Date of Hearing: August 23, 2023

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Chris Holden, Chair
SB 257 (Portantino) – As Introduced January 30, 2023

Policy Committee: Health Vote: 15 - 0

Urgency: No State Mandated Local Program: Yes Reimbursable: No

SUMMARY:

This bill requires a health care service plan contract (health plan), disability insurance policy, or a self-insured employee welfare benefit plan to provide, without cost sharing, coverage for screening mammography, medically necessary diagnostic or supplemental breast examinations, diagnostic mammography, tests for screening or diagnostic purposes, and medically necessary diagnostic breast imaging.

Specifically, this bill:

1) Requires a health plan contract, a disability insurance policy that provides hospital, medical, or surgical coverage, or a self-insured employee welfare benefit plan issued, amended, or renewed on or after January 1, 2025, as specified, to provide, without cost sharing, coverage for screening mammography, medically necessary diagnostic or supplemental breast examinations, diagnostic mammography, tests for screening or diagnostic purposes, and medically necessary diagnostic breast imaging, including diagnostic breast imaging following an abnormal mammography result and for an enrollee or insured indicated to have a risk factor associated with breast cancer, including family history or known genetic mutation.

2) Specifies that diagnostic breast imaging includes breast magnetic resonance imaging (MRI), breast ultrasound, and other clinically indicated diagnostic testing.

3) Clarifies that diagnostic breast imaging, diagnostic mammography, and diagnostic and supplemental breast examinations, or other clinically indicated diagnostic testing are covered to the extent consistent with nationally recognized evidence-based clinical guidelines.

4) Applies 1), above, to a health plan contract or insurance policy that meets the federal definition of a high deductible health plan only after an enrollee or insured has met their deductible for the year.

5) Requires a health plan or policy to arrange for providers outside the plan's network to provide the required services if needed to ensure timely access to services, as specified.

FISCAL EFFECT:

1) Minor and absorbable costs to the Department of Managed Health Care (DMHC).

2) The California Department of Insurance (CDI) estimates costs of $37,000 in fiscal year (FY) 2024-25 to review insurance policies for compliance with this bill (Insurance Fund).

3) Based on the California Health Benefits Review Program (CHBRP) analyses for SB 974 (Portantino), of the 2021-22 Legislative Session, and AB 2024 (Friedman), of the 2021-22 Legislative Session, which were similar to this bill, this bill will increase aggregate premiums for the California Public Employees' Retirement System (CalPERS) by $5.4 million (0.09%). The state pays for approximately 60% of CalPERS enrollees (Public Employees Health Care Fund, special funds).

4) No increases in costs to the Department of Health Care Services, as Medi-Cal already covers breast imaging without cost sharing.

5) Based on the previous CHBRP estimates, this bill will reduce aggregate cost sharing by $73.8 million, but increase overall health expenditures by $43.7 million for enrollees in DMHC-regulated plans and CDI-regulated policies, due to a $117.6 million increase in total health insurance premiums paid by employers and enrollees for newly covered benefits. However, most of these costs are not borne by the state.

COMMENTS:

1) **Purpose.** This bill is sponsored by Susan G. Komen. According to the author:

> Breast cancer is the second leading cause of death among women of all races. Although it is rare, men can also get breast cancer. Patients who receive abnormal results on a breast cancer screening or who have a genetic risk factor associated with breast cancer, including family history or known genetic mutation, can be instructed to undergo follow-up testing to ensure that the abnormality is not cancerous. However, health insurance companies in California provide full coverage only for the initial screening mammogram and impose significant cost-sharing for diagnostic imaging if the patients are directed to additional screenings. Such costs cause many to delay or avoid appointments following an abnormal mammography result. SB 257 provides coverage without imposing cost-sharing for medically necessary diagnostic breast imaging, including diagnostic breast imaging following abnormal mammography, and for an enrollee indicated to have a genetic risk factor associated with breast cancer, including family history or known genetic mutation.

2) **Background.** Mammography is the first step in early detection of breast cancer. Early detection of breast cancer is not possible without the medically necessary diagnostic follow-up or additional supplemental imaging required to rule out breast cancer or confirm the need for a biopsy. An estimated 12% to 16% of women screened with modern digital mammography require follow-up imaging. California codified the federal Affordable Care Act's mandate that most plans cover a set of preventive services with no cost-sharing in SB 406 (Pan), Chapter 302, Statutes of 2020. For women age 40 to 74, federal law already prohibits cost-sharing for primary screening mammography.

3) **CHBRP Analysis.**

a) **Utilization.** CHBRP estimated the bills would result in an additional 38,226 enrollees using supplemental or diagnostic breast imaging. As a group, these enrollees would see a $74 million reduction in cost-sharing. For enrollees who had cost-sharing requirements, the average amount of cost-sharing per supplemental or diagnostic breast imaging service that this bill would prevent would be between $104.40 (large group market plan or policy) and $212.70 (individual market plan or policy). For those in plans and polices with applicable deductibles, especially those enrolled in high deductible plans and polices, the reduction in total out-of-pocket spending could be greater.

b) **Medical Effectiveness.** Although there is a preponderance of evidence that digital breast tomosynthesis (DBT) and breast MRI are effective for increased detection of breast cancer when used in a supplemental role, and clear and convincing evidence that DBT and MRI are effective for the diagnosis of breast cancer, the evidence is inconclusive regarding the risks and harms associated with supplementary screening imaging for breast cancer.

c) **Public Health.** This bill would have an unknown effect on breast cancer morbidity and mortality on a population level. CHBRP projects an additional 38,226 enrollees would obtain an additional 91,161 breast imaging tests. Results would vary and many would yield negative results (no cancer detected). Some would yield false-positive results that would require unnecessary recall treatment (biopsy) and costs. A smaller number would yield earlier cancer detection. The marginal impact of the earlier cancer detection is unknown, as is the marginal impact of the additional adverse events stemming from false-positives (such as physical pain, anxiety, added biopsy expense, and overtreatment). Measurable impacts at the population level are unlikely, though some persons could experience improved outcomes and some could experience more adverse events.

d) **Long-term Effects**. CHBRP estimates that assuming that current technology remains in place, utilization of breast imaging in years following the first year postmandate will be relatively stable. Postmandate, CHBRP does not anticipate long term population-level measurable change in the annual number of cancer treatments since the additional imaging results in earlier, but not additional, diagnoses. On the person level, some persons might receive less intensive cancer treatments because cancers were identified at an earlier stage than otherwise would have occurred. However, others might experience adverse impacts due to unnecessary treatment related to false positive imaging results.

4) **Prior Legislation**.

a) AB 2024 (Friedman), of the 2021-22 Legislative Session, was similar to this bill and was held on the Senate Appropriations Committee's suspense file.

b) SB 974 (Portantino), of the 2021-22 Legislative Session, was also similar to this bill and was vetoed by Governor Newsom, with the following message:

> …[t]his bill proposes to implement a standard that is not included by the United States Preventive Services Task Force (USPSTF) and the federal United States Health Resources and Services

Administration. The USPSTF is currently in the process of updating their recommendations on breast cancer screening; until those recommendations are released, this bill is premature.

Furthermore, the bill prohibits health plans and insurance policies from imposing cost-sharing for these services, which exceed the requirements of the federal Affordable Care Act, and will result in increased health care costs. According to the California Health Benefits Review Program, this bill would increase premiums by $117,550,000, a significant impact that would be felt by many Californians. The State must weigh the potential benefits of all mandates with the comprehensive costs to the entire delivery system.

For these reasons, I cannot sign this bill.

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