
THIRD READING

Bill No: AB 2134
Author: Akilah Weber (D) and Cristina Garcia (D), et al.
Amended: 8/24/22 in Senate
Vote: 21

SENATE HEALTH COMMITTEE: 8-1, 6/22/22
AYES: Pan, Eggman, Gonzalez, Leyva, Limón, Roth, Rubio, Wiener
NOES: Melendez
NO VOTE RECORDED: Grove, Hurtado

SENATE JUDICIARY COMMITTEE: 9-1, 6/28/22
AYES: Umberg, Caballero, Cortese, Durazo, Hertzberg, McGuire, Stern,
Wieckowski, Wiener
NOES: Jones
NO VOTE RECORDED: Borgeas

SENATE APPROPRIATIONS COMMITTEE: 5-2, 8/11/22
AYES: Portantino, Bradford, Laird, McGuire, Wieckowski
NOES: Bates, Jones

ASSEMBLY FLOOR: 53-19, 5/26/22 - See last page for vote

SUBJECT: Reproductive health care

SOURCE: Ricardo Lara, California Insurance Commissioner
ACCESS Reproductive Justice
Essential Access Health
NARAL Pro-Choice California
National Health Law Program
Planned Parenthood Affiliates of California

DIGEST: This bill establishes the California Reproductive Health Equity Fund, and specifies that its purpose is to provide grant funding to safety net providers of abortion and contraception services through the California Reproductive Health Equity Program (Program) and to ensure affordability of and access to abortion

and contraception to anyone who seeks care in California, regardless of their ability to pay. This bill requires health plans and health insurers that provide coverage to employees of a religious employer that does not include coverage and benefits for abortion and contraception to provide enrollees with information regarding that lack of coverage and that services are available through the Program.

Senate Floor Amendments of 8/24/22 clarify that reduced cost services are required to be provided under the Program, in addition to no-cost services.

ANALYSIS:

Existing law:

- 1) Establishes the Reproductive Privacy Act, which prohibits the state from denying or interfering with a woman's right to choose or obtain an abortion prior to viability of the fetus, or when the abortion is necessary to protect the life or health of the woman. [HSC §123460, et seq.]
- 2) Replaces the Office of Statewide Health Planning and Development with the Department of Health Care Access and Information (HCAI), and requires HCAI to conduct a number activities related to workforce development, health planning, and data collection and dissemination related to pharmaceutical prices and health care payments. [HSC §127000, et seq.]
- 3) Establishes the Department of Health Care Services (DHCS) to administer the Medi-Cal program, which provides comprehensive medical coverage to low-income persons, and the Family PACT program, which provides comprehensive clinical family planning services and sexually transmitted disease (STD) screening and treatment to low income persons. [WIC §14000, et seq., WIC §14132, et seq.]
- 4) Establishes the State-Only Family Planning Program to provide family planning services for men and women, including emergency and complication services directly related to the contraceptive method and follow-up, and consultation and referral services. [WIC §24007]
- 5) Establishes the Department of Managed Health Care (DMHC) to regulate health plans under the Knox-Keene Health Care Service Plan Act of 1975 (Knox-Keene Act) and the California Department of Insurance (CDI) to regulate health and other insurance. [HSC §1340, et seq. and INS §106, et seq.]

- 6) Requires health plans and health insurers, except for a specialized health plan contract or a specialized health insurance policy, to provide coverage for all of the following services and contraceptive methods for women: (a) all Food and Drug Administration (FDA) approved contraceptive drugs, devices, and other products for women, including all FDA-approved contraceptive drugs, devices, and products available over the counter, as prescribed by the enrollee's or insured's provider; (b) voluntary sterilization procedures; (c) patient education and counseling on contraception; and, (d) follow-up services related to the drugs, devices, products, and procedures, including, but not limited to, management of side effects, counseling for continued adherence, and device insertion and removal. [HSC §1367.25 and INS §10123.196]
- 7) Prohibits a health plan or disability insurer from imposing a deductible, coinsurance, copayment, or any other cost-sharing requirement on the coverage provided pursuant to 6) above, except in the case of a grandfathered health plan. Prohibits cost sharing from being imposed on Medi-Cal beneficiaries for family planning services. [HSC §1367.25, INS §10123.196, WIC 14134(a)(5)]
- 8) Permits a religious employer to request a health plan contract or disability insurance policy without coverage for FDA-approved contraceptive methods that are contrary to the religious employer's religious tenets, and requires a health plan contract or disability insurance policy to be provided without coverage for contraceptive methods, if requested. HSC §1367.25 and §10123.196]
- 9) Requires health plans and health insurers that cover hospital, medical, and surgical benefits to include a statement in a prominent location on any provider directory and in a conspicuous place in other forms as follows:

Some hospitals and other providers do not provide one or more of the following services that may be covered under your plan contract and that you or your family member might need: family planning; contraceptive services, including emergency contraception; sterilization, including tubal ligation at the time of labor and delivery; infertility treatments; or abortion. You should obtain more information before you enroll. Call your prospective doctor, medical group, independent practice association, or clinic, or call the health plan at (insert the health plan's membership services number or other appropriate number that individuals can call for assistance) to ensure that you can obtain the health care services that you need. [HSC §1363.02 and INS §10604.1]

This bill:

California Reproductive Health Equity Fund and Program

- 1) Establishes the California Reproductive Health Equity Fund (Fund), and specifies that the purpose of the fund is to provide grant funding to safety net providers of abortion and contraception services through the Program and to otherwise ensure affordability of and access to abortion and contraception to anyone who seeks care in California, regardless of their ability to pay for care. Requires the Fund to also be used to pay for the cost of administering the Program and for any other purpose authorized under this bill. Requires the level of expenditure by HCAI for administrative support of the Program to be subject to review and approval annually through the annual budget process. Permits HCAI to receive private donations to be deposited into the Fund. Continuously appropriates the money in the Fund to HCAI for the purposes of this bill and requires HCAI to manage the Fund prudently in accordance with the law.
- 2) Specifies that the purpose of the Program is to ensure abortion and contraception are affordable for and accessible to all patients, regardless of their ability to pay, and to provide financial support for safety net providers of these services to offset the costs of providing uncompensated care to patients with low incomes who would otherwise lack access to care.
- 3) Permits Medi-Cal providers to apply for a grant, and a continuation award after the initial grant, if they agree to provide abortion and contraception services in accordance with the following:
 - a) The abortion and contraception services provided are within the provider's scope of practice and licensure;
 - b) The provider agrees to be identified, in a manner determined by HCAI, as a participating provider in the Program. Prohibits an institutional provider from being required to identify any individual who is an abortion provider as a condition of a grant;
 - c) Requires the services, to the extent they are covered by Medi-Cal, to be provided at no cost, or a reduced cost, to an individual with a household income at or below 400% of the federal poverty level (FPL) who meets both of the following criteria: (i) is uninsured or has health care coverage that does not include both abortion and contraception; and, (ii) is not

otherwise eligible to receive both abortion and contraception at no cost through the Medi-Cal and Family PACT programs.

- 4) Requires an individual's self-declaration of income and source of health care coverage made to the provider at the time of service to be all that is required to determine whether the individual may be able to access no-cost or reduced-cost services pursuant to this bill.
- 5) Provides that this bill does not require a provider to accept additional patients if, in the reasonable professional judgment of the provider, accepting additional patients would endanger access to, or continuity of, care for existing patients.
- 6) Requires HCAI to work with DHCS to notify Medi-Cal enrolled providers of the availability of this funding, including any pertinent deadlines and other requirements.
- 7) Requires HCAI to develop an application form and begin accepting applications for grants by January 1, 2023. Requires an application for a grant, and any continuation award, to be made on the form developed by HCAI. Requires an application to include:
 - a) A justification of the amount of grant funds requested, including both of the following:
 - i) The cost of uncompensated abortion and contraceptive services the applicant provided to patients with household incomes at or below 400% FPL in the previous 12 months; and,
 - ii) The anticipated cost of uncompensated abortion and contraception services to be provided to patients with household incomes at or below 400% FPL in the upcoming 12 months; and,
 - b) Other pertinent information that HCAI requires.
- 8) Requires the cost of uncompensated abortion and contraception services to:
 - a) Be calculated based on the amount the provider would expect to receive for providing these services to a patient enrolled in the Medi-Cal program; and,
 - b) Include those services provided through prescription, including laboratory and pharmaceutical, as well as services that are the result of complications related to services, to the extent they would be covered by Medi-Cal.

- 9) Prohibits HCAI from requiring the submission of personal information about individuals receiving uncompensated abortion and contraception services as part of an application. Requires information to only include information in summary, statistical, or other forms that do not identify particular individuals. Exempts applications for grants and continuation awards from disclosure under the California Public Records Act.
- 10) Permits HCAI, within the limits of funds available, to award grants that best promote the purposes of the Program, taking into account:
 - a) The extent to which abortion and contraception services are needed locally;
 - b) The ability of the applicant to advance health equity; and,
 - c) The relative need of the applicant.
- 11) Requires HCAI to determine the amount of an award on the basis of the amount of funds requested. Requires an initial grant to be for a 12-month period, unless otherwise specified by HCAI. Requires the determination of a grant award to be made within 60 days of receipt of a completed application.
- 12) Requires decisions regarding continuation awards and the funding level of those awards to be made after consideration of factors that include the recipient's anticipated level of need and the availability of funds. Requires a continuation award to be for a 12-month period, unless otherwise specified by HCAI.
- 13) Requires awarded funds to be expended solely for the purpose for which they were awarded, in accordance with the approved application and budget, implementation guidance issued by HCAI, and the terms and conditions of the grant or continuation award.
- 14) Requires HCAI to consult with interested parties, including the DHCS, DMHC, CDI, abortion and contraception providers, consumer advocates, and other stakeholders it deems appropriate.
- 15) Requires HCAI to conduct an evaluation of the Program and report its findings to the Legislature by July 1, 2024, and on an annual basis no later than each July 1 thereafter, as specified. Permits HCAI to use funds in the Fund for the evaluation of the program.

Health care coverage provisions

- 16) Requires health plans and health insurers that provide coverage to the employees of a religious employer that does not include coverage and benefits for both abortion and contraception to provide, in writing upon initial enrollment and annually thereafter upon renewal, each enrollee with information regarding:
 - a) Abortion and contraception benefits or services that are not included in the enrollee's or health plan contract; and,
 - b) Abortion and contraception benefits or services that may be available at no cost through the Program, which is established under this bill at HCAI.
- 17) Requires the Department of Industrial Relations (DIR), beginning January 1, 2023, to post on its website information regarding abortion and contraception benefits that may be available at no cost through Program to employees whose employer-sponsored health coverage does not include coverage for both abortion and contraception.

Miscellaneous

- 18) Includes a severability clause, so that if any provision of this bill is held invalid, that invalidity does not affect other provisions that can be given effect without the invalid provision.
- 19) Makes a finding and declaration that this bill imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies and a finding that to protect confidential and personal medical information, it is necessary that grant applications be protected from public disclosure.

Comments

Author's statement. According to the author, this bill continues California's commitment to being a Reproductive Freedom State and a national leader in safeguarding and advancing reproductive freedom. This bill ensures that health care providers who provide abortions are fully compensated for their services. This bill is essential for ensuring that all people in California can access abortion care regardless of their insurance type and providers are supported. With the U.S. Supreme Court set to decide a case that could overturn *Roe v. Wade* later this year, it is critical that California has policy in place to meet this moment.

(NOTE: Please see policy committee analyses for more detailed background information.)

FISCAL EFFECT: Appropriation: Yes Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee:

- Unknown General Fund costs, potentially tens of millions of dollars, to provide the grant funding. By creating a continuously appropriated fund, the bill would make an appropriation.
- HCAI estimates state operations costs of approximately \$2 million General Fund over three years for a vendor to administer the program and \$37,530 - \$75,060 General Fund for staff to develop the contract and oversee the vendor.
- Minor and absorbable costs to DIR, DMHC and CDI.

SUPPORT: (Verified 8/11/22)

Ricardo Lara, California Insurance Commissioner (co-source)

ACCESS Reproductive Justice (co-source)

Essential Access Health (co-source)

NARAL Pro-Choice California (co-source)

National Health Law Program (co-source)

Planned Parenthood Affiliates of California (co-source)

Betty T. Yee, California State Controller

Rob Bonta, California Attorney General

ACLU California Action

American College of Obstetricians and Gynecologists District IX

American Nurses Association

California Academy of Family Physicians

California Latinas for Reproductive Justice

California Nurse-Midwives Association

California Nurses Association

California Women's Law Center

Citizens for Choice

City Of Los Angeles

Democratic Party of Contra Costa County

Having Our Say Coalition

Indivisible San Jose

LA Care Health Plan

National Association of Social Workers, California Chapter

Stronger Women United
Together We Will/Indivisible-Los Gatos
Training in Early Abortion for Comprehensive Healthcare

OPPOSITION: (Verified 8/11/22)

California Catholic Conference
Concerned Women for America Legislative Action Committee
Department of Finance
Fieldstead and Company
Right to Life League

ARGUMENTS IN SUPPORT: Planned Parenthood Affiliates of California (PPAC), co-sponsor of this bill, writes that despite insurance coverage for abortion services, a gap still exists for employees of religious employers and employees of self-funded plans which may exclude these benefits. And many Californians without employer-based coverage earn too much to qualify for Medi-Cal, but not enough to make coverage under Covered California an option. While those with no insurance must still pay out-of-pocket. In 2022, there have been over 500 abortion restrictions introduced across 41 states. Also this year, the U.S. Supreme Court will decide on a case that directly challenges the constitutional right to abortion established under *Roe v. Wade*. If the Court upholds Mississippi's abortion ban, thereby overturning *Roe*, people in over half of the states across the country, over 36 million women and other people who may become pregnant, will lose access to abortion. In fact, millions of Texans are already experiencing this lack of access. Since Texas' SB 8 went into effect last fall, Texans needing abortion have been denied. The ban in Texas disproportionately impacts Black, Brown, Indigenous and other people of color, people with low-income, people living in rural areas, and other historically marginalized communities who are most likely to be forced to continue pregnancies against their will, rather than be able to travel to already overburdened clinics in neighboring states, like Oklahoma, making matters worse. Oklahoma politicians have since introduced several extreme abortion bans. According to a report released by the Guttmacher Institute, if *Roe v. Wade* is overturned, as many legal and health experts now anticipate, 26 states are certain or likely to ban abortion almost immediately, increasing the number of out-of-state patients who would find their nearest abortion provider in California from 46,000 to 1.4 million, an increase of nearly 3,000%. As California prepares to see patients seeking abortion services and reproductive health care in our state, we must invest in the providers and organizations that are assisting in access and already providing that care. For those that cannot afford the out-of-pocket cost for services, providers often offer sliding-fee scales and charity care as an option. In 2019, Planned

Parenthood health centers in California provided about \$9 million of uncompensated care to patients. To support California's health care providers, this bill seeks to create the Program to provide financial support to safety net providers who offer reproductive and sexual health care services, specifically abortion and contraception, to people in California who are unable to pay out-of-pocket for services. PPAC is proud to offer reproductive health care to anyone who walks through the health centers doors. For providers to remain financially stable and available to Californians, particularly during a time when patients are forced to come to California, displaced by cruel restrictions in other states, the cost of uncompensated care must be addressed. With the support of state funded grants, California can continue to lead as a reproductive freedom state.

Ricardo Lara, California Insurance Commissioner, co-sponsor of this bill, writes that the issue of access to reproductive health and abortion services becomes even more urgent when discussing women of color. Women of color's access to abortion care is even more critical when considering the pervasive health disparities they face in comparison to white women. In nearly all aspects of reproductive health, women of color face poor health outcomes than white women, from maternal mortality rates to endometrial and cervical cancer. Additionally, women of color, particularly Black women, frequently have negative experiences in the health care system due to institutionalized racism and a history of control, coercion, and lack of bodily autonomy when it comes to their reproductive health and decision making. Health care providers and the system more broadly, must embrace a larger equity approach to reduce these disparities.

ARGUMENTS IN OPPOSITION: The California Catholic Conference (CCC) is opposed to abortion since it always takes the life of an innocent human being, with more than 132,000 lives lost each year in our state. Women deserve to be empowered with non-violent solutions to the challenges they face during pregnancy. However, this bill should also be rejected because it forces employers who object to abortion in conscience to pay yet another tax for abortion, beyond those paid into Medi-Cal and Family PACT. A majority of Americans oppose using tax dollars to pay for abortions. Furthermore, this bill compels speech from religious and non-religious employers by forcing them to advertise the options for abortion and contraception to their employees annually. The many employers who conscientiously object to abortion will have to advertise this very same moral violation against their most deeply held convictions. The right of conscience should not be abridged. There is no lack of access to abortion in California. The state already funds abortions through tax dollars, with over 400 facilities performing abortions, and abortions offered by nurse practitioners, nurse midwives, physician assistants, via telehealth, on college campuses, and through a

dozen sources by mail. CCC contends what California needs is equity for the choices of pregnant and parenting women as they pursue motherhood. California women face critical issues, including maternal mortality, infant mortality, lack of prenatal and postpartum care, housing, nutrition, transportation, childcare, immigration services, intimate partner violence, and unemployment. According to CCC, this bill further prejudices the choice of abortion over the choice of birth and parenting, serving to coerce marginalized, economically challenged women to have abortions they do not want.

ASSEMBLY FLOOR: 53-19, 5/26/22

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Bloom, Boerner

Horvath, Mia Bonta, Bryan, Calderon, Carrillo, Cervantes, Cooper, Daly, Mike Fong, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Gray, Haney, Holden, Irwin, Jones-Sawyer, Kalra, Lee, Levine, Low, Maienschein, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Petrie-Norris, Quirk, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Stone, Ting, Villapudua, Ward, Akilah Weber, Wicks, Wilson, Wood, Rendon

NOES: Bigelow, Chen, Cooley, Cunningham, Megan Dahle, Davies, Flora, Fong, Gallagher, Kiley, Lackey, Mathis, Nguyen, Patterson, Seyarto, Smith, Valladares, Voepel, Waldron

NO VOTE RECORDED: Berman, Choi, Grayson, Mayes, O'Donnell, Quirk-Silva

Prepared by: Melanie Moreno / HEALTH / (916) 651-4111

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**** END ****