

Senate Bill No. 483

CHAPTER 379

An act to amend Sections 14005, 14015, and 14018 of, to amend and renumber Section 14002 of, and to add Sections 14006.01, 14006.15, 14006.41, 14009.6, 14009.7, 14015.1, and 14015.2 to, the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor September 27, 2008. Filed with
Secretary of State September 27, 2008.]

LEGISLATIVE COUNSEL'S DIGEST

SB 483, Kuehl. Medi-Cal: home and facility care.

Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services, and which provides health care services to qualified low-income recipients. Existing law establishes various criteria for eligibility for Medi-Cal benefits. The Medi-Cal program is partially governed and funded by federal Medicaid provisions.

Under existing law, Medi-Cal benefits include nursing facility services and home- and community-based services.

This bill would, to the extent required by federal law, require any applicant for, or recipient of, Medi-Cal benefits who requests medical assistance for home and facility care, as defined, to meet the specific eligibility requirements for the receipt of medical assistance for home and facility care set forth in these provisions.

The bill would require an individual, as a condition of eligibility for medical assistance for home and facility care, to disclose a description of any interest that the individual or his or her spouse has in an annuity, as specified. The bill would also require the state, as an operation of law, to become a remainder beneficiary of certain annuities, as described, unless the individual notifies the state in writing that he or she prohibits the state from becoming a remainder beneficiary, as provided, and would require the department to inform an individual and his or her spouse of this fact at the time of the individual's application or redetermination of Medi-Cal eligibility. The bill would also require that before any penalties, as provided for in the bill, are imposed that may result in a period of ineligibility for medical assistance for home and facility care, an individual shall have the right to demonstrate that a period of ineligibility would be an undue hardship, as defined. It would require the state to provide notice to individuals requesting medical assistance for home and facility care of the undue hardship exception and would require a determination of whether an undue hardship exists to be made before an applicant is denied eligibility for medical assistance for home and facility care. If an individual or his or her spouse notifies the state in writing that he or she prohibits the state from

becoming a remainder beneficiary to his or her annuity, the bill would require the annuity to be treated as a transfer of assets for less than fair market value for purposes of determining Medi-Cal eligibility.

This bill would express the intent of the Legislative that its provisions shall apply prospectively to any individual to whom the bill applies commencing from the date regulations adopted pursuant to this bill are filed with the Secretary of State.

The people of the State of California do enact as follows:

SECTION 1. Section 14002 of the Welfare and Institutions Code, as amended by Section 3 of Chapter 1024 of the Statutes of 1992, is amended and renumbered to read:

14002.5. For the purposes of this article, the following definitions shall apply:

(a) "Annuity" means a contract that names an annuitant and gives a person or entity the right to receive periodic payments of a fixed or variable sum for a described period of time, which may include a lump-sum payment or periodic payments upon the death of the annuitant.

(b) "Community spouse" means the spouse of an institutionalized spouse.

(c) "Home and facility care" means the following services that are subject to Medi-Cal reimbursement:

(1) Nursing facility care services.

(2) A level of care in any institution equivalent to that of nursing facility care services.

(3) Home- or community-based care services furnished under a waiver granted pursuant to subsection (c) or (d) of Section 1396n of Title 42 of the United States Code.

(d) "Institutionalized spouse" means any individual to whom all of the following apply:

(1) The individual is in a medical institution or nursing facility or is a person who is receiving institutional or noninstitutional services from an organization with a frail elderly demonstration project waiver pursuant to Chapter 8.75 (commencing with Section 14590), and is likely to meet that requirement for at least 30 consecutive days.

(2) The individual is married to a spouse who is not in a medical institution or nursing facility, or to a spouse who is not receiving services from any organization with a frail elderly demonstration project waiver pursuant to Chapter 8.75 (commencing with Section 14590).

(3) Except for purposes of Sections 14005.7, 14005.12, 14005.16, and 14005.17, an individual who is admitted to a medical institution or nursing facility on or after September 30, 1989, and who applies for Medi-Cal benefits on or after January 1, 1990, or a Medi-Cal recipient who is admitted to a medical institution or nursing facility on or after January 1, 1990.

(e) "Medical institution" has the same meaning as defined in Section 435.1010 of Title 42 of the Code of Federal Regulations.

(f) “Nursing facility” has the same meaning as defined in Section 1250 of the Health and Safety Code.

SEC. 2. Section 14005 of the Welfare and Institutions Code is amended to read:

14005. (a) The health care benefits and services specified in this chapter, to the extent that such services are neither provided under any other federal or state law nor provided nor available under other contractual or legal entitlements of the person, shall be provided under this chapter to any person who is a resident of this state and is made eligible by the provisions of this article. It is the intent of the Legislature that a provider shall look to such other contractual or legal entitlements for payment before submitting a bill for payment under this chapter.

(b) Any applicant for, or recipient of, Medi-Cal benefits who requests medical assistance for home and facility care shall meet the specific eligibility requirements for the receipt of medical assistance for home and facility care set forth in this chapter.

(c) This section shall be implemented pursuant to the requirements of Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.), and any regulations adopted pursuant to that act, and only to the extent that federal financial participation is available.

(d) To the extent that regulations are necessary to implement this section, the department shall promulgate regulations using the nonemergency regulatory process described in Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of the Government Code.

(e) It is the intent of the Legislature that the provisions of this section shall apply prospectively to any individual to whom the act applies commencing from the date regulations adopted pursuant to this act are filed with the Secretary of State.

SEC. 3. Section 14006.01 is added to the Welfare and Institutions Code, to read:

14006.01. (a) This section applies to any individual who is residing in a continuing care retirement community, as defined in paragraph (11) of subdivision (c) of Section 1771 of the Health and Safety Code, pursuant to a continuing care contract, as defined in paragraph (8) of subdivision (c) of Section 1771 of the Health and Safety Code, or pursuant to a life care contract, as defined in subdivision (l) of Section 1771 of the Health and Safety Code, that collects an entrance fee from its residents upon admission.

(b) In determining an individual’s eligibility for Medi-Cal benefits, the individual’s entrance fee shall be considered a resource available to the individual if all of the following apply:

(1) The individual has the ability to use the entrance fee, or the contract provides that the entrance fee may be used, to pay for care if other resources or income of the individual are insufficient to pay for care.

(2) The individual is eligible for a refund of any remaining entrance fee when he or she dies or terminates his or her contract with, and leaves, the continuing care retirement community.

(3) The entrance fee does not confer an ownership interest in the continuing care retirement community.

(c) This section shall be implemented pursuant to the requirements of Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.), and any regulations adopted pursuant to that act, and only to the extent required by federal law, and only to the extent that federal financial participation is available.

(d) To the extent that regulations are necessary to implement this section, the department shall promulgate regulations using the nonemergency regulatory process described in Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of the Government Code.

(e) It is the intent of the Legislature that the provisions of this section shall apply prospectively to any individual to whom the act applies commencing from the date regulations adopted pursuant to this act are filed with the Secretary of State.

SEC. 4. Section 14006.15 is added to the Welfare and Institutions Code, to read:

14006.15. (a) For the purposes of this section, “equity interest” means the lesser of the following:

(1) The assessed value of the principal residence determined under the most recent tax assessment, less any encumbrances of record.

(2) The appraised value of the principal residence determined by a qualified real estate appraiser who has been retained by the applicant or beneficiary, less any encumbrances of record.

(b) Notwithstanding subdivisions (b) and (c) of Section 14006, and except as provided in subdivision (c), an individual is not eligible for medical assistance for home and facility care if his or her equity interest in the principal residence exceeds seven hundred fifty thousand dollars (\$750,000). No later than December 31, 2011, and each year thereafter, this amount shall be increased based on the percentage increase in the consumer price index for all urban consumers (all items, United States city average), rounded to the nearest one thousand dollars (\$1,000).

(c) This section does not apply to an individual if any of the following circumstances exist:

(1) The spouse of the individual or the individual’s child, who is under 21 years of age, or who is blind or who is disabled, as defined in paragraph (3) of subsection (a) of Section 1382c of Title 42 of the United States Code, is lawfully residing in the individual’s home.

(2) The individual was determined eligible for medical assistance for home and facility care based on an application filed before January 1, 2006.

(3) The department determines that ineligibility for medical assistance for home and facility care would result in demonstrated hardship on the individual. For purposes of this section, demonstrated hardship shall include, but need not be limited to, any of the following circumstances:

(A) The individual was receiving home and facility care prior to January 1, 2006.

(B) The individual has been determined to be eligible for medical assistance for home and facility care based on an application filed on or after January 1, 2006, and before the date that regulations adopted pursuant to this section are certified with the Secretary of State.

(C) The individual purchased and received benefits under a long-term care insurance policy certified by the department's California Partnership for Long-Term Care Program, established by Division 12 (commencing with Section 22000).

(D) The individual's equity interest in the principal residence exceeds the equity interest limit as provided in subdivision (b), but would not exceed the equity interest limit under that subdivision if it had been increased by using the quarterly House Price Index (HPI) for California, published by the Office of Federal Housing Enterprise Oversight (OFHEO).

(E) The applicant or beneficiary has been denied a home equity loan by at least three lending institutions, or is ineligible for any one Federal Housing Administration (FHA) approved loan or reverse mortgage.

(F) The applicant or beneficiary, with good cause, is unable to provide verification of the equity value.

(G) The applicant or beneficiary meets the criteria set forth in subdivision (b) of Section 14015.1.

(d) To the extent that federal financial participation is unavailable to cover the costs associated with subparagraph (C) of paragraph (3) of subdivision (c), state general funds shall be used.

(e) This section shall be implemented pursuant to the requirements of Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.) and any regulations adopted pursuant to that act, and except for subparagraph (C) of paragraph (3) of subdivision (c), and subdivision (d), only to the extent that federal financial participation is available.

(f) To the extent that regulations are necessary to implement this section, the department shall promulgate regulations using the nonemergency regulatory process described in Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of the Government Code.

(g) It is the intent of the Legislature that the provisions of this section shall apply prospectively to any individual to whom the act applies commencing from the date regulations adopted pursuant to this act are filed with the Secretary of State.

SEC. 5. Section 14006.41 is added to the Welfare and Institutions Code, to read:

14006.41. (a) To be eligible for medical assistance for home and facility care, an individual shall disclose at the time of the individual's application or redetermination a description of any interest that he or she or his or her spouse has in an annuity, which is known to the individual or his or her spouse, regardless of whether the annuity is irrevocable or is treated as income or as a resource.

(b) At the time of the individual's application or redetermination, the department shall inform the individual and his or her spouse that, by virtue of its provision of medical assistance for home and facility care to the

individual, the state will, by operation of law, become a remainder beneficiary of certain annuities, as described in Section 14009.6.

(c) This section shall be implemented pursuant to the requirements of Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.) and any regulations adopted pursuant to that act, and only to the extent that federal financial participation is available.

(d) To the extent that regulations are necessary to implement this section, the department shall promulgate regulations using the nonemergency regulatory process described in Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of the Government Code.

(e) It is the intent of the Legislature that the provisions of this section shall apply prospectively to any individual to whom the act applies commencing from the date regulations adopted pursuant to this act are filed with the Secretary of State.

SEC. 6. Section 14009.6 is added to the Welfare and Institutions Code, to read:

14009.6. (a) As a result of providing medical assistance for home and facility care to an individual, the state shall, by operation of law, become a remainder beneficiary, to the extent required by Section 1917(e) of the federal Social Security Act (42 U.S.C. Sec. 1396p(e)), of annuities purchased in whole or in part by the individual or his or her spouse in which the individual or his or her spouse is an annuitant, except as provided in Section 14009.7, unless the individual or his or her spouse notifies the department in writing that he or she prohibits the state from acquiring a remainder interest in his or her annuity, in which case subdivision (d) shall apply.

(b) This section shall only apply to the following annuities:

(1) Those purchased on or after February 8, 2006.

(2) Those purchased before February 8, 2006, and subjected to a transaction that occurred on or after February 8, 2006.

(A) For the purposes of this paragraph, “transaction” includes, but is not limited to, any action taken by the individual or his or her spouse that changes the course of payments to be made by the annuity or the treatment of the income or principal of the annuity.

(B) For the purpose of this paragraph, “transaction” shall not include any of the following:

(i) Routine changes and automatic events that do not require any action or decision on or after February 8, 2006.

(ii) Changes that occur based on the terms of the annuity that existed prior to February 8, 2006, and that do not require a decision, election, or action to take effect.

(iii) Changes that are beyond the control of the individual or the individual’s spouse.

(c) Any provision in any annuity subject to this section that has the effect of restricting the right of the state to become a remainder beneficiary is void.

(d) If an individual or his or her spouse notifies the department in writing that he or she prohibits the state from acquiring a remainder interest in his

or her annuity, the purchase of the annuity shall be treated as the transfer of an asset for less than fair market value that is subject to Section 14015.

(e) (1) When the state becomes aware of an annuity in which it has acquired a remainder interest, the department shall notify the issuer of the annuity of the state's acquisition of its remainder beneficiary interest.

(2) The issuer of the annuity shall, upon notification by the department, immediately inform the department of the amount of income and principal being withdrawn from the annuity as of the date of the individual's disclosure of the annuity.

(3) The issuer of the annuity shall, upon request by the department or any agent of the department, immediately disclose to the department the amount of income and principal being withdrawn from the annuity.

(4) The issuer of the annuity shall immediately notify the department if there is any change in either of the following:

(A) The amount of income or principal being withdrawn from that annuity.

(B) The named beneficiaries of the annuity.

(f) Any moneys received by the state pursuant to this section shall be deposited into the General Fund.

(g) This section shall be implemented pursuant to the requirements of Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.) and any regulations adopted pursuant to that act, and only to the extent that federal financial participation is available.

(h) To the extent that regulations are necessary to implement this section, the department shall promulgate regulations using the nonemergency regulatory process described in Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of the Government Code.

(i) It is the intent of the Legislature that the provisions of this section shall apply prospectively to any individual to whom the act applies commencing from the date regulations adopted pursuant to this act are filed with the Secretary of State.

SEC. 7. Section 14009.7 is added to the Welfare and Institutions Code, to read:

14009.7. (a) If an annuity is considered part or all of the community spouse resource allowance allowed under subdivision (c) of Section 14006, the state shall only become a remainder beneficiary of that portion of the annuity that is not a part of that community spouse resource allowance.

(b) The state shall not become a remainder beneficiary of an annuity that is any of the following:

(1) Purchased by a community spouse with resources of the community spouse during the continuous period in which the individual is receiving medical assistance for home and facility care and after the month in which the individual is determined eligible for these benefits.

(2) Contained in a retirement plan qualified under Title 26 of the United States Code, established by an employer or an individual, including, but not limited to, an Individual Retirement Annuity or Account (IRA), Roth IRA, or Keogh fund.

(3) An annuity that is all of the following:

(A) The annuity is irrevocable and nonassignable.

(B) The annuity is actuarially sound.

(C) The annuity provides for payments in equal amounts during the term of the annuity, with no deferral and no balloon payments made from the annuity.

(c) The individual or the community spouse, or both, shall bear the burden of demonstrating that the requirements of this section that limit the state's right to become a remainder beneficiary, as described in Section 14009.6, are met.

(d) This section shall be implemented pursuant to the requirements of Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.) and any regulations adopted pursuant to that act, and only to the extent that federal financial participation is available.

(e) To the extent that regulations are necessary to implement this section, the department shall promulgate regulations using the nonemergency regulatory process described in Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of the Government Code.

(f) It is the intent of the Legislature that the provisions of this section shall apply prospectively to any individual to whom the act applies commencing from the date regulations adopted pursuant to this act are filed with the Secretary of State.

SEC. 8. Section 14015 of the Welfare and Institutions Code is amended to read:

14015. (a) (1) The providing of health care under this chapter shall not impose any limitation or restriction upon the person's right to sell, exchange or change the form of property holdings nor shall the care provided constitute any encumbrance on the holdings. However, the transfer or gift of assets, including income and resources, for less than fair market value shall, pursuant to the requirements of Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.) and any regulations adopted pursuant to that act, result in a period of ineligibility for medical assistance for home and facility care, which may include partial months of ineligibility, applied in accordance with federal law.

(2) Any items, including notes, loans, life estates, or annuities that are held and distributed in a manner that is not in conformity with the requirements of Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.) and regulations adopted pursuant to that act, shall be treated as a transferred asset and may result in a period of ineligibility as described in paragraph (1), as required by Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.) and any regulations adopted pursuant to that act.

(b) Pursuant to Section 1917 (c)(2)(C)(ii) of the federal Social Security Act (42 U.S.C. Sec. 1396p(c)(2)(C)(ii)), a satisfactory showing that assets transferred exclusively for a purpose other than to qualify for medical assistance shall not result in ineligibility for Medi-Cal and shall include, but not be limited to, the following:

(1) Assets that would have been considered exempt for purposes of establishing eligibility pursuant to federal or state laws at the time of transfer.

(2) Property with a net market value that, when the property is transferred, if included in the property reserve, would not result in ineligibility.

(3) Assets for which adequate consideration is received.

(4) Property upon which foreclosure or repossession was imminent at the time of transfer, provided there is no evidence of collusion.

(5) Assets transferred in return for an enforceable contract for life care that does not include complete medical care.

(6) Assets transferred without adequate consideration, provided that the applicant or beneficiary provides convincing evidence to overcome the presumption that the transfer was for the purpose of establishing eligibility or reducing the share of cost.

(c) In administering this section, it shall be presumed that assets transferred by the applicant or beneficiary prior to the look-back period established by the department preceding the date of initial application were not transferred to establish eligibility or reduce the share of cost. These assets shall not be considered in determining eligibility.

(d) Any item of durable medical equipment which is purchased for a recipient pursuant to this chapter exclusively with Medi-Cal program funds shall be returned to the department when the department determines that the item is no longer medically necessary for the recipient. Items of durable medical equipment shall include, but are not limited to, wheelchairs and special hospital beds.

(e) This section shall be implemented pursuant to the requirements of Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.) and any regulations adopted pursuant to that act, and only to the extent that federal financial participation is available.

(f) To the extent that regulations are necessary to implement this section, the department shall promulgate regulations using the nonemergency regulatory process described in Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of the Government Code.

(g) It is the intent of the Legislature that the provisions of this section shall apply prospectively to any individual to whom the act applies commencing from the date regulations adopted pursuant to this act are filed with the Secretary of State.

SEC. 9. Section 14015.1 is added to the Welfare and Institutions Code, to read:

14015.1. (a) The department shall consider, at initial application or redetermination, whether an undue hardship, as described in subdivision (b), exists prior to finding that an applicant or recipient is subject to a period of ineligibility for medical assistance for home and facility care pursuant to this article. No person shall be subject to a period of ineligibility for medical assistance for home and facility care at the time of the initial application or redetermination if the department determines that an undue hardship exists.

(b) An undue hardship shall be found to exist under any of the following circumstances:

(1) The individual has been determined eligible for medical assistance for home and facility care based on an application filed on or after January 1, 2006, and before the date that regulations adopted pursuant or relating to this section have been certified with the Secretary of State.

(2) The deprivation of medical assistance for home and facility care would cause an endangerment to the life or health of the individual.

(3) The denial of medical assistance for home and facility care would result in the eviction of the individual from a nursing home.

(4) The individual is otherwise eligible for the Medi-Cal program and unable to obtain home and facility care without Medi-Cal.

(5) The denial of medical assistance for home and facility care would cause the individual to be unable to remain at home or in the community and would hasten or cause the individual's entry into a medical or long-term care institution.

(6) The individual would be deprived of food, clothing, shelter, or other necessities of life.

(c) The department shall establish regulations, procedures, and forms that ensure all of the following:

(1) The department or county provides a notice of the undue hardship process, at the initial request and the annual redetermination, to any individual who requests medical assistance for home and facility care. The notice shall inform the individual that undue hardship shall be considered before a request for medical assistance for home and facility care is denied.

(2) A timely and simplified process is established to determine whether an undue hardship exists and an exception will be granted.

(3) If the issue of undue hardship is considered and found not to apply, the department shall provide the individual with a notice of action that states the reasons for the adverse determination. The notice of action shall specify how that adverse determination can be appealed. Upon the request of the applicant or beneficiary, or person acting on his or her behalf, undue hardship notices shall be provided to the home and facility care administrator in accordance with regulations promulgated by the department.

(d) This section shall be implemented pursuant to the requirements of Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.) and any regulations adopted pursuant to that act, and only to the extent that federal financial participation is available.

(e) To the extent that regulations are necessary to implement this section, the department shall promulgate regulations using the nonemergency regulatory process described in Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of the Government Code.

(f) It is the intent of the Legislature that the provisions of this section shall apply prospectively to any individual to whom the act applies commencing from the date regulations adopted pursuant to this act are filed with the Secretary of State.

SEC. 10. Section 14015.2 is added to the Welfare and Institutions Code, to read:

14015.2. (a) In accordance with Section 1917(c)(2)(D) of the federal Social Security Act (42 U.S.C. Sec. 1396p(c)(2)(D)), any of the following may request a fair hearing on the issue of undue hardship:

(1) An individual requesting or receiving medical assistance for home and facility care.

(2) A personal representative of an individual requesting or receiving medical assistance for home and facility care.

(3) The facility in which the individual requesting or receiving medical assistance for home and facility care is residing, with the consent of that individual or the personal representative of that individual.

(b) An individual with a pending undue hardship appeal who is subject to a period of ineligibility pursuant to this article shall receive medical assistance for home and facility care for a maximum of 30 bed-hold days.

(c) This section does not alter or limit the right of applicants or recipients to obtain a state hearing in accordance with Chapter 7 (commencing with Section 10950) of Part 2.

(d) This section shall be implemented pursuant to the requirements of Title XIX of the federal Social Security Act (42 U.S.C. 1396 et seq.), and any regulations adopted pursuant to that act, and only to the extent that federal financial participation is available.

(e) To the extent that regulations are necessary to implement this section, the department shall promulgate regulations using the nonemergency regulatory process described in Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of the Government Code.

(f) It is the intent of the Legislature that the provisions of this section shall apply prospectively to any individual to whom the act applies commencing from the date regulations adopted pursuant to this act are filed with the Secretary of State.

SEC. 11. Section 14018 of the Welfare and Institutions Code is amended to read:

14018. (a) (1) The Medi-Cal card shall be authorization for payment for health care services rendered, during and subsequent to the month of application of a person eligible under Section 14005.1, or a person eligible under Section 14005.4 or 14005.7 who is certified by the department.

(2) The Medi-Cal card shall be signed and dated in the space provided on the card by the beneficiary upon receipt of the card and prior to presentation of the card for any service. This paragraph shall not apply to either of the following:

(A) Persons 17 years of age and under.

(B) Persons in long-term care.

(b) Notwithstanding subdivision (a), any person with a Medi-Cal card who receives medical assistance for home and facility care may be ineligible for payment for periods of time, including partial months of ineligibility, as determined pursuant to Section 14015 and in accordance with Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.).

(c) This section shall be implemented pursuant to the requirements of Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.) and any regulations adopted pursuant to that act, and only to the extent that federal financial participation is available.

(d) To the extent that regulations are necessary to implement this section, the department shall promulgate regulations using the nonemergency regulatory process described in Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of the Government Code.

(e) It is the intent of the Legislature that the provisions of this section shall apply prospectively to any individual to whom the act applies commencing from the date regulations adopted pursuant to this act are filed with the Secretary of State.