

Date of Hearing: April 17, 2024

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Buffy Wicks, Chair

AB 2753 (Ortega) – As Introduced February 15, 2024

Policy Committee: Health

Vote: 12 - 0

Urgency: No

State Mandated Local Program: Yes

Reimbursable: No

SUMMARY:

This bill specifies that essential health benefits (EHBs) coverage of rehabilitative and habilitative services and devices includes durable medical equipment (DME), services, and repairs, if appropriately prescribed or ordered by a health professional, and prohibits a health care service plan (health plan) or health insurance policy from subjecting coverage of DME and services to financial or treatment limitations. This bill defines DME to mean devices that are designed for repeated use, and that are used for the treatment or monitoring of a medical condition or injury in order to help a person to partially or fully acquire, improve, keep, or learn, or minimize the loss of, skills and functioning of daily living.

FISCAL EFFECT:

- 1) The Department of Managed Health Care (DMHC) estimates the total costs of this bill to be approximately \$305,000 in fiscal year (FY) 2024-25 and \$1.1 million in FY 2025-26 and annually thereafter (Managed Care Fund). DMHC states its Office of Plan Monitoring will need to develop surveys requiring a focused review of DME files and conduct clinical reviews during routine and follow-up medical survey assessments. DMHC anticipates its Help Center will incur the majority of costs for additional workload to address an increase in consumer complaints and independent medical reviews.

DMHC notes that, generally and depending on enrollment, a \$1 million increase to the Managed Care Fund could result in a \$0.02 increase per enrollee on assessments to full-service health plans and a \$0.01 increase per enrollee to specialized health plans. To the extent this and other bills result in an additional assessment on health plans, consumers could face increased premiums.

- 2) The Department of Insurance estimates costs of \$6,000 in FY 2024-25 and \$14,000 in FY 2025-26 (Insurance Fund).

COMMENTS:

- 1) **Purpose.** This bill is sponsored by the Western Center on Law and Poverty and the National Health Law Program. According to the author:

Private health plans regularly exclude or severely limit coverage for [DME] such as wheelchairs, hearing aids, or ventilators, causing people to go without medically necessary devices or

obtaining inferior ones that put their health and safety at risk. This gap in private coverage occurs despite the Affordable Care Act's (ACA) clear mandate to cover all [EHBs]...in a nondiscriminatory way.

Without adequate coverage, the lives of adults and children with disabilities are severely impacted – many are unable to attend school, work, or participate in community life. Others face institutionalization because they cannot function in their own homes without needed equipment.

This bill would clarify that DME is a covered EHB...and prohibit targeted limitations, such as annual dollar caps and “home use only” restrictions on DME coverage, consistent with all EHBs. This bill would be cost-neutral to the State because, when a benefit is required through state action for the purpose of complying with federal requirements (in this case federal nondiscrimination law), the State is not responsible for defraying the cost of the benefit.

2) **Background.**

DME. According to the California Health Benefits Review Program (CHBRP), DME is not defined under California law. However, the ACA requires all state-regulated nongrandfathered health plans and policies in the individual and small-group markets to cover at least all tests, treatments, and services included in the California EHB benchmark plan, which includes limited coverage of DME. There are five major categories of DME, including personal mobility devices, bathroom safety devices, medical furniture, monitoring and therapeutic devices, and patient lifts. DME can be used for either chronic or temporary conditions, and some DME requires special modifications or customization to meet the medical needs of the user. The process of obtaining authorization for coverage of DME varies by health plan or policy. Health plans are required to cover DME for use in the enrollee's home.

EHBs. The ACA requires coverage of EHBs for almost all enrollees in the individual and small-group markets. CHBRP estimates that in 2024, 12% of Californians are enrolled in commercial health insurance that must cover EHBs. EHB requirements do not apply to large group, self-insured and grandfathered plans and policies. (The ACA also requires Medi-Cal to cover a set of benefits referred to as EHBs, but Medi-Cal EHBs are separate from the EHBs commercial health insurance can be required to cover under the ACA.)

- 3) **CHBRP Report.** CHBRP analyzed a similar bill, AB 1157 (Ortega), of the current legislative session, in 2023. CHBRP estimated AB 1157 would increase total net annual expenditures by \$26.4 million, or 0.02% for enrollees with DMHC-regulated plans and CDI-regulated policies. The projected increase was due to a \$57.2 million increase in total health insurance premiums paid by employers and enrollees for newly covered benefits, increased enrollee expenses for covered benefits (\$11.4 million) and a decrease in enrollee expenses of \$42.2 million. CHBRP projected changes in premiums in the range of \$0.001 to \$0.002 per member per month, with the greatest increase in the DMHC-regulated small-group and individual plans (\$0.002 PMPM each). CHBRP projected increased utilization of DME and

related services and repairs, and therefore increased enrollee cost sharing for covered DME. For enrollees gaining coverage of DME because of this bill, 1.6% of those in small-group or individual plans and policies would experience an average reduction in out-of-pocket expenses of \$395.21 for DME benefits.

- 4) **Support.** The Western Center on Law and Poverty and the National Health Law Program, sponsors of this bill, argue this bill provides the state an opportunity to correct, in a timely and cost-neutral manner, a benefit design that discriminates against people with disabilities. The sponsors state DME devices—essential for basic functions such as mobility, breathing, and communication—are primarily used by people with disabilities. Excluding or severely limiting DME from health plan coverage creates an access barrier for adults and children who rely on this equipment but who cannot afford the out-of-pocket costs of up to \$50,000.
- 5) **Related Legislation.** SB 1290 (Roth) expresses the intent of the Legislature to review California’s EHB benchmark plan and establish a new benchmark plan for the 2027 plan year. SB 1290 is pending in Senate Health Committee.

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