

AMENDED IN ASSEMBLY AUGUST 6, 2012

AMENDED IN SENATE APRIL 25, 2011

SENATE BILL

No. 255

Introduced by Senator Pavley

(Coauthor: Senator Evans)

(Coauthors: Assembly Members Atkins, Bonnie Lowenthal, and Mitchell)

February 10, 2011

An act to amend Sections 1367.6 and 1367.635 of the Health and Safety Code, and to amend 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

1 (surgical removal of the breast) with removal of some of the
2 axillary (underarm) lymph nodes.

3 (f) Currently, 20 states mandate minimum ~~in-patient~~ *inpatient*
4 coverage after a patient undergoes a mastectomy, including
5 California.

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

9 SEC. 2. Section 1367.6 of the Health and Safety Code is
10 amended to read:

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

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

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

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

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

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

1 SEC. 3. Section 1367.635 of the Health and Safety Code is
2 amended to read:

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

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

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

20 (3) Cover all complications from a mastectomy, including
21 lymphedema.

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

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

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

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

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

1 surgeon, this surgery is necessary to achieve normal symmetrical
2 appearance.

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

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

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

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

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

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

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

24 SEC. 4. Section 10123.8 of the Insurance Code is amended to
25 read:

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

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

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

1 (d) Treatment for breast cancer under this section shall include
2 coverage for prosthetic devices or reconstructive surgery to restore
3 and achieve symmetry for the patient incident to a mastectomy.
4 Coverage for prosthetic devices and reconstructive surgery shall
5 be subject to the deductible and coinsurance conditions applied to
6 the mastectomy and all other terms and conditions applicable to
7 other benefits.

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

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

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

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

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

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

1 (2) Cover prosthetic devices or reconstructive surgery, including
2 devices or surgery to restore and achieve symmetry for the patient
3 incident to the mastectomy. Coverage for prosthetic devices and
4 reconstructive surgery shall be subject to the deductible and
5 coinsurance conditions applicable to other benefits.

6 (3) Cover all complications from a mastectomy, including
7 lymphedema.

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

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

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

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

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

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

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

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

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

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

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

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

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

17 *SEC. 6. Nothing in this act shall be construed to establish a*
18 *new mandated benefit. The purpose of this act is to clarify that the*
19 *existing definition of the term “mastectomy” also includes*
20 *lumpectomy.*

21 ~~SEC. 6.~~
22 *SEC. 7. No reimbursement is required by this act pursuant to*
23 *Section 6 of Article XIII B of the California Constitution because*
24 *the only costs that may be incurred by a local agency or school*
25 *district will be incurred because this act creates a new crime or*
26 *infraction, eliminates a crime or infraction, or changes the penalty*
27 *for a crime or infraction, within the meaning of Section 17556 of*
28 *the Government Code, or changes the definition of a crime within*
29 *the meaning of Section 6 of Article XIII B of the California*
30 *Constitution.*