Date: April 9, 2013

To: Monterey County Board of Supervisors

From: Laurie Johnson, Senior Legislative Advocate, JEA & Associates

Re: Affordable Care Act (ACA): Medi-Cal Expansion: State Implementation

MEMORANDUM

The Legislation

Last November, Governor Brown convened a "special session" to address the complex and timely implementation of the federal provisions of the ACA, most importantly, being the Medi-Cal expansion component.

Both houses of the Legislature introduced identical expansion bills. SB1x 1 (Hernandez) and AB1x 1 (Speaker Perez) – These bills, beginning in 2014, would eliminate many of the complex categorical groupings and limitations in the Med-Cal Program and provide eligibility to all non-disabled, non-pregnant citizens between the ages of 19-65 with a family income at or below 133% of federal poverty level.

Both of these bills have a wide array of support, from labor unions, to provider and patient advocacy groups. Because they are "special session" bills, both have moved quickly through their house of origin and have been referred to policy committees in the other house, where they will be held until the Administration and the Legislature come to an agreement on amendments. An agreement is not expected anytime soon, as the state is waiting on federal guidelines on calculating income under the Modified Adjusted Gross Income (MAGI), which is the new eligibility criterion under both SB1x 1 and AB1x 1, as well as the fact that there is no consensus between the Administration and Legislature on some of the expansion's fundamental policies.

The Administration and the Legislature

In the Governor's January budget, he proposed two expansion options for the Legislature to consider. The first is that the state assumes responsibility and child-care is realigned to the counties to backfill savings now that counties would have less indigent adult to care for under the expansion. The second is that the counties assume responsibility under the Low-Income Health Program (LIHP). From the beginning, health care advocates, the Legislature and the counties viewed the county-run option as unviable, and the state-option was the starting point of negotiations. Despite the Administration not acknowledging this contention and, as some believe, unwilling to move the process along, the Legislature has grown increasingly frustrated and tensions are beginning to intensify. These frustrations go beyond the handling of the state's attempt to undertake the ACA's massive overhaul, but lie in core principles, money and timing.

The Governor has submitted 65+ amendments to the expansion bills, and according to inside consultants, ten of those are fundamentally polar opposite of what the Legislature wants to do. These differences are rooted in the basic principle of coverage. Administrations in the past have structured any Medi-Cal expansion or increased benefit in a manner that made it difficult for beneficiaries to access and/or become eligible for. The practice of "churning" eligible beneficiaries off Medi-Cal is a means to control the cost of the ever-growing program and the ever-growing population that is now eligible to participate in. However, the Legislature is vocally opposed to this principle and any amendments that try to "muck up" a streamlined process. Both Houses view the ACA Medi-Cal expansion as a "once in a lifetime" opportunity to achieve true coverage and health care parity for millions of Californians.

The other huge divide comes down to money. The Department of Health Care Services (DHCS) released its fiscal assumptions for the expansion, claiming that, despite the fact that the federal government is paying total share of cost for the first three years; the cost to the state would exceed $1.5 billion for years 2014-2017. In an Assembly Health Committee informational hearing in mid-March, the chair and committee members strongly disagreed with their figures, and chastised the Director of DHCS, Toby Douglas, for the Administration's lack of transparency and proper budgeting. Another fiscal issue of contention between the Administration and the Legislature is how to handle the financials of the expansion, and in particular, the fate of the realignment dollars to counties. The Administration wants the appropriation language in the legislation, as well as the counties realignment funds used to serve the medically-indigent adult (MIA) population to go back to the state because it is assumed that they are now covered under the expansion. Whereas the Legislature wants to move the expansion bills along without any money tied to them, and deal with the funding issues in the budget, where they would have more leverage. The Legislature is not "sold" on sending the realignment dollars back to the state, nor are they supportive of counties assuming programmatic responsibility of a program in lieu of those dollars. This disagreement lends itself to their last divide…timing. The Administration, for unknown reasons, does not see the urgency of moving this legislation through and allowing the necessary "ramping up" process to be online by January 1, 2014. The Legislature and many insiders are accusing the Administration of stalling and fragmenting the process in order to force the Legislature and stakeholders to capitulate to their demands. While negotiations are occurring between both sides, it is clearly evident that agreements between both sides will be hard-won and arduous.

The Counties

While the California State Association of Counties (CSAC) is supporting both expansion bills, they have not taken a formal position on the State vs. County options. At a Board meeting in late-February, Executive Dir. Matt Cate opened up the discussion by informing the Board that the ACA issue would not be voted on that day, but was an informational item only. Mr. Cate said that there needed to be further discussion to really outline the issues of the Governor's two proposals for Medi-Cal expansion before CSAC takes a formal position and begins negotiations with the Administration and Legislature. While CSAC staff and the board members that spoke all agreed that both plans are not ideal and risky, members clearly leaned towards the "State Option" without agreeing to assume programmatic responsibility for child care services or some other state-ran health/social services program in lieu of paying back realignment funds. Mr. Cate also acknowledged that 53 counties are favorable of that option as well. Since then, CSAC has prepared a comprehensive analysis of both options and have presented this to the Administration as a starting point for meaningful negotiations. According to CSAC staff, previous meetings with the Administration on the issue have been tense at best. CSAC convened an emergency Board meeting on March 28th to adopt principles pertaining to the Medi-Cal expansion, which are the following:

- The Medi-Cal optional expansion should happen on January 1, 2014, and counties are committed to working with the Administration, Legislature and other stakeholders to meeting this goal.

- The proposal for a county option is not viable for the statewide Medi-Cal expansion. Because of variant readiness levels across counties, the county option would prevent California from implementing the expansion in January 2014.

- The Governor's proposal for a state option provides the best framework for expanding Medi-Cal by January 2014. However, the programmatic realignment aspect of the proposal is problematic for a number of reasons outlined in the following more specific principles.

  Specifically, future conversations about appropriate use of 1991 realignment savings associated with the Medi-Cal optional expansion must ensure continuity of health services and address long-term sustainability for both the counties and the state.

- Counties must retain sufficient health realignment funds to be able to fulfill residual responsibilities (such as serving the remaining uninsured and public health services). Because counties have different delivery systems, some counties may experience savings prior to 2017, but determining potential savings statewide without jeopardizing delivery systems remains a challenge.

- When considering redirection of savings, consideration should be given to reinvesting those savings in local health, public health, and behavioral health systems that are preventive in nature. Reinvestment in health care provides opportunities to decrease health care costs and support sustainability.

- A key priority for counties is to manage the transition to Medi-Cal expansion within the constitutional protections associated with mandates. Counties oppose the realignment of programs without revenue protections and protections on future costs associated with state and federal law changes.

- State and county fiscal impacts associated with the Medi-Cal expansion and continued health service responsibilities must be identified on an ongoing basis to inform future decisions regarding shared financial risks.

These principles were based off recommendations from staff and CSAC's Health and Human Services Committee that has been meeting weekly since January to discuss the state implementation of the ACA and its impact on the counties.

Legislative Analyst's Office

In an analysis released at the end of February, the Legislative Analyst's Office recommends the "State Option". Furthermore, the LAO suggests that the State and Counties enter into a MOE as a compromise rather than the Counties taking on new programmatic responsibility with no financial assurances. Essentially, the State and Counties would come to an agreement of either some realignment money going back to the State or reinvest it back in the local healthcare delivery systems (i.e., safety net, mental health, etc…). Additionally, the LAO estimates that fiscal savings to the state as a whole are likely to outweigh the cost of the expansion for at least a decade.