

Date of Hearing: July 11, 2023

ASSEMBLY COMMITTEE ON HEALTH
Jim Wood, Chair
SB 541 (Menjivar) – As Amended June 30, 2023

SENATE VOTE: 31-9

SUBJECT: Sexual health: contraceptives: immunization.

SUMMARY: Adds immunization against human papillomavirus (HPV), as clinically indicated, to persons who are between 12 and 18 years of age, inclusive, as a covered benefit in the Family Planning, Access, Care, and Treatment (Family PACT) Program for provider sites not enrolled in the federal Vaccines for Children (VFC) program. Requires all public high schools to make condoms available to students by the start of the 2024-25 school year, and requires schools to provide information to students on the availability of condoms, as well as other sexual health information. Prohibits public schools from preventing distribution of condoms or preventing a school-based health center from making condoms available and easily accessible to students at the school-based health center site. Prohibits retailers from restricting sales of nonprescription contraception on the basis of age. Specifically, **this bill:**

- 1) Adds coverage for immunization against HPV, as clinically indicated, to persons between 12 and 18 years of age, inclusive, at Family PACT provider sites that are not enrolled in the federally funded VFC program administered by the federal Centers for Disease Control and Prevention (CDC), and specifies the Department of Health Care Services (DHCS) is not prohibited from providing that coverage to persons who are over 18 years of age through the Family PACT Program.
- 2) Requires, on or before the start of the 2024–25 school year, each public school to make condoms available to all pupils in grades 9 to 12, inclusive, free of charge, and requires related information to be made available to students.
- 3) Requires each public school serving any of grades 7 to 12, inclusive, to allow the distribution of condoms during the course of, or in connection with, educational or public health programs and initiatives, as specified.
- 4) Requires public schools, serving any of grades 7 to 12, to allow a school-based health center to make internal and external condoms available and easily accessible to pupils at the school-based health center site.
- 5) Prohibits a retail establishment from refusing to furnish nonprescription contraception to a person solely on the basis of age by means of any conduct, including, but not limited to, requiring the customer to present identification for purposes of demonstrating their age, unless the contraception is otherwise subject to restriction on the basis of age. Specifies that penalties do not apply for non-compliance.
- 6) Provides, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs will be made pursuant to existing law.

EXISTING LAW:

- 1) Establishes the Family PACT program, administered by DHCS, which provides comprehensive clinical family planning services, including family planning, contraceptive drugs and devices, health education and counseling, treatment of specified conditions, and other family-planning related services, to qualified individuals with incomes below 200% of the federal poverty level (FPL). [Welfare and Institutions Code § 14132 (aa)]
- 2) Establishes the California Healthy Youth Act to provide pupils with the knowledge and skills necessary to protect their sexual and reproductive health from HIV and other sexually transmitted infections and from unintended pregnancy, and, among other things, to ensure that pupils receive integrated, comprehensive, accurate, and unbiased sexual health and HIV prevention instruction, and provide educators with clear tools and guidance to accomplish that objective. [Education Code (EC) § 51930]
- 3) Requires each school district to ensure that all students in grades 7 to 12 receive comprehensive sexual health education and HIV prevention at least once in junior high or middle school and once in high school. Requires this instruction to include information about the value of delaying sexual activity while also providing medically accurate information on other methods of preventing HIV and other sexually transmitted infections and pregnancy, as well as information about the effectiveness and safety of all FDA-approved contraceptive methods in preventing pregnancy, including, but not limited to, emergency contraception. [EC § 51934]
- 4) Requires local educational agencies (LEAs), at the beginning of each school year, or, for a pupil who enrolls in a school after the beginning of the school year, at the time of that pupil's enrollment, to provide parents and guardians with a notice explaining planned instruction in comprehensive sexual health education and HIV prevention education, and requires LEAs to advise parents and guardians of their rights to excuse their child from the instruction. [EC § 51938]

FISCAL EFFECT: According to the Senate Appropriations Committee:

- 1) By requiring schools to provide condoms for free to students in grades 9 through 12, this bill could result in a reimbursable state mandate. The magnitude of the costs is unknown but could be in the high hundreds of thousands to low millions of dollars in Proposition 98 General Fund each year. To the extent that school districts elect not to file mandate claims for these activities, this could place additional cost pressure on the K-12 Mandate Block Grant.
- 2) This bill's requirement to provide coverage for immunization against HPV could result in increased program costs potentially in the low tens of millions of dollars each year. A precise amount will largely depend on the actual take up rate of eligible Medi-Cal recipients.
- 3) The Department of Public Health (DPH) indicates that any costs to DPH related to the bill's prohibition on retail establishments would be minor and absorbable within existing resources.

COMMENTS:

1) **PURPOSE OF THIS BILL.** According to the author, many young people rely on the state's family planning program, Family PACT, to obtain free and confidential family planning and related services including sexually transmitted infection (STI) counseling, testing and treatment. The author notes the program served more than 85,000 teens in 2019 alone. The author indicates Family PACT began covering the HPV vaccine in 2022 when the expanded benefit was included in the 2022 Budget Act; however, the policy fell short in extending the HPV vaccine benefit only for patients 19 and older. The author states that while the rationale for the age limit was that minors can obtain the vaccine from the VFC program, in reality, not all family planning providers are VFC providers, cutting off access for teens in a place that may be their trusted source of health care. The author indicates thousands of teens may be unable to get a potentially life-saving vaccine while getting other sexual and reproductive health services in a confidential and non-judgmental health care setting, negatively affecting their continuity of care and unnecessarily denying them access to a potentially life-saving vaccine. The author explains this bill would close the HPV coverage gap by requiring the Family PACT program to cover the HPV vaccine for teens ages 12 to 18 at Family PACT provider sites that are not enrolled in the VFC program.

2) **BACKGROUND.**

- a) **Family PACT.** Family PACT provides comprehensive clinical family planning and family planning-related services to qualified individuals with incomes below 200% FPL. According to DHCS, Family PACT is designed to narrow the gap between insured and uninsured individuals in California. The program is designed to make contraception easily accessible to individuals who qualify. Unlike other programs with more complex and lengthy eligibility processes, enrolled Family PACT providers can determine an individual's eligibility for Family PACT at the site of clinical service delivery, on the same day the individual seeks services. Family PACT covers a wide range of family planning services, including office visits, procedures, drugs and contraceptive supplies.
- b) **HPV.** According to the CDC, HPV vaccine protects against cancers caused by HPV infection. HPV is a common virus that infects teens and adults. About 1 million people, including teens, become infected with HPV each year. HPV infection can cause cervical, vaginal, and vulvar cancers in women and penile cancer in men. HPV can also cause anal cancer, cancer of the back of the throat (oropharynx), and genital warts in both men and women. Annually, 36,500 people are estimated to be diagnosed with a cancer caused by HPV infection. CDC estimates HPV vaccination could prevent more than 90% of cancers caused by HPV from ever developing.

CDC recommends all children who are 11 or 12 years old should get two shots of HPV vaccine 6 to 12 months apart. CDC explains vaccinated during this time protects preteens before ever being exposed to the virus through intimate sexual contact. Teens and young adults who start the series later, at ages 15 through 26 years, need three doses of HPV vaccine. Vaccination is not recommended for everyone older than age 26 years. CDC notes some adults age 27 through 45 years who are not already vaccinated may decide to get HPV vaccine after speaking with their doctor about their risk for new HPV infections and the possible benefits of vaccination for them. HPV vaccination in this age range provides less benefit on a population level, because more people in this age range have already been exposed to HPV.

- c) **VFC.** The federally funded VFC program provides no-cost vaccines for children ages 18 years and younger who are uninsured, Medicaid-eligible, American Indian or Alaska Native. Any health care provider authorized by their state to prescribe vaccines can be a VFC provider. VFC providers agree to order and provide all age-appropriate, federally recommended vaccines to VFC-eligible patient populations. In exchange for federally funded vaccines, enrolled providers agree to partner with the VFC Program to ensure that program requirements are met. There are a number of administrative steps related to becoming a VFC provider and maintaining enrollment. Providers must enroll and recertify each year, and receive periodic visits by VFC field representatives who conduct scheduled compliance visits and unannounced storage and handling visits to assess the provider's compliance with CDC's standards. Providers agree to various tracking, vaccine storage and handling, staff training, and other compliance requirements in exchange for receiving free pediatric vaccines. VFC also requires providers to identify a Vaccine Coordinator, an on-site employee who is fully trained and responsible for implementing and overseeing the provider's vaccine management plan, as well as a backup Vaccine Coordinator.

According to the bill's sponsors, many family planning clinics where teens seek care funded through Family PACT are not VFC providers. Proponents of this bill indicate it seeks to offer a "no wrong door" approach to receiving these important vaccines.

- d) **Condoms in Schools.** While sexuality is a normal part of adolescent development, sexual activity among teens can have serious consequences, including STIs and unintended pregnancy. It is estimated that although young people ages 15-24 make up 13% of the U.S. population, they represent around 25% of the sexually active population and account for around 50% of all new STI cases each year. The external condom remains the most popular contraceptive method among adolescents. Condoms are available over the counter in all states but may be difficult for teens to access, as some stores stock condoms in inaccessible locations that require a store attendant to assist the customer. The costs of condoms may also be a limiting factor for many young people. This bill would require condoms to be provided in all California high schools in order to protect teens from STIs while also removing barriers that lead to lack of access to condoms.
- 3) **SUPPORT.** The sponsors of this bill write that vaccination rates against HPV are down nationwide due to the COVID-19 pandemic, putting teens and young people at risk of developing HPV-related cancers later in life. The sponsors indicate many young people rely on the state's family planning program, Family PACT, to obtain free and confidential family planning and related services including STI counseling, testing and treatment, but that the HPV coverage policy in Family PACT is inadequate in that it excludes teens, with the rationale that minors can obtain the vaccine from the VFC program. The sponsors note that while there are more than 2,000 Family PACT health providers, not all of them are VFC providers and don't have the ability to provide the HPV vaccine to minors. Therefore, the sponsors argue, this policy leaves thousands of teens unable to get a potentially life-saving vaccine while getting other sexual and reproductive health services, unnecessarily denying them access to the vaccine.
- 4) **OPPOSITION.** California Family Council and California Policy Center oppose this bill, citing concerns related to the provision of condoms in public school. California Family Council questions the efficacy of condoms for preventing sexually transmitted infections and

asserts handing out free condoms perpetuates a “hook-up culture.” California Policy Center argues that providing birth control is not a core mission of public education, and that this bill is a distraction that diverts money and focus from the core mission of promoting literacy.

- 5) **RELATED LEGISLATION.** AB 659 (Aguiar-Curry) states that it is the public policy of the state that pupils are expected to be fully immunized against HPV before admission or advancement to the eighth grade, and before first-time enrollment in any public college or university; and requires health plans, insurers, and Family PACT to provide coverage for the HPV vaccine. AB 659 is pending in the Senate Education Committee.
- 6) **PREVIOUS LEGISLATION.** AB 2312 (Lee) of 2022 would have prohibited retailers from restricting sales of nonprescription contraception on the basis of age, subjecting retailers to a civil penalty for violations. AB 2312 was referred to the Assembly Health Committee, but the hearing was canceled at the request of the author.

AB 2516 (Aguiar-Curry) of 2022 would have required Family PACT, health plans, and insurers to provide coverage for the HPV vaccine. AB 2516 was vetoed by the Governor, who stated, in part, that the HPV vaccine is available through Medi-Cal and the VFC programs. As a result, the Governor stated, providing the HPV vaccine to teens in the Family PACT program to individuals who are already covered through the VFC program would result in millions of dollars in General Fund expenditures not included in 2022 Budget Act and would not be available for federal reimbursement. The Governor noted the 2022 Budget Act included \$8 million (\$4.6 million General Fund) to add the HPV vaccine under the Family PACT program for individuals ages 19 through 45, and that while he supports the author’s efforts to address STI prevention, proposals with an ongoing fiscal impact should be considered through the annual budget process.

- 7) **DOULBE REFERRAL.** This bill is double referred; it passed the Assembly Education Committee by a vote of 5-1 on June 28, 2023.
- 8) **POLICY COMMENTS.** This bill has a substantive conflict with a provision of AB 659 that specifies “comprehensive clinical family planning services” covered by Family PACT include the HPV vaccine for persons for whom it is approved by the FDA. This would include those under 18, the same population targeted by this bill. As this bill moves forward, the Committee recommends the author continue working in collaboration with AB 659’s author to resolve the conflict.

In addition, this bill does not address the Governor’s veto of a similar measure last year (AB 2516). Accordingly, the author may also wish to explore potential alternative solutions to address the goals of ensuring access to HPV vaccines in family planning clinics, such as addressing barriers to more robust enrollment of family planning providers in the VFC program.

REGISTERED SUPPORT / OPPOSITION:

Support

Access Reproductive Justice
ACLU California Action
ACT for Women and Girls

Adolescent Health Working Group
AIDS Healthcare Foundation
Alameda County Board of Supervisors
American College of Obstetricians and Gynecologists, District IX
Black Women for Wellness Action Project
California Academy of Family Physicians
California Coalition for Youth
California Faculty Association
California Federation of Teachers
California Health+ Advocates, Subsidiary of The California Primary Care Association
California Nurse Midwives Association
California School-Based Health Alliance
California Teachers Association
California Women's Law Center
CAPSLO, the Center for Health & Prevention
Citizens for Choice
Coachman Moore and Associates
Community Clinic Association of Los Angeles County
Desert Aids Project D/b/a DAP Health
Essential Access Health
Feminist Majority Foundation
Genders & Sexualities Alliance Network
Generation Up
Glide
Los Angeles LGBT Center
Naral Pro-Choice California
National Center for Youth Law
National Harm Reduction Coalition
National Health Law Program
Planned Parenthood Affiliates of California
Radiant Health Centers
Rainbow Pride Youth Alliance
Realistic Education in Action Coalition to Foster Health (REACH LA)
San Francisco AIDS Foundation
The Los Angeles Trust for Children's Health
Training in Early Abortion for Comprehensive Health Care
UCLA Bixby Center on Population and Reproductive Health
URGE: Unite for Reproductive & Gender Equity
Women's Foundation of California
Women's Health Specialists

Opposition

California Family Council
California Policy Center

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