California Budget Watch 2019 (Part 2 of 4): Compromise! Five Quick Insights into AB 74 – The Legislature's Budget Act of 2019

On June 13, using the Governor's May Revise as a starting point, the Assembly and Senate adopted AB 74, the Budget Act of 2019, and sent it to the Governor. This bill provides in detail the Legislature's compromise of the proposals from the Assembly, Senate, and the Governor. While this bill only provides the appropriation and not the full language of implementation, the proposed budget provides a great preview for what health reforms are in store for California. To better digest specifics of this budget compromise, we'll break this down into five insights.

1. ***The Budget Cycle is Not Yet Complete***

The first insight is that this is not at all a finalized budget. Even though the Legislature agreed on the budget numbers, there are still two actions left on the budget checklist.

First, the Governor must sign the budget bill. He has 12 days to sign, starting from June 15, when AB 74 was enrolled and sent to the Governor's desk. As of June 24, he has not done so.

More importantly, the Governor has significantly more power than simply a yes or no vote; he has line item veto power. According to Article IV, Section 10(e) of the California Constitution, the Governor may "reduce or eliminate one or more items of

appropriation while approving other portions of a bill." In doing so, Governor Newsom could easily take out various parts of the proposed budget. According to California's Department of Finance, "it is rare when a Governor does not exercise any veto action on the Budget Bill passed by the Legislature."[1] To override the line item vetoes, the Legislature would need to separately pass each line with a two-third vote from both houses. While the Legislature had veto proof majority in each house for the overall budget bill, this may change when considering a specific proposal.[2] That said, it would seem unlikely that the Governor would veto changes to his own health care proposals, which were covered in in part 1 of this series.

Second, the finalized budget still requires trailer bills, which contain language that implement the budget. This year, this could range from the redirection of health realignment funds to the implementation of the individual mandate. We'll take a look at those more closely when they are passed and signed into law.

2. ***Middle Class Premium Assistance Gains More Funding but Scope Narrows to 400-600% FPL***

As previously discussed, the Governor proposed an increased range and funding for individual market premium assistance and an individual mandate that would offset the costs of these subsidies. The Legislature approved the Governor's proposed subsidy levels and the individual mandate proposal with some significant changes.

Perhaps to address concerns over predicted individual penalty amounts and the level of subsidies needed, the Legislature increased funding for these subsidies by $450 million over three years, such that funding for premium assistance would be $428.7 million in 2019-20, $479.8 million in 2020-21, and $547.2

million in 2021-22.

However, the Legislature's distribution of such funds differed greatly from the Governor's proposal. Instead of applying the subsidies to individuals between 200-600% FPL as the Governor proposed, the Legislature narrowed the scope of the subsidies to assist those below 138% of FPL and 400-600% of FPL. Specifically, the Legislature designated only $10 million per year to subsidize individuals below 138% of the federal poverty line (FPL) to fully cover the cost of out-of-pocket premiums. The rest of the funding, according to the Conference Compromise, would be used to provide subsidies for individuals between 400 and 600% of the FPL, who are not covered at all by any state subsidies. The accompanying trailer bill, however, is still up for negotiation, so the Legislature may compromise with the Governor in the coming weeks for a different subsidy disbursement scheme.

3. ***Medi-Cal Expansion Increases Even Further to Include Seniors and More Optional Benefits***

The Governor sought to expand Medi-Cal to young adults ages 19-25, regardless of immigration status. The Legislature agreed to the $98 million appropriation. However, the final budget did not include the Senate's $62.5 million proposal to expand Medi-Cal to all seniors, regardless of immigration status.

Instead, the Legislature agreed to resolve another issue relating to Medi-Cal coverage of seniors: ending the "senior penalty."[3] The Legislature appropriated $124.9 million to expand Medi-Cal eligibility up to 138% of the FPL for the aged, blind, and disabled seniors, to match the federal 138% of FPL income limit for under-65 adults, set by the Affordable Care Act. This new appropriation for expansion of Medi-Cal

eligibility would bring parity to the income limit of seniors and under-65 adults, as well as make an estimated 20,000 seniors eligible for Medi-Cal.[4] The Governor did not include this in his proposal, so it would be interesting to see if he approves it.

Finally, the Legislature expanded significantly on the Governor's $33.4 million proposal to restore optical benefits in Medi-Cal. The Legislature appropriated $57.9 million over two years to restore not just optical but also audiology, incontinence creams and washes, podiatry, and speech therapy benefits.

4. ***Medi-Cal Reimbursement Sees Rate Increases and New Payment Model***

The Governor proposed $2.2 billion dollars to increase Medi-Cal provider rates for physicians, dentists, women's health, intermediate care facilities-developmental disabilities, HIV/AIDS Waiver providers, and home health providers. The Legislature approved the proposed funding for rate increases, but also detailed additional funding for certain services (see table below).

Type of Services	**Prop. 56 Funding Allocated for Medi-Cal Rates**
Stand-Alone Pediatric Subacute Facilities	$4 million
Community-Based Adult Services	$13.7 million

Non-Emergency Medical Transportation Providers	$5.6 million
Hospital-Based Pediatric Physician Services	$2 million

Additionally, the Legislature agreed with the Governor's proposal for a $544.2 million appropriation to create a Value-Based Payments Program in the Department of Health Care Services, which oversees Medi-Cal. Details are limited at the moment, but a trailer bill is in progress to hash out the details of this value-based reimbursement program.

However, one notable proposal that did not survive the Conference Committee was the Assembly's proposal to establish a new reimbursement methodology for hospitals outside of the diagnosis-related group (DRG) payment system to account for the costs of newly-approved high cost drugs. Not much more is known about this proposal, but had it survived, it may have been an interesting approach to tackle growing drug costs.

5. ***Attempts to Redirect Funding for Council on Health Care Delivery Systems and APCD Falter***

Aside from all the approved proposals, missing appropriations in this budget bill are also telling. Proposals from the budget process may represent shifting priorities or possible challenges to ongoing health reform efforts. This budget season, two restructuring proposals put two programs previously mandated by 2018's AB 1810 in jeopardy.

The first proposal involves restructuring of the Council on Health Care Delivery Systems. In 2018, AB 1810 required the state to "develop a plan that includes options for advancing progress toward achieving a health care delivery system in California that provides coverage and access through a unified financing system for all Californians" by October 1, 2021. This year, Governor Newsom had a different idea. He proposed that the $5 million allocated to the Council be redirected to a renamed committee called the Healthy California for All Commission and focus on developing a single-payer health care financing system. In doing so, the proposal would narrow the Council's original mandate. In the end, the Legislature did not include this change in their final budget and instead deferred it for later discussion.

The second proposal involves California's development of its APCD. AB 1810 granted the Office of Statewide Health Planning and Development (OSHPD) a one-time $60 million appropriation to build California's APCD, officially named Health Care Cost Transparency Database. As The Source previously discussed, California has always had a tough road to creating an APCD. The Senate, in its initial proposal, sought to revert $50 million of the $60 million, which would've made the future of the California's APCD quite grim, as limited funding would delay, perhaps indefinitely, the implementation of the APCD. Luckily, the Assembly resisted the proposal in conference and the APCD appropriation remained intact.

While neither restructuring proposal advanced, the lesson to take away here is that health reforms proposals that are formally passed, like the previously mandated Council on Health Care Delivery Systems and APCD, are still vulnerable to shifting legislative attitudes.

Conclusion

The budget process in California moves rather quickly, and the amount of details that are considered during that time is dizzying. In less than a month, each house of the Legislature builds up a comprehensive budget proposal either accepting or proposing alternatives to the Governor's May Budget Revise. In 18 days, the Conference Committee creates a budget proposal that both houses can agree to. Then, the Governor has 12 days to either line veto items or agree to the budget as a whole. That's a quick turnaround for a budget bill that authorizes $147.8 billion in total expenditures!

Out of that incredible budget process, health reform proposals are either brought to life or buried in paper, never to see the light of day. In part 2 of this year's budget watch, we provided five insights. First, despite all the agreements the Legislature made, the proposals are not definite until the Governor signs the budget and the trailer bills are finalized. Second, the Legislature agreed to the individual mandate proposal and increased funding to premium assistance but also narrowed the scope to individuals between 400-600% of the FPL. Third, the Legislature expanded the Governor's own Medi-Cal expansion to also include seniors, who were left behind in the ACA Medicaid expansion. Fourth, the budget made changes to Medi-Cal provider reimbursement rates and method. Lastly, unsuccessful attempts to restructure last year's health reforms illustrate how vulnerable health care reform can be.

As can be seen from these insights, California legislates health care reform not just through specific laws but also through the very brief budget cycle. Barring any new developments, next month we'll look at the Governor's approval of the budget and any vetoes he makes, as well as trailer bills to implement the budget. Stay tuned!

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[1]*Appropriations in General*, State of California | Department of Finance(2019), http://www.dof.ca.gov/budget/resources_for_departments/budget_analyst_guide/budget_act.html.

[2]That said, a fascinating Los Angeles Times article discussed how "[i]n most cases, the political math doesn't favor a veto override" due to the difficulty of creating a legislative super majority. John Myers, *Once California's governor vetoes a bill, lawmakers almost never challenge the decision*, Los Angeles Times (Sep. 30, 2018), https://www.latimes.com/politics/la-pol-ca-road-map-governor-veto-override-california-legislature-20180930-story.html.

[3]The "senior penalty" refers to the significant disparity between the Medi-Cal eligibility income limit for seniors and for adults under 65. Seniors are only eligible if their assets are less than $2,000, which is significantly lower than the income limit of 138% FPL for those below age 65. Even if individuals were Medi-Cal eligible when they were under 65, they would lose that eligibility when they turn 65. Because age is the only reason for the change in eligibility, this disparity is called the "senior penalty."

[4]*See* Scott Graves, *Proposed State Legislation Aims to End Medi-Cal's Senior Penalty*, California Budget & Policy Center(Apr. 3, 2018), https://calbudgetcenter.org/blog/proposed-state-legislation-aims-to-end-medi-cals-senior-penalty/.