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## SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair  
2021 - 2022 Regular Session

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### SB 923 (Wiener) - Gender-affirming care

**Version:** May 2, 2022

**Urgency:** No

**Hearing Date:** May 16, 2022

**Policy Vote:** HEALTH 8 - 2

**Mandate:** Yes

**Consultant:** Samantha Lui

**Bill Summary:** Senate Bill 923 would require a health plan and health insurer to require all of its staff in direct contact with enrollees or insureds to complete evidence-based cultural competency training for the purpose of providing trans-inclusive health care for individuals who identify as transgender, gender nonconforming, or intersex. Would require the Department of Managed Health Care and Department of Insurance to track and monitor specified complaints and public report this data. Would require a health plan, insurer, Medi-Cal managed care plan, by July 31, 2023, to include a link from the provider directory for a list of in-network providers who offer and have provided gender-affirming services. Would require the California Health and Human Services Agency to convene an 11-member working group to develop a quality metric.

#### **Fiscal Impact:**

- Department of Managed Health Care (DMHC). According to the DMHC, \$1.4 million and 6.5 PYs in FY 2022-23; \$1.8 million and 7.8 PYs in FY 2023-24; \$1.7 million and 7.2 PYs in FY 2024-25; and \$1.7 million and 7.0 PYs in FY 2025-26 and annually thereafter. (Managed Care Fund)
- Department of Insurance (CDI). According to the CDI, \$85,000 FY 2022-23, \$727,000 FY 2023-24, and \$34,000 for FY 2024-25 and ongoing. (Insurance Fund)
- Department of Health Care Services (DHCS). Staff estimate unknown, potentially significant costs in workload to conduct oversight of its Medi-Cal managed care plans (MCMCPs) to require that managed care plan staff complete specified cultural competency training, track and monitor specified complaints, and compile complaint data and prepare the report.
- California Health and Human Services Agency. Staff estimates unknown, potentially significant costs (millions, General Fund) to establish and operate the workgroup, including hosting the four listening sessions. Costs would include administrative and technical staff, as well as operating expenses and equipment, as well as possible per diem and travel reimbursement costs for workgroup members.
- Covered California and CalPERS. Staff anticipates indeterminate costs (tens of thousands, special fund) for their participation in the working group.

For more detail, please see Staff Comments.

**Background:** The Lesbian, Gay, Bisexual, and Transgender Disparities Reduction Act requires, with some exceptions, and to the extent permissible by federal law, specified

state entities, in the course of collecting demographic data directly or by contract as to the ancestry or ethnic origin of Californians, to collect voluntary self-identification information pertaining to sexual orientation and gender identity. The State Department of Public Health's (CDPH) Office of Health Equity to administer the Transgender Wellness and Equity Fund for purposes of funding grants to create programs, or funding existing programs, focused on coordinating trans-inclusive health care for individuals who identify as transgender, gender nonconforming, or intersex (TGI). Grants to TGI-serving organizations are intended to increase the capacity of health care professionals to effectively provide TGI health care and institute TGI-inclusive best practices. Existing law requires grants be available to a hospital, health care clinic, or other medical provider that currently provides gender-affirming health care services, such as hormone therapy or gender reassignment surgery, to continue providing those services, or to a hospital, health care clinic, or other medical provider that will establish a program that offers gender-affirming health care services and has an established relationship with a TGI-serving organization that will lead in establishing the program.

**Proposed Law:** Senate Bill 923 would include several provisions, including:

Continuing medical education standards. The bill would add further specificity to the cultural competency training components to include: understanding and applying culturally, ethnically, and sociologically inclusive data to the process of clinical care, including, as appropriate, information and evidence-based cultural competency training pertinent to the treatment of, and provision of care to, individuals who identify as lesbian, gay, bisexual, transgender, queer or questioning, asexual, intersex, or gender nonconforming. This would include processes specific to those seeking gender-affirming care services. The bill would also provide an evidence-based cultural competency training implemented could include information related to specified information.

Cultural competency training. The bill would require, no later than January 1, 2024, a health plan and health insurer that issues, sells, renews, or offers health care service plan contracts for health care coverage in this state, including a grandfathered health plan or health insurance policy, but not including specialized health care plan contracts or health insurance policies that provide only dental or vision services, and a Medi-Cal managed care plan to require all of its health plan staff or managed care staff who are in direct contact with enrollees, insureds, or beneficiaries in the delivery of care or their services to complete evidence-based cultural competency training for the purpose of providing trans-inclusive health care for individuals who identify as transgender, gender nonconforming, or intersex (TGI).

The bill would require an evidence-based cultural competency training include specified information, such as the ongoing personal effects, of historical and contemporary exclusion and oppression of TGI communities; how to communicate more effectively across gender identities, including TGI-inclusive terminology, using correct names and pronouns; and avoiding assumptions about gender identity by using gender-neutral language; discussion on health inequities within the TGI community; perspectives of diverse, local constituency groups and TGI-serving organizations; and, recognition of the difference between personal values and professional responsibilities with regard to serving TGI people.

The bill would require DMHC, CDI, and DHCS to approve any training curricula, following stakeholder engagement with local constituency groups and TGI-serving organization. In addition, after first-time completion of the evidence-based cultural competency training, an individual must complete a refresher course if a complaint has been filed, and a decision has been made in favor of the complainant, against that individual for not providing trans-inclusive health care.

Sanctions. The bill would require the DMHC, CDI, and DHCS, no later than July 1, 2023, to develop and implement procedures, and would authorize the departments to impose sanctions to ensure compliance. In addition to requiring plan compliance, the DMHC must review individual case complaints alleging discrimination on the basis of gender identity and refer those complaints to the Department of Fair Employment and Housing. For improper denials, delays, or modifications of trans-inclusive care, the DMHC must review the complaints to determine whether any enforcement actions, including sanctions are appropriate. The bill also would include parallel provisions providing CDI and DHCS authority to impose sanctions.

Complaint data. The bill would require the DMHC, CDI, and DHCS to track and monitor complaints received by the department related to trans-inclusive health care and publicly report this data with other complaint data in its annual report, on its website, or with other public reports containing complaint data.

Plan provider directory. The bill would require, no later than July 31, 2023, a full service health plan, health insurer, and Medi-Cal managed care plan (including Program of All-Inclusive Care for the Elderly (PACE) organization) to include a link accessible from the provider directory and accessible through the call center, to a list of in-network providers who offer and have provided gender-affirming services, as specified. A network provider must be permitted to volunteer its inclusion on this list and the list must be updated at least annually and when a provider requests to be included or excluded from the list.

Workgroup: Development of a quality metric. The bill would require, no later than March 1, 2023, the CHHSA to convene an 11-member working group of specified representatives including one appointee from DMCH, CDI, DHCS, Covered California, and CalPERS, to develop a quality standard for patient experience to measure cultural competency.

The bill would require the working group conduct at least four listening sessions across the state with patients from the TGI community, and would require the metric be developed no later than March 1, 2024, with measurement to begin no later than January 1, 2025.

Implementation. The bill would authorize DHCS to utilize all-county letters, plan letters, plan or provider bulletins, or similar instructions, until regulations are adopted by July 1, 2024.

Status report. The bill would require DHCS to provide a status report to the Legislature on a semiannual basis, until regulations are adopted.

**Related Legislation:**

- AB 2194 (Ward, 2022) would prohibit the Board of Pharmacy from renewing a pharmacist or pharmacy technician license unless the applicant submits proof that the applicant has successfully completed a cultural competency course, as specified. AB 2194 is pending on the Assembly Floor.
- AB 133 (Committee on Budget, Chapter 143, Statutes of 2021) among other provisions, adds new health equity and quality measures and other reporting to the Knox-Keene Act, including new responsibilities for DMHC and health plans.
- AB 2218 (Santiago, Chapter 181, Statutes of 2021) establishes the Transgender Wellness and Equity Fund within CDPH, for the purpose of funding grants to organizations serving people that identify as TGI, to create or fund TGI-specific housing programs and partnerships with hospitals, health care clinics, and other medical providers to provide TGI-focused health care, as defined, and related education programs for health care providers.
- AB 241 (Kamlager, Chapter 417, Statutes of 2019) requires continuing education courses for physicians and surgeons, nurses, and physician assistants to include the understanding of implicit bias and the promotion of bias-reducing strategies.
- AB 677 (Chiu, Chapter 744, Statutes of 2017) expands the list of state entities currently required to collect voluntary self-identification information on sexual orientation and gender identity to include various education and employment-related state agencies.
- AB 959 (Chiu, Chapter 565, Statutes of 2015) enacts the Lesbian, Gay, Bisexual, and Transgender Disparities Reduction Act and requires four specified state entities – the Department of Health Care Services (DHCS), the Department of Public Health (DPH), the Department of Social Services (DSS), and the Department of Aging (CDA) – to collect voluntary self-identification information on sexual orientation and gender identity, beginning no later than July 1, 2018.
- AB 496 (Gordon, Chapter 630, Statutes of 2014) adds to the medical board’s cultural competency continuing medical education course requirement, information pertinent to the appropriate treatment of, and provision of care to, the lesbian, gay, bisexual, transgender, and intersex communities.

**Staff Comments:** The Department of Managed Health Care anticipates the following costs (Managed Care Fund):

- Office of Legal Services. \$115,000 and 0.7 PY in FY 2022-23, \$114,000 and 0.6 PY in FY 2023-24, and \$36,000 and 0.2 PY in FY 2024-25 only, for short-term workload to conduct legal research, issue legal memoranda and promulgate a regulation.
- Office of Plan Licensing. approximately \$727,000 and 3.4 PYs in FY 2022-23, \$773,000 and 3.5 PYs in FY 2023-24, \$683,000 and 3.2 PYs in FY 2024-25 and annually thereafter, for workload to review Evidence of Coverage, provider

contracts, plan-to-plan agreements, plan training curricula and other health plan documents for compliance.

- Help Center. \$94,000 and 0.5 PY in FY 2022-23, \$98,000 and 0.5 PY in FY 2023-24, \$94,000 and 0.5 PY in FY 2024-25 and annually thereafter for increased volume of consumer complaints.
- Office of Plan Monitoring. \$241,000 and 1.1 PYs in FY 2022-23, \$641,000 and 2.4 PYs in FY 2023-24, \$604,000 and 2.0 PYs in FY 2024-25 and annually thereafter. Of this amount, consultant funding in the amount of \$9,000 in FY 2022-23, \$131,000 in FY 2023-24, \$200,000 in FY 2024-25 and ongoing to assist OPM with the clinical reviews of health plan policies and procedures and to conduct provider directory validation to determine whether health plans are compliant with SB 923. The other costs would be related to reviewing health plan filings, modifying existing survey tools, participating in a working group to develop quality standards. OPM would also develop all plan letters to provide guidance to health plans.
- Office of Enforcement. \$182,000 and 0.8 PY in FY 2022-23, \$188,000 and 0.8 PY in FY 2023-24, \$301,000 and 1.3 PYs in FY 2024-25, \$297,000 and 1.3 PYs in FY 2024-25 and annually thereafter to address referrals.
- Office of Technology and Innovation. \$2,000 in FY 2022-23 and annually thereafter for Necessary Infrastructure Modernization for Business Unified Services (NIMBUS) software licenses.

The Department of Insurance also anticipates the following workload:

- Review and approval of transgender, gender nonconforming, intersex cultural competency training curricula, including required pre-approval stakeholder engagement
  - CDI would need to (1) review insurers' cultural competency training curricula relating to TGI and trans-inclusive health care for compliance with statutory criteria; (2) convene stakeholder meetings with TGI-serving organizations and other relevant stakeholders prior to approval; (3) approve training curricula. Each insurer would have to file an initial training curriculum in the first year of implementation, and file any changes on an ongoing basis thereafter.
- Review insurers' annual reports, as well as monitor compliance and flag issues for investigation or regulatory action.
- Public posting of insurers' compliance reports on CDI's website:
- Guidance
- CDI would need to develop and issue implementing guidance, including coordination with DMHC
- Rulemaking.

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