
VETO

Bill No: SB 257
Author: Portantino (D), et al.
Amended: 9/8/23
Vote: 27

SENATE HEALTH COMMITTEE: 12-0, 3/29/23

AYES: Eggman, Nguyen, Glazer, Gonzalez, Grove, Hurtado, Limón, Menjivar, Roth, Rubio, Wahab, Wiener

SENATE APPROPRIATIONS COMMITTEE: 6-0, 5/18/23

AYES: Portantino, Jones, Ashby, Bradford, Wahab, Wiener

NO VOTE RECORDED: Seyarto

SENATE FLOOR: 35-0, 5/26/23

AYES: Allen, Archuleta, Ashby, Atkins, Becker, Blakespear, Bradford, Cortese, Dahle, Dodd, Durazo, Eggman, Glazer, Gonzalez, Grove, Hurtado, Jones, Laird, Limón, McGuire, Menjivar, Min, Newman, Nguyen, Niello, Ochoa Bogh, Padilla, Portantino, Roth, Skinner, Smallwood-Cuevas, Umberg, Wahab, Wiener, Wilk

NO VOTE RECORDED: Alvarado-Gil, Caballero, Rubio, Seyarto, Stern

SENATE FLOOR: 39-0, 9/12/23

AYES: Allen, Alvarado-Gil, Archuleta, Ashby, Atkins, Becker, Blakespear, Bradford, Cortese, Dahle, Dodd, Durazo, Eggman, Glazer, Gonzalez, Grove, Hurtado, Jones, Laird, Limón, McGuire, Menjivar, Min, Newman, Nguyen, Niello, Ochoa Bogh, Padilla, Portantino, Roth, Rubio, Seyarto, Skinner, Smallwood-Cuevas, Stern, Umberg, Wahab, Wiener, Wilk

NO VOTE RECORDED: Caballero

ASSEMBLY FLOOR: 79-0, 9/11/23 - See last page for vote

SUBJECT: Health care coverage: diagnostic imaging

SOURCE: American Colleges of Obstetricians and Gynecologists District IX
Susan G. Koman

DIGEST: This bill requires health care coverage without imposing cost-sharing 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.

ANALYSIS:

Existing law:

- 1) Establishes the Department of Managed Health Care (DMHC) to regulate health plans and the California Department of Insurance (CDI) to regulate health insurance. [HSC §1340, et seq. and INS §106, et seq.]
- 2) Deems mammography for screening or diagnostic purposes covered if there is a referral by a participating nurse practitioner, participating certified nurse-midwife, participating physician assistant, or participating physician providing care to the patient and operating within the scope of practice provided under existing law. Applies this provision to health plans, individual and group policies of disability insurance, and self-insured employee welfare benefit plans.[HSC §1367.65 and INS §10123.81]

This bill:

- 1) Prohibits, on or after January 1, 2025, health plan and health insurance coverage or a self-insured employee welfare benefit plan from imposing cost-sharing 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 indicated to have a risk factor associated with breast cancer, including family history or known genetic mutation.
- 2) Requires diagnostic breast imaging to include breast magnetic resonance imaging, breast ultrasound, and other clinically indicated diagnostic testing. Requires diagnostic breast imaging, diagnostic mammography, and diagnostic and supplemental breast examinations, or other clinically indicated diagnostic testing, to be covered to the extent consistent with nationally recognized evidence-based clinical guidelines.

- 3) Applies 1) and 2) above to a plan contract that meets the definition of a “high deductible health plan,” as set forth federal law only after an enrollee’s or insured’s deductible has been satisfied for the year.
- 4) Clarifies that this bill does not authorize enrollees or insureds to receive services when those services are provided from providers outside the plan’s or insurer’s network unless those services are unavailable within the network consistent with timely access standards, as specified in law.
- 5) Permits a health plan or disability insurer that provides coverage for out-of-network benefits to impose cost-sharing requirements for the items or services described in this bill that are delivered by an out-of-network provider, except as otherwise required by law.
- 6) Defines “Diagnostic breast examination” as a medically necessary and appropriate examination of the breast, including an examination using diagnostic mammography, breast magnetic resonance imaging, breast ultrasound, or other clinically indicated diagnostic testing that is either of the following:
 - a) Used to evaluate an abnormality seen or suspected from a screening examination for breast cancer; or,
 - b) Necessary based on personal or family medical history or additional factors, including known genetic mutations, that may increase the individual’s risk of breast cancer.
- 7) Defines “Supplemental breast examination” as a medically necessary and appropriate examination of the breast, including an examination using breast magnetic resonance imaging, breast ultrasound, or other clinically indicated diagnostic testing, that is either of the following:
 - a) Used to screen for breast cancer when an abnormality is not seen or suspected; or,
 - b) Necessary based on personal or family medical history or additional factors, including know genetic mutations that may increase the individual’s risk of breast cancer.

Comments

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. This bill 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.

Related/Prior Legislation

SB 974 (Portantino, 2022) was substantially similar to this bill. SB 974 was vetoed by the Governor, who stated:

Breast cancer screenings save lives, which is why health plans must provide coverage for mammograms. However, this bill proposes to implement a standard that is not included by the USPSTF and HRSA. 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 CHBRP, 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.

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

According to the Assembly Appropriations Committee:

- 1) Minor and absorbable costs to the DMHC.
- 2) CDI estimates costs of \$37,000 in fiscal year 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 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.

SUPPORT: (Verified 9/7/23)

American Colleges of Obstetricians and Gynecologists District IX (co-source)

Susan G. Koman (co-source)

Albie Aware Breast Cancer Foundation

American Association of University Women, California

American Association of University Women, San Jose

American Cancer Society Cancer Action Network

Biocom

California Academy of Family Physicians

California Academy of Preventive Medicine

California Chronic Care Coalition

California Life Sciences

California Medical Association

California Professional Firefighters

California Radiological Society

California Society of Plastic Surgeons

California State Council of Service Employees International Union

City of Hope National Medical Center

Color Health, Inc.

Medical Imaging and Technology Alliance

National Association of Social Workers, California Chapter

National Health Law Program

Western Center on Law and Poverty

OPPOSITION: (Verified 9/7/23)

America's Health Insurance Plans
Association of California Life and Health Insurance Companies
California Association of Health Plans
California Chamber of Commerce
Department of Finance

ARGUMENTS IN SUPPORT: Susan G. Koman, one of the co-sponsors of this bill, writes this bill will eliminate out-of-pocket costs for medically necessary diagnostic and supplemental breast imaging. Eliminating this financial barrier will ensure Californians have access to no-cost diagnostic services that allow them to identify breast cancer cases earlier and begin treatment sooner and will greatly increase patients' chances of survival. Individuals at a higher risk of breast cancer or those requiring follow-up imaging due to an abnormal mammogram result face hundreds to thousands of dollars in patient cost sharing. This bill ensures fair and equitable access to these services by eliminating the out-of-pocket costs for medically necessary imaging tests. According to the American Colleges of Obstetricians and Gynecologists District IX, the other co-sponsor of this bill, regular breast screening can help find cancer at an early and more curable stage. A woman may be at high risk of breast cancer if she has certain risk factors including a family history of breast cancer, ovarian cancer, or other inherited types of cancer; BRCA1 and BRCA2 mutations; chest radiation treatments at a young age; and a history of high-risk breast biopsy results. Screening also can find problems in the breasts that are not cancer. Using x-ray technology, mammography is currently the primary tool used to screen for breast cancer and other problems, but other diagnostic breast imaging may be utilized as well. Despite these advantages of increased cancer detection, not all private insurer and health plans cover this diagnostic testing and many still require patients to pay out-of-pocket. The ability to pay for breast cancer screening – whether it be for lack of coverage or high-cost sharing – should not be an impediment for patients to receive this care. This bill eliminates this problem by removing the financial barriers of co-pays and deductibles for these life-saving screening tests.

ARGUMENTS IN OPPOSITION: The California Association of Health Plans, the Association of California Life and Health Insurance Companies, and America's Health Insurance Plans write in opposition to this along with 22 other health insurance mandate bills. These bills include mandates for health plans and insurers to cover specific services, as well as bills that eliminate cost sharing and limit utilization management, which have similar cost impacts as coverage mandates. Moreover, they will increase costs, reduce choice and competition, and further

incent some employers and individuals to avoid state regulation by seeking alternative coverage options. State mandates increase costs of coverage – especially for families who buy coverage without subsidies, small business owners who cannot or do not wish to self-insure, and California taxpayers who foot the bill for the state’s share of those mandates. Benefit mandates that do not promote evidence-based medicine can lead to lower quality care, over- or misutilization of services, and higher costs for treatments that may be ineffective, less safe, or higher cost than other, new or trusted services. California is rightly focused on achieving both universal coverage and cost containment at a time when the national conversation has shifted toward lower costs through less comprehensive options. The California Chamber of Commerce writes employer-based health care coverage is usually one of the largest expenses a business experiences and, while this bill is well-intentioned, it will unintentionally exacerbate health care affordability issues.

GOVERNOR'S VETO MESSAGE:

This bill would require health plans to provide coverage without cost-sharing for screening mammography, medically necessary diagnostic or supplemental breast examinations, diagnostic mammography, testing for screening or diagnostic purposes, and medically necessary diagnostic breast imaging. I appreciate the author's efforts to improve access to preventive health care services, particularly breast cancer. Breast cancer screenings save lives, which is why health plans already must provide coverage for primary screening mammograms, without cost sharing for women aged 40 to 74. However, this bill exceeds the cost sharing provisions under the Affordable Care Act. As such, this policy would result in unknown costs to health plans passed on to consumers through premiums. The State must weigh the potential benefits of all new mandates with the comprehensive costs to the entire delivery system.

ASSEMBLY FLOOR: 79-0, 9/11/23

AYES: Addis, Aguiar-Curry, Alanis, Alvarez, Arambula, Bains, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Calderon, Juan Carrillo, Wendy Carrillo, Cervantes, Chen, Connolly, Megan Dahle, Davies, Dixon, Flora, Mike Fong, Vince Fong, Friedman, Gabriel, Gallagher, Garcia, Gipson, Grayson, Haney, Hart, Holden, Hoover, Irwin, Jackson, Jones-Sawyer, Kalra, Lackey, Lee, Low, Lowenthal, Maienschein, Mathis, McCarty, McKinnor, Muratsuchi, Stephanie Nguyen, Ortega, Pacheco, Papan, Jim Patterson, Joe Patterson, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Rendon, Reyes, Luz Rivas, Rodriguez, Blanca Rubio, Sanchez, Santiago, Schiavo, Soria, Ta, Ting,

Valencia, Villapudua, Waldron, Wallis, Ward, Weber, Wicks, Wilson, Wood,
Zbur, Robert Rivas

NO VOTE RECORDED: Essayli

Prepared by: Teri Boughton / HEALTH / (916) 651-4111
10/19/23 10:43:07

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