

AMENDED IN SENATE APRIL 25, 2011

SENATE BILL

No. 255

Introduced by Senator Pavley

February 10, 2011

An act to amend ~~Section~~ *Sections 1367.6 and 1367.635* of the Health and Safety Code, and to amend ~~Section~~ *Sections 10123.8 and 10123.86* of the Insurance Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

SB 255, as amended, Pavley. Health care coverage: breast cancer.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care, and makes a willful violation of its provisions a crime. Existing law provides for the regulation of health insurers by the Department of Insurance. *Existing law requires every health care service plan contract and health insurance policy to provide coverage for screening for, diagnosis of, and treatment for, breast cancer, including coverage for prosthetic devices or reconstructive surgery to restore and achieve symmetry for the patient incident to a mastectomy.* Existing law requires every health care service plan contract and health insurance policy that provides coverage for mastectomies and lymph node dissections to allow the length of any hospital stay to be determined by the attending physician and surgeon in consultation with the patient, to cover prosthetic devices or reconstructive surgery, and to cover all complications from a mastectomy. Existing law defines mastectomy for those purposes as the removal of all or part of the breast for medically necessary reasons, as determined by a licensed physician and surgeon.

This bill would revise and recast the definition of mastectomy and would specify that the partial removal of a breast includes, but is not limited to, lumpectomy, which includes surgical removal of the tumor with clear margins. The bill would require the consultation regarding the length of any hospital stay to be conducted postsurgery.

Because a willful violation of these provisions by a health care service plan is a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) The National Cancer Institute estimates that a woman born
4 today in the United States has a one in eight chance of developing
5 breast cancer during her lifetime.

6 (b) According to the American Cancer Society, excluding
7 cancers of the skin, breast cancer is the most frequently diagnosed
8 cancer in women.

9 (c) According to the American Cancer Society, an estimated
10 40,480 women and 450 men died from breast cancer in 2008.

11 (d) Nationwide, in 2008, an estimated 182,460 new cases of
12 invasive breast cancer were diagnosed in women, and an estimated
13 1,990 invasive breast cancer cases were diagnosed in men. In
14 addition, an estimated 67,770 new cases of in situ breast cancer
15 occurred in women in 2008, and, of these, approximately 85
16 percent were ductal carcinoma in situ.

17 (e) According to the American Cancer Society, most breast
18 cancer patients undergo some type of surgical treatment, which
19 may involve breast-conserving surgeries, such as lumpectomy
20 (surgical removal of the tumor with clear margins) or mastectomy
21 (surgical removal of the breast) with removal of some of the
22 axillary (underarm) lymph nodes.

1 (f) Currently, 20 states mandate minimum in-patient coverage
2 after a patient undergoes a mastectomy, including California.

3 (g) Breast cancer patients have reported adverse outcomes,
4 including infection, and inadequately controlled pain resulting
5 from premature hospital discharge following breast cancer surgery.

6 *SEC. 2. Section 1367.6 of the Health and Safety Code is*
7 *amended to read:*

8 1367.6. (a) Every health care service plan contract, except a
9 specialized health care service plan contract, that is issued,
10 amended, delivered, or renewed on or after January 1, 2000, shall
11 provide coverage for screening for, diagnosis of, and treatment
12 for, breast cancer.

13 (b) No health care service plan contract shall deny enrollment
14 or coverage to an individual solely due to a family history of breast
15 cancer, or who has had one or more diagnostic procedures for
16 breast disease but has not developed or been diagnosed with breast
17 cancer.

18 (c) Every health care service plan contract shall cover screening
19 and diagnosis of breast cancer, consistent with generally accepted
20 medical practice and scientific evidence, upon the referral of the
21 enrollee's participating physician.

22 (d) Treatment for breast cancer under this section shall include
23 coverage for prosthetic devices or reconstructive surgery to restore
24 and achieve symmetry for the patient incident to a mastectomy.
25 Coverage for prosthetic devices and reconstructive surgery shall
26 be subject to the copayment, or deductible and coinsurance
27 conditions, that are applicable to the mastectomy and all other
28 terms and conditions applicable to other benefits.

29 (e) As used in this section, "mastectomy" means the removal
30 of all or part of the breast for medically necessary reasons, as
31 determined by a licensed physician and surgeon. *Partial removal*
32 *of a breast includes, but is not limited to, lumpectomy, which*
33 *includes surgical removal of the tumor with clear margins.*

34 (f) As used in this section, "prosthetic devices" means the
35 provision of initial and subsequent devices pursuant to an order
36 of the patient's physician and surgeon.

37 ~~SEC. 2.~~

38 *SEC. 3. Section 1367.635 of the Health and Safety Code is*
39 *amended to read:*

1 1367.635. (a) Every health care service plan contract that is
2 issued, amended, renewed, or delivered on or after January 1, 1999,
3 that provides coverage for surgical procedures known as
4 mastectomies and lymph node dissections, shall do all of the
5 following:

6 (1) Allow the length of a hospital stay associated with those
7 procedures to be determined by the attending physician and surgeon
8 in consultation with the patient, postsurgery, consistent with sound
9 clinical principles and processes. No health care service plan shall
10 require a treating physician and surgeon to receive prior approval
11 from the plan in determining the length of hospital stay following
12 those procedures.

13 (2) Cover prosthetic devices or reconstructive surgery, including
14 devices or surgery to restore and achieve symmetry for the patient
15 incident to the mastectomy. Coverage for prosthetic devices and
16 reconstructive surgery shall be subject to the deductible and
17 coinsurance conditions applicable to other benefits.

18 (3) Cover all complications from a mastectomy, including
19 lymphedema.

20 (b) As used in this section, all of the following definitions apply:

21 (1) “Coverage for prosthetic devices or reconstructive surgery”
22 means any initial and subsequent reconstructive surgeries or
23 prosthetic devices, and followup care deemed necessary by the
24 attending physician and surgeon.

25 (2) “Prosthetic devices” means and includes the provision of
26 initial and subsequent prosthetic devices pursuant to an order of
27 the patient’s physician and surgeon.

28 (3) “Mastectomy” means the removal of all or part of the breast
29 for medically necessary reasons, as determined by a licensed
30 physician and surgeon. Partial removal of a breast includes, but is
31 not limited to, lumpectomy, which includes surgical removal of
32 the tumor with clear margins.

33 (4) “To restore and achieve symmetry” means that, in addition
34 to coverage of prosthetic devices and reconstructive surgery for
35 the diseased breast on which the mastectomy was performed,
36 prosthetic devices and reconstructive surgery for a healthy breast
37 is also covered if, in the opinion of the attending physician and
38 surgeon, this surgery is necessary to achieve normal symmetrical
39 appearance.

1 (c) No individual, other than a licensed physician and surgeon
2 competent to evaluate the specific clinical issues involved in the
3 care requested, may deny requests for authorization of health care
4 services pursuant to this section.

5 (d) No health care service plan shall do any of the following in
6 providing the coverage described in subdivision (a):

7 (1) Reduce or limit the reimbursement of the attending provider
8 for providing care to an individual enrollee or subscriber in
9 accordance with the coverage requirements.

10 (2) Provide monetary or other incentives to an attending provider
11 to induce the provider to provide care to an individual enrollee or
12 subscriber in a manner inconsistent with the coverage requirements.

13 (3) Provide monetary payments or rebates to an individual
14 enrollee or subscriber to encourage acceptance of less than the
15 coverage requirements.

16 (e) On or after July 1, 1999, every health care service plan shall
17 include notice of the coverage required by this section in the plan's
18 evidence of coverage.

19 (f) Nothing in this section shall be construed to limit
20 retrospective utilization review and quality assurance activities by
21 the plan.

22 *SEC. 4. Section 10123.8 of the Insurance Code is amended to*
23 *read:*

24 10123.8. (a) Every policy of disability insurance that provides
25 coverage for hospital, medical, or surgical expenses, that is issued,
26 amended, delivered, or renewed on or after January 1, 2000, shall
27 provide coverage for screening for, diagnosis of, and treatment
28 for, breast cancer.

29 (b) No policy of disability insurance that provides coverage for
30 hospital, medical, or surgical expenses shall deny enrollment or
31 coverage to an individual solely due to a family history of breast
32 cancer, or who has had one or more diagnostic procedures for
33 breast disease but has not developed or been diagnosed with breast
34 cancer.

35 (c) Every policy of disability insurance shall cover screening
36 and diagnosis of breast cancer, consistent with generally accepted
37 medical practice and scientific evidence, upon the referral of the
38 insured's participating physician.

39 (d) Treatment for breast cancer under this section shall include
40 coverage for prosthetic devices or reconstructive surgery to restore

1 and achieve symmetry for the patient incident to a mastectomy.
2 Coverage for prosthetic devices and reconstructive surgery shall
3 be subject to the deductible and coinsurance conditions applied to
4 the mastectomy and all other terms and conditions applicable to
5 other benefits.

6 (e) As used in this section, “mastectomy” means the removal
7 of all or part of the breast for medically necessary reasons, as
8 determined by a licensed physician and surgeon. *Partial removal*
9 *of a breast includes, but is not limited to, lumpectomy, which*
10 *includes surgical removal of the tumor with clear margins.*

11 (f) As used in this section, “prosthetic devices” means the
12 provision of initial and subsequent devices pursuant to an order
13 of the patient’s physician and surgeon.

14 (g) For purposes of this section, disability insurance does not
15 include accident only, credit, disability income, specified disease
16 and hospital confinement indemnity, coverage of Medicare services
17 pursuant to contracts with the United States government, Medicare
18 supplement, long-term care insurance, dental, vision, coverage
19 issued as a supplement to liability insurance, insurance arising out
20 of a workers’ compensation or similar law, automobile medical
21 payment insurance, or insurance under which benefits are payable
22 with or without regard to fault and that is statutorily required to
23 be contained in any liability insurance policy or equivalent
24 self-insurance.

25 ~~SEC. 3.~~

26 *SEC. 5.* Section 10123.86 of the Insurance Code is amended
27 to read:

28 10123.86. (a) Every policy of disability insurance covering
29 hospital, surgical, or medical expenses that is issued, amended,
30 renewed, or delivered on or after January 1, 1999, that provides
31 coverage for surgical procedures known as mastectomies and
32 lymph node dissections, shall do all of the following:

33 (1) Allow the length of a hospital stay associated with those
34 procedures to be determined by the attending physician and surgeon
35 in consultation with the patient, postsurgery, consistent with sound
36 clinical principles and processes. No disability insurer shall require
37 a treating physician and surgeon to receive prior approval in
38 determining the length of hospital stay following those procedures.

39 (2) Cover prosthetic devices or reconstructive surgery, including
40 devices or surgery to restore and achieve symmetry for the patient

1 incident to the mastectomy. Coverage for prosthetic devices and
2 reconstructive surgery shall be subject to the deductible and
3 coinsurance conditions applicable to other benefits.

4 (3) Cover all complications from a mastectomy, including
5 lymphedema.

6 (b) As used in this section, all of the following definitions apply:

7 (1) “Coverage for prosthetic devices or reconstructive surgery”
8 means any initial and subsequent reconstructive surgeries or
9 prosthetic devices, and followup care deemed necessary by the
10 attending physician and surgeon.

11 (2) “Prosthetic devices” means and includes the provision of
12 initial and subsequent prosthetic devices pursuant to an order of
13 the patient’s physician and surgeon.

14 (3) “Mastectomy” means the removal of all or part of the breast
15 for medically necessary reasons, as determined by a licensed
16 physician and surgeon. Partial removal of a breast includes, but is
17 not limited to, lumpectomy, which includes surgical removal of
18 the tumor with clear margins.

19 (4) “To restore and achieve symmetry” means that, in addition
20 to coverage of prosthetic devices and reconstructive surgery for
21 the diseased breast on which the mastectomy was performed,
22 prosthetic devices and reconstructive surgery for a healthy breast
23 is also covered if, in the opinion of the attending physician and
24 surgeon, this surgery is necessary to achieve normal symmetrical
25 appearance.

26 (c) No individual, other than a licensed physician and surgeon
27 competent to evaluate the specific clinical issues involved in the
28 care requested, may deny requests for authorization of health care
29 services pursuant to this section.

30 (d) No insurer shall do any of the following in providing the
31 coverage described in subdivision (a):

32 (1) Reduce or limit the reimbursement of the attending provider
33 for providing care to an insured in accordance with the coverage
34 requirements.

35 (2) Provide monetary or other incentives to an attending provider
36 to induce the provider to provide care to an insured in a manner
37 inconsistent with the coverage requirements.

38 (3) Provide monetary payments or rebates to an insured to
39 encourage acceptance of less than the coverage requirements.

1 (e) On or after July 1, 1999, every insurer shall include notice
2 of the coverage required by this section in the insurer's evidence
3 of coverage or certificate of insurance.

4 (f) Nothing in this section shall be construed to limit
5 retrospective utilization review and quality assurance activities by
6 the insurer.

7 (g) This section shall only apply to health benefit plans, as
8 defined in subdivision (a) of Section 10198.6, except that for
9 accident only, specified disease, or hospital indemnity insurance,
10 coverage for benefits under this section shall apply to the extent
11 that the benefits are covered under the general terms and conditions
12 that apply to all other benefits under the policy. Nothing in this
13 section shall be construed as imposing a new benefit mandate on
14 accident only, specified disease, or hospital indemnity insurance.

15 ~~SEC. 4.~~

16 *SEC. 6.* No reimbursement is required by this act pursuant to
17 Section 6 of Article XIII B of the California Constitution because
18 the only costs that may be incurred by a local agency or school
19 district will be incurred because this act creates a new crime or
20 infraction, eliminates a crime or infraction, or changes the penalty
21 for a crime or infraction, within the meaning of Section 17556 of
22 the Government Code, or changes the definition of a crime within
23 the meaning of Section 6 of Article XIII B of the California
24 Constitution.