STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE ENROLLED BILL ANALYSIS

Date Amended:	**Chapter 157**	Bill No:	**AB 1422**
Tax:	**Insurance Tax**	Author:	**Bass**
Related Bills:			

This analysis will only address the bill's provisions which impact the State Board of Equalization (Board).

BILL SUMMARY

This bill would subject Medi-Cal managed care plans to the insurance gross premiums tax at a rate of 2.35 percent of their total operating revenues, until December 31, 2010.

CURRENT LAW

Section 12201 of the Revenue and Taxation Code (Section) imposes an annual tax on all insurers doing business in this state. For insurers other than title insurers and ocean marine insurers, Section 12221 specifies that the basis of the annual tax is gross premiums, less return premiums, received by the insurer on business done in this state. For insurers transacting title insurance, Section 12231 specifies that the basis of the annual tax is all income from business done in this state except interest and dividends, rents from real property, profits from the sale of investments, and income from investments. For insurers transacting ocean marine insurance, Section 12101 provides that the annual tax is measured by that proportion of the underwriting profit of the insurer from the ocean marine insurance written in the United States, which the gross premiums from ocean marine insurance written in this state bear to the gross premiums from ocean marine insurance written within the United States, at the rate of 5 percent.

Section 12202 sets the current rate of the annual tax at 2.35 percent, except for specified premiums that are taxed at 0.50 percent. Under Section 12204, the tax imposed on insurers is in lieu of all other state, county, and municipal taxes and licenses, including income taxes, with specified exceptions.

The definition of insurer does not expressly include health care service plan providers, who are covered under the Knox-Keene Health Care Service Plan Act. The Department of Managed Heath Care (DMHC) is responsible for administration of the Knox-Keene Act under which health care plan providers (including all HMOs and some PPOs) are subject to California's general tax on corporations. Unless otherwise provided by law, corporations doing business or incorporated in California must pay a franchise tax equal to the greater of the minimum of $800 or an amount measured by net income multiplied by the current tax rate, which is 8.84%.

PROPOSED LAW

This bill would amend Section 12201 to impose the insurance gross premiums tax upon a Medi-Cal managed care plan doing business in this state at a rate of 2.35 percent, until December 31, 2010. The revenues derived from the imposition of the tax on Medi-Cal managed care plans would be continuously appropriated as follows:

- To the State Department of Health Care Services (DHCS) for purposes of the Medi-Cal program in an amount equal to 38.41 percent of the total revenues derived from the imposition of the tax on Medi-Cal managed care plans.
- To the Managed Risk Medical Insurance Board for purposes of the Healthy Families Program in an amount equal to 61.59 percent of the total revenues derived from the imposition of the tax on Medi-Cal managed care plans.

Article 4 (commencing with Section 12240), which this bill would add to Chapter 3 of Part 7 of Division 2 of the Revenue and Taxation Code, would provide that the basis of the tax in the case of a Medi-Cal managed care plan would be "total operating revenues," which would be defined to mean all amounts received by a Medi-Cal managed care plan in premium or capitation payments for the coverage or provision of all health care services, including, but not limited to, Medi-Cal services. Total operating revenues would not include amounts received by a Medi-Cal managed care plan pursuant to a subcontract with a Medi-Cal managed care plan to provide health care services to Medi-Cal beneficiaries.

This bill would add Section 12009 to the Revenue and Taxation Code to define "Medi-Cal managed care plan" to mean any individual, organization, or entity, other than an insurer or a dental managed care plan, that enters into a contract with the DHCS, as described.

This bill would also amend Section 12204 to provide that the in lieu provisions currently afforded to insurers for all other taxes and licenses would not apply to a Medi-Cal managed care plan. Accordingly, Medi-Cal managed care plans would continue to be subject to other state, county, and municipal taxes and licenses, as applicable.

This measure will have no force or effect if any of the following applies:

- There is a final judicial determination or a final determination by the administrator of the federal Centers for Medicare and Medicaid Services, that federal financial participation is not available with respect to any payment made under the methodology implemented pursuant to this bill.
- The revenues derived from the imposition of the gross premiums tax on Medi-Cal managed care plans are diverted in whole, or in part, from the Medi-Cal program or the Healthy Families Program.
- There is a final judicial determination that the tax imposed pursuant to this bill on Medi-Cal managed care plans is required to be in lieu of all other taxes as described in Section 12204 of the Revenue and Taxation Code.

Furthermore, the bill states that, if there is a delay for any reason in the implementation of Section 14301.11, which this bill would add to the Welfare and Institutions Code to require the DOI to use the revenues generated pursuant to the imposition of the gross premiums tax on a Medi-Cal health care plan as specified, in the 2009-10 rate year or in any other rate year, both of the following shall apply:

- A Medi-Cal managed care plan subject to the tax imposed by this bill shall be assessed the amount the plan will be required to pay, but shall not be required to pay the tax until the DHCS meets all of its required obligations.
- DHCS may retroactively increase rates and make payments to plans.

This bill would become effective immediately as an urgency statute.

BACKGROUND

Medi-Cal is California's Medicaid program. The DHCS's website describes Medi-Cal as a public health insurance program which provides needed health care services for low-income individuals including families with children, seniors, persons with disabilities, foster care, pregnant women, and low income people with specific diseases such as tuberculosis, breast cancer, or HIV/AIDS. Medi-Cal is financed equally by the State and federal government.

Medi-Cal provides health care through either fee-for-service (FFS) or managed care. Approximately half of all Medi-Cal beneficiaries are enrolled in managed care plans, which have networks of providers, including doctors, pharmacies, clinics, labs, and hospitals. Health care plans that operate under the regulation of the DMHC, which are generally prepaid health plans that are health maintenance organizations and some preferred provider organizations, are legally not considered to be in the business of insurance and not subject to regulation under the Insurance Code, pursuant to court rulings dating back to the 1940s and the provisions of the Knox-Keene Health Care Service Plan Act of 1975 (Knox-Keene).

IN GENERAL

According to the Assembly Floor Analysis, "The Healthy Families Program (HFP) is California's version of the federal Children's Health Insurance Program and provides health, dental and vision coverage to children in families with incomes between 100-250% of the federal poverty level who are not eligible for Medi-Cal and do not have private insurance. California receives a 2:1 federal match for every dollar spent on HFP. As of August 1, 2009, there were approximately 920,000 children enrolled in HFP.

"HFP currently has a $194 million General Fund shortfall resulting from budget-related cutbacks and has been closed to all new enrollments since July of this year. As of August 25, 2009, there were 70,788 children on the HFP waiting list. Without additional funding, MRMIB [Managed Risk Medical Insurance Board] had scheduled to begin disenrolling nearly 700,000 children in October 2009."

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the author and is intended to establish a funding mechanism that will avoid the disenrollment of 670,000 low-income children from Healthy Families Program and will address and eliminate the current Healthy Families Program waiting list through 2010.

2. **The Board staff does not foresee any administrative problems with this bill.** The insurance tax is administered by three state agencies, the Board, the Department of Insurance (DOI), and the Controller. The Controller acts as a collector of the tax. The DOI is primarily responsible for licensing and regulating insurers under the Insurance Code. This includes assessing the amount of tax each insurer is required to pay. The Board is responsible for issuing the assessments provided by DOI and for deciding the validity of any petition for redetermination.

   Requiring Medi-Cal managed care plans to pay the gross premiums tax would not change the roles or responsibilities of the Board.

COST ESTIMATE

The Board's administrative costs related to this bill would be absorbable (i.e., under $10,000).

REVENUE ESTIMATE

Assessment of the gross premiums tax is the responsibility of the DOI. As such, no revenue estimate will be provided as this is outside the scope of the responsibility of the Board.

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