Office of Senate Floor Analyses
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UNFINISHED BUSINESS

Bill No: SB 221
Author: Wiener (D), et al.
Amended: 9/3/21
Vote: 21

SENATE HEALTH COMMITTEE: 9-0, 3/17/21
AYES: Pan, Eggman, Gonzalez, Hurtado, Leyva, Limón, Roth, Rubio, Wiener
NO VOTE RECORDED: Melendez, Grove

SENATE APPROPRIATIONS COMMITTEE: 5-2, 5/20/21
AYES: Portantino, Bradford, Kamlager, Laird, Wieckowski
NOES: Bates, Jones

SENATE FLOOR: 32-7, 6/1/21
AYES: Allen, Archuleta, Atkins, Becker, Bradford, Caballero, Cortese, Dodd, Durazo, Eggman, Glazer, Gonzalez, Hertzberg, Hueso, Hurtado, Kamlager, Laird, Leyva, Limón, McGuire, Min, Newman, Nielsen, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener
NOES: Bates, Dahle, Grove, Jones, Melendez, Ochoa Bogh, Wilk
NO VOTE RECORDED: Borgeas

ASSEMBLY FLOOR: 76-0, 9/8/21 - See last page for vote

SUBJECT: Health care coverage: timely access to care

SOURCE: National Union of Healthcare Workers

DIGEST: This bill codifies existing timely access to care standards for health plans and health insurers, applies these requirements to Medi-Cal managed care plans, adds a standard for non-urgent follow-up appointments for nonphysician mental health care or substance use disorder providers that is within 10 business days of the prior appointment, and, prohibits contracting providers and employees from being disciplined for informing patients about timely access standards.

Assembly Amendments:

1) Indicate that guidance and methodologies developed by the Department of Managed Health Care (DMHC) and California Department of Insurance (CDI) are not subject to the Administrative Procedures Act until July 1, 2025, and that nothing in this bill prevents DMHC and CDI from adopting further standards on timely access to care and network adequacy.

2) Indicate that the standard for non-urgent follow-up appointments for nonphysician mental health care or substance use disorder providers commences July 1, 2022.

3) Delete a prohibition that a health plan or insurer cannot summarily deny enrollees/insureds coverage for faster or more frequent follow-up appointments if the provider determines the care to be medically necessary in the provider's clinical judgement, and instead, clarify that coverage is not permitted by this bill to be limited to once every 10 days.

4) Make other clarifications.

ANALYSIS:

Existing law:

1) Establishes DMHC to regulate health plans under the Knox-Keene Health Care Service Plan Act of 1975 (Knox-Keene Act); CDI to regulate health and other insurance; and, the Department of Health Care Services (DHCS) to administer the Medi-Cal program. [HSC §1340, et seq., INS §106, et seq., and WIC §14000, et seq.]

2) Requires DMHC and CDI to develop and adopt regulations to ensure that enrollees have access to health care services in a timely manner, as specified. [HSC §1367.03, and INS §10133.5]

3) Requires every health plan contract that provides hospital, medical, or surgical coverage to provide coverage for medically necessary treatment of mental health and substance use disorders, under the same terms and conditions applied to other medical conditions, as specified, including if these services are not available in network within the geographic and timely access standards set by law or regulation to ensure out-of-network services and any follow-up services that, to the maximum extent possible, meet those geographic and timely access standards. [HSC §1374.72]

4) Requires a disability insurer, if services for the medically necessary treatment of a mental health or substance use disorder are not available in network within the geographic and timely access standards set by law or regulation, to arrange coverage to ensure the delivery of medically necessary out-of-network services and any medically necessary follow-up services that, to the maximum extent possible, meet those geographic and timely access standards. [INS §10144.51]

5) Requires Medi-Cal managed care plans to meet the DMHC timely access standards and establishes distance standards for providers of Medi-Cal services, including outpatient mental health services and opioid treatment programs. [WIC §14197]

This bill:

1) Requires a health plan that provides or arranges for the provision of hospital of physician services, including a specialized mental health plan that provides physician or hospitals services, or that provides mental health services pursuant to the contract with a full service plan to comply with timely access requirements pursuant to this bill, and for contracts issued, renewed, or amended on or after July 1, 2022, to provide information to an enrollee regarding the standards for timely access to care, including information related to interpreter services at the time of the appointment without imposing delay on scheduling of the appointment, and in a timely manner, no less than annually.

2) Codifies many of the requirements of the DMHC and CDI timely access regulations described in 2) of the comments section below and adds a new standard, commencing July 1, 2022, for nonurgent follow-up appointments with a nonphysician mental health care or substance use disorder provider of within ten business days of the prior appointment for those undergoing a course of treatment for an ongoing mental health or substance use disorder condition, except when the provider has determined and noted in the record that a longer time will not have a detrimental impact, as specified. States that this does not limit coverage to once every 10 business days. Requires a health plan that uses a tiered network to demonstrate compliance based on providers available at the lowest cost-sharing tier.

3) Clarifies that 2) above, does not permit nonurgent follow-up appointments with a nonphysician mental health care or substance use disorder provider to be limited to once every 10 days.

4) Requires a health plan to arrange coverage outside the plan's contracted network in accordance with existing law, if medically necessary treatment of a

mental health or substance use disorder is not available in network within the geographic and timely access standards set by law or regulation, as specified.

5) Applies the DMHC timely access requirements to Medi-Cal managed care plans. Requires a referral to a specialist by a primary care provider or another specialist to be subject to relevant time elapsed standards, except as specified.

6) Requires DMHC's timely access report to include demonstration of the average waiting time for each class of appointment regulated under the law.

7) Requires a health insurance policy that is issued, renewed, or amended on or after July 1, 2022, that provides benefits through contract with providers for alternative rates, to provide information to an insured regarding the standards for timely access to care, as specified, including information related to receipt of interpreter services in a timely manner, no less than annually.

8) Requires an insurer to ensure timely access to covered heath care services, including applicable time-elapsed standards, by assisting an insured to locate available and accessible contracted providers in assisting in a timely manner appropriate for the insured's health needs. Requires an insurer to arrange for the provision of services outside the insurer's contracted network if unavailable within the network if medically necessary for the insured's condition. Requires an insureds costs for medically necessary referrals to non network providers to not exceed applicable in-network copayments, coinsurance, and deductibles.

9) Prohibits a plan or insurer from preventing, discouraging or disciplining a contracting provider or employee for informing enrollees or insureds about timely access standards.

Comments

Author's statement. According to the author, this bill will ensure that people are able to get timely follow-up mental health appointments. Currently, people frequently have to wait long periods of time - frequently months - for follow-up appointments, thus undermining their care. This bill will establish clear, timely access standards for follow-up appointments needed by patients in ongoing, medically necessary treatment for mental health and substance use disorders. In the absence of clear, timely access standards for follow-up appointments with non-physician mental health and substance use disorders providers, such as social workers and therapists, large numbers of Californians requiring ongoing courses of treatment for mental health and substance use disorders have been unable to access care within the timeframes that are clinically appropriate for their diagnoses. This problem is exacerbated by the significant increase in demand for mental

health and substance use disorders services driven by the COVID-19 pandemic, with national survey data showing that the rate of anxiety and depression has tripled over the last year and a recent Centers for Disease Control and Prevention study finding that one in four people age 18 to 24 has seriously considered suicide in the past 30 days. Timely access to ongoing mental health and substance use disorders treatment is essential and must be accessible when medically necessary.

Timely access requirements. The wait time standards for products regulated by DMHC and CDI are described in the chart below and are the allowed times between when an appointment is requested and when it must be scheduled (also referred to as time-elapsed standards).

Urgent Care	48 hours (no prior authorization)	96 days when authorization is required
Non Urgent	10 business days PCP, non-physician mental health appointment (counseling including substance abuse professionals)	15 business days specialty care and ancillary (lab, diagnostic testing, PT)

CDI requires insurers that use tiered networks to demonstrate compliance with the timely access standards based on providers available at the lowest cost-sharing tier. Both CDI and DMHC have clinical appropriateness standards in their respective regulations. CDI requires interpreter services without imposing delay on the scheduling of the appointment. DMHC does not include this requirement. CDI's regulations include substance use disorder. Both regulations include that wait times can be extended if the referring or treating licensed provider determines and notes in the record that it will not have a detrimental impact on the enrollee or insured. CDI and DMHC have a phone call waiting standard required for insurers or plans of not more than 10 minutes, but only CDI allows a call back within 30 minutes. Both DMHC and CDI require a plan or insurer to ensure that the telephone triage or screening services waiting period does not exceed 30 minutes. DMHC is in the process of updating its timely access regulation including developing a rate of compliance standard for both urgent and non-urgent appointments to which health plans will be held accountable.

Concerns. Kaiser Permanente writes that the change to a 10-day follow-up appointment standard for non-physician mental health providers locks in a return interval not tied to clinical judgement. Return appointments for mental health and substance use conditions should meet individual patient needs and be deemed medically indicated by the patient's treating provider. This mandate will lead to an

increase in caseloads for mental health therapists, which Kaiser Permanente and other health systems must manage. A primary and fundamental challenge is to build the workforce necessary to meet the current demand for mental health care. Right now, you can count the number of psychiatry residents in some regions on one hand. In others, there are none. The COVID-19 pandemic has exacerbated the shortage we were already facing, as demand for mental health care has greatly increased. There are thousands of open positions for mental health care professionals throughout California. Kaiser Permanente, other medical groups and health systems, cities, counties, local agencies, and others are all recruiting from the same pool of candidates. It is imperative that a bill that mandates increased frequency of appointments include ways to increase the mental health workforce.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Assembly Appropriations Committee:

- CDI anticipates regulations will be necessary to align network adequacy requirements with this bill's provisions. CDI estimates costs of $88,000 in fiscal year (FY) 2021-22 and $97,000 in FY 2022-23 (Insurance Fund).

- The Department of Health Care Services anticipates additional staffing needs in the Managed Care Quality and Monitoring Division and the Medi-Cal Behavioral Health Division. The initial estimate is $954,000 with ongoing costs of $900,000 (50% General Fund, 50% federal funds).

- DMHC anticipates increased workload to promulgate regulations; review health plan documents; develop a methodology for monitoring plan compliance; and address the increased volume of health plan surveys. DMHC estimates the total cost of this bill to be approximately $1,772,000 (including 5.8 personnel years (PYs)) in fiscal year (FY) 2021-22; $3,719,000 (15.7 PYs) in FY 2022-23; $3,893,000 (16.7 PYs) in FY 2023-24; $3,698,000 (16.7 PYs) in FY 2024-25; and $3,788,000 (16.7 PYs) in FY 2025-26 and annually thereafter (Managed Care Fund).

SUPPORT: (Verified 9/7/21)

National Union of Healthcare Workers (source)
Alameda Labor Council
Association of Regional Center Agencies
Autism Speaks
California Access Coalition
California Alliance of Children and Family Services

California Association for Marriage and Family Therapists
California Association of Alcohol and Drug Program Executives
California Association of Social Rehabilitation Agencies
California Behavioral Health Planning Council
California Catholic Conference
California Conference of Machinists
California Council of Community Behavioral Health Agencies
California Pan-Ethnic Health Network
California Psychological Association
California Retired Teachers Association
California School Employees Association
California Senior Legislature
California State Association of Psychiatrists
California State Employees Association
Center for Autism and Related Disorders
City and County of San Francisco
Consumer Watchdog
Contra Costa Labor Council
Depression and Bipolar Support Alliance
Disability Rights California
Friends Committee on Legislation of California
Health Access California
Housing Rights Committee of San Francisco
Kern Inyo Mono Central Labor Council
Mental Health & Autism Insurance Project
Mental Health America of California
Napa Solano Central Labor Council
National Alliance on Mental Illness
National Association of Social Workers, California Chapter
National Health Law Program
Painters and Allied Trades District Council 16
San Francisco Black, Jewish and Unity Group
San Francisco Labor Council
San Mateo Labor Council
South Bay Labor Council
State Building and Construction Trades Council
Steinberg Institute
The Kennedy Forum

OPPOSITION: (Verified 9/7/21)

None received

ARGUMENTS IN SUPPORT: The National Union of Healthcare Workers, the sponsor of this bill, writes that the American Psychological Association (APA), the premier standard-setting organization for psychological care in the United States, recommends either weekly or biweekly therapy appointments for the ongoing treatment of depression in adults and adolescents, PTSD in adults, and obsessive compulsive disorder in children. For the already very common and increasingly frequent diagnosis of depression among adults, the APA recommends seven possible treatment modalities, all of which are recommended to be delivered to patients weekly. Nevertheless, in a December 2020 survey of mental health and substance use disorders clinicians at California's largest HMO, 88% of therapists reported that weekly individual psychotherapy is unavailable for patients who need it. Fifty-one percent of therapists reported that their patients have to wait more than four weeks for a follow-up treatment appointment. On average, these therapists reported that they had no follow-up appointments available in their schedules for fully twenty-two business days. The Kennedy Forum writes this bill will hold health plans and insurers accountable in a common-sense way to ensure timely access to follow-up care, minimizing the negative consequences associated with delays in treatment.

ASSEMBLY FLOOR: 76-0, 9/8/21
AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bigelow, Bloom, Boerner Horvath, Mia Bonta, Bryan, Burke, Calderon, Carrillo, Cervantes, Chau, Chen, Chiu, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Davies, Flora, Fong, Frazier, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kiley, Lackey, Lee, Levine, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Nguyen, O'Donnell, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Stone, Ting, Valladares, Villapudua, Voepel, Waldron, Ward, Akilah Weber, Wicks, Wood, Rendon
NO VOTE RECORDED: Choi, Gray, Seyarto, Smith

Prepared by: Teri Boughton / HEALTH / (916) 651-4111
9/8/21 21:28:45

****** END ******