLC) writes in support that asset limits present a serious barrier to savings for families who rely on public assistance. Existing law prohibits an assets or resources test for individuals whose income eligibility is determined based on MAGI. However, non-MAGI-based applicants are subject to these tests to qualify for Medi-Cal. By removing 529 accounts from determining Medi-Cal eligibility, families can prioritize higher education without having to compromise vital social safety-net programs. Further, families who opened a 529 savings account and find themselves unemployed or face a change in their income should have access to social safety-net programs, such as Medi-Cal, in a time of financial hardship.

EBCLC writes that low-income parents and grandparents who understand the importance of attending higher education and want to secure a financial future for their children and grandchildren should not have to risk access to Medi-Cal. Saving for higher education has shown to increase access and encourage more students to attend and graduate. Studies have shown that children with college savings of less than $500 are three times more likely to enroll in higher education and four times more likely to graduate from college. EBCLC writes that the state needs to continue to encourage low income families to save for the future and remove any barriers or disincentives that keep them from doing so, and this bill is a necessary step to ensure California does its part to prevent asset limits from creating a barrier to savings for low-income families.
SUPPORT AND OPPOSITION:
Support: American Academy of Pediatrics, California
  American Federation of State, County, and Municipal Employees
  Asian Law Alliance
  California Advocates for Nursing Home Reform
  California Asset Building Coalition
  California Catholic Conference
  California Federation of Teachers
  California Health+ Advocates
  California Rural Legal Assistance Foundation
  California School Employees Association
  City and County of San Francisco Treasurer José Cisneros
  Congress of California Seniors
  County Welfare Directors Association
  Disability Rights California
  EARN
  East Bay Community Law Center
  Health Access California
  National Association of Social Workers, California Chapter
  National Health Law Program
  Opportunity Fund
  San Francisco Office of Financial Empowerment
  United Ways of California
  Western Center on Law & Poverty

Oppose: None received

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