

## CONCURRENCE IN SENATE AMENDMENTS

AB 2134 (Akilah Weber and Cristina Garcia)

As Amended August 24, 2022

Majority vote

**SUMMARY**

Establishes the California Abortion and Reproductive Equity (CARE Act), and the California Reproductive Health Equity Program (Program) within the Department of Health Care Access and Information (HCAI), to ensure abortion and contraception services are affordable for and accessible to all patients and to provide financial support for safety net providers of these services. Authorizes a Medi-Cal enrolled provider to apply for a grant, and a continuation award after the initial grant, to provide abortion and contraception at no cost **or reduced cost** to an individual with a household income at or below 400% of the federal poverty level who is uninsured or has health care coverage that does not include both abortion and contraception, and who is not eligible to receive both abortion and contraception at no cost through the Medi-Cal and Family Planning, Access, Care and Treatment programs. Requires a health care service plan (health plan) or health insurer that provides health coverage to employees of a religious employer that does not include coverage and benefits for both abortion and contraception to provide an enrollee or insured with written information that abortion and contraception benefits and services may be available at no cost through the Program. Requires the Department of Industrial Relations (DIR) to post information regarding benefits that may be available at no cost through the Program on its website. Adds a severability clause.

**Senate Amendments**

- 1) Clarify that specified covered services be provided at no cost or reduced cost to an eligible individual.
- 2) Specify that this bill's provisions do not alter the applicability of any other requirement of law.
- 3) Delete provisions requiring an employer to provide notice to its employees that abortion and contraception benefits or services are not included in the employee's health coverage or benefit plan and requiring an employer to report this information to DIR.

**COMMENTS**

According to the California Health Benefits Review Program, under the Reproductive Privacy Act, California law 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 medically necessary. The state defines viability as the point in a pregnancy when, in the good faith medical judgment of a physician, there is a reasonable likelihood that a fetus will survive outside the uterus without "extraordinary medical measures." Abortion is considered a basic health care service in California and, therefore, is required to be covered by commercial health insurance plans and policies and the California Public Employees' Retirement System. Medically necessary follow-up services to abortions that constitute basic health care services must also be covered. However, the state does not mandate which types of abortion methods (i.e., procedural or medication) must be covered, nor does it mandate cost-sharing requirements specific to these services. California's Medi-Cal program is one of 16 state Medicaid programs that use their own funds to cover abortion services and follow-up services for beneficiaries. The Medi-Cal program covers

abortions as a physician service without cost sharing for all enrollees. California law prohibits family planning grants distributed by the Department of Health Care Services from funding abortions or associated services, including postabortion examinations.

Under federal law, since 1976, Congress has included a provision, the Hyde Amendment, in the annual appropriations legislation for the Departments of Labor, Health and Human Services, and Education prohibiting the use of federal funds for most abortions. The only exceptions to this prohibition are in cases of rape, incest, or if a woman suffers from a life-threatening physical injury or illness that would place her in danger of death unless an abortion is performed.

Medicaid is a jointly funded program by the federal and state governments. States may choose to pay for abortion services for additional circumstances; however, they must use nonfederal funds to pay for the service. Sixteen states currently have policies that allow for Medicaid funds to be used to pay for abortions that exceed Hyde limitations, including Alaska, California, Connecticut, Hawaii, Illinois, Oregon, Maine, Maryland, Massachusetts, Minnesota, Montana, New Jersey, New Mexico, New York, Washington, and Vermont.

On December 1, 2021, the United States (U.S.) Supreme Court heard oral arguments in *Dobbs v. Jackson Women's Health Organization*, a case about a Mississippi law that would ban abortion after 15 weeks of pregnancy. This case is a direct challenge to *Roe v. Wade*, the 1973 Supreme Court decision that affirmed the constitutional right to abortion and demanding that the Supreme Court ignore established legal precedent and completely overturn *Roe*. By agreeing to hear the case, the Supreme Court has signaled its potential willingness to overturn decades of its own decisions upholding abortion rights. In a separate case, the Supreme Court allowed a Texas law banning abortion at six weeks to go into effect in direct violation of *Roe*. In May 2021, Texas Governor Greg Abbott signed legislation (SB 8) to ban abortion at six weeks of gestation, so early in pregnancy that many people may not even know that they are pregnant. Among other harms, it could force many people to travel dramatically longer distances to obtain abortion care. The law has made national news as it allows anyone who is opposed to abortion, regardless of where they live or whether they have any association with a patient, to sue an abortion provider or anyone who helps a patient obtain an abortion, such as by providing financial help or transportation.

- 1) *Governor's 2022 Budget funding for reproductive health*. To protect the right to safe and accessible reproductive health care services, the May Revision includes \$57 million General Fund to maintain and improve availability of safe and accessible reproductive health care. These new proposals build on the \$68 million included in the Governor's Budget to support access to reproductive health care services.
  - a) Uncompensated Care Funding for Reproductive Health Services: \$40 million General Fund (GF) one-time, available over six years, for the HCAI to award grants to reproductive health care providers to offset the cost of providing care to low and moderate income individuals who do not have health care coverage for abortion care services.
  - b) California Reproductive Justice and Freedom Fund: \$15 million GF one-time for the Department of Public Health (DPH) to award grants to community-based reproductive health, rights, and justice organizations to conduct medically accurate and culturally competent outreach and education on sexual health and reproductive health issues.

- c) Comprehensive Reproductive Rights Website: \$1 million GF one-time for the DPH to develop and maintain a website providing accurate and updated information to the public on the right to abortion care under state law, information about reproductive health care providers, and options for coverage for reproductive services including state-funded coverage and programs.
- d) Research on the Unmet Needs for Reproductive Health Care Services: \$1 million GF one-time for the DPH to research the unmet needs for access to reproductive health care services.

### **According to the Author**

The CARE Act continues California's commitment to being a Reproductive Freedom State and a national leader in safeguarding and advancing reproductive freedom. This bill is essential for ensuring that all people in California can access abortion care regardless of their insurance type and providers are able 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.

### **Arguments in Support**

Planned Parenthood Affiliates of California (PPAC), cosponsor 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' S.B. 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 dollars 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. The California Department of Insurance, cosponsor 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 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. While the intent of the bill has merit, the Department of Finance is opposed to this bill because it duplicates services recently authorized in the 2022 Budget Act and results in increased costs not accounted for in the Administration's spending plan. Specifically, the 2022 Budget Act includes: 1) \$40 million one-time General Fund, available over six years, for HCAI to award grants to reproductive health care providers to offset the cost of providing care to uninsured and underinsured individuals who do not have health care coverage for abortion care services; 2) \$20 million one-time General Fund to HCAI to provide grants for non-profit organizations that assist patients overcoming barriers to reproductive health care; and 3) \$30 million one-time General Fund, over two years, for the Department of Health Care Services to provide supplemental payments to non-hospital community clinics that offer abortion care services to Medi-Cal beneficiaries.

**FISCAL COMMENTS**

According to the Senate Appropriations Committee:

- 1) 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.
- 2) 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.
- 3) Minor and absorbable costs to DIR, Department of Managed Health Care and California Department of Insurance.

**VOTES:****ASM HEALTH: 10-3-2**

**YES:** Wood, Aguiar-Curry, Arambula, Carrillo, Maienschein, McCarty, Nazarian, Rodriguez, Santiago, Cristina Garcia

**NO:** Waldron, Bigelow, Flora

**ABS, ABST OR NV:** Mayes, Luz Rivas

**ASM APPROPRIATIONS: 12-4-0**

**YES:** Holden, Bryan, Calderon, Carrillo, Mike Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Wilson

**NO:** Bigelow, Megan Dahle, Davies, Fong

**ASSEMBLY FLOOR: 53-19-6**

**YES:** 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

**NO:** Bigelow, Chen, Cooley, Cunningham, Megan Dahle, Davies, Flora, Fong, Gallagher, Kiley, Lackey, Mathis, Nguyen, Patterson, Seyarto, Smith, Valladares, Voepel, Waldron

**ABS, ABST OR NV:** Berman, Choi, Grayson, Mayes, O'Donnell, Quirk-Silva

**UPDATED**

VERSION: August 24, 2022

CONSULTANT: Kristene Mapile / HEALTH / (916) 319-2097

FN: 0003785