

SENATE THIRD READING
SB 510 (Pan)
As Amended September 3, 2021
2/3 vote. Urgency

SUMMARY

Requires a health care service plan (health plan) contract or a disability insurance policy, as specified, to cover the costs for COVID-19 diagnostic and screening testing and health care services related to the testing for COVID-19, or a future disease when declared a public health emergency by the State of California's Governor. Prohibits the contract or policy from imposing cost sharing or prior authorization requirements for that coverage. Requires a contract or policy to cover without cost sharing or prior authorization an item, service, or immunization intended to prevent or mitigate COVID-19, or a future disease when declared a public health emergency, that is recommended by the United States Preventive Services Task Force or the federal Centers for Disease Control and Prevention (CDC), as specified. Applies the provisions of this bill retroactively beginning from the Governor's declared State of Emergency related to COVID-19 on March 4, 2020. Makes the provisions of this bill severable. *Adds an urgency clause to ensure that the provisions of this bill go into immediate effect upon enactment.*

- 1) Defines diagnostic testing as all of the following:
 - a) Testing intended to identify current or past infection and performed when a person has signs or symptoms consistent with COVID-19, or when a person is asymptomatic but has recent known or suspected exposure to SARS-CoV-2;
 - b) Testing a person with symptoms consistent with COVID-19;
 - c) Testing a person as a result of contact tracing efforts;
 - d) Testing a person who indicates that they were exposed to someone with a confirmed or suspected case of COVID-19; and,
 - e) Testing a person after an individualized clinical assessment by a licensed health care provider.
- 2) Defines screening testing as tests that are intended to identify people with COVID-19 who are asymptomatic and do not have known, suspected, or reported exposure to SARS-CoV-2. Screening testing helps to identify unknown cases so that measures can be taken to prevent further transmission. Screening testing includes all of the following:
 - a) Workers in a workplace setting;
 - b) Students, faculty, and staff in a school setting;
 - c) A person before or after travel; and,

At home for someone who does not have symptoms associated with COVID-19 and does not have a known exposure to someone with COVID-19

Major Provisions

COMMENTS

- 1) *COVID-19*. According to the California Health Benefits Review Program (CHBRP), COVID-19 is an infectious disease caused by a new strain of coronavirus that is responsible for a worldwide pandemic. On March 13, 2020, a national emergency was declared to help states and healthcare systems prevent the spread of COVID-19 in the United States (U.S.) Despite these efforts, as of March 16, 2021, there have been 29,319,457 confirmed cases and 533,057 deaths from COVID-19 in the U.S. and 3,530,055 confirmed cases and 55,372 (63,317 as of July 8, 2021 and according to the Department of Public Health (DPH)) deaths from COVID-19 in California.
- 2) *Families First Coronavirus Response Act (FFCRA) and the Coronavirus Aid, Relief, and Economic Security Act (CARES) Act*. The FFCRA was enacted on March 18, 2020 and generally requires group health plans and health insurance issuers offering group or individual health insurance coverage, including grandfathered health plans, to provide benefits for certain items and services related to testing for the detection of SARS-CoV-2, which is the virus that causes COVID-19, or the diagnosis of COVID-19 when those items or services are furnished on or after March 18, 2020, and during the applicable emergency period. Under the FFCRA, plans and issuers must provide this coverage without imposing any cost-sharing requirements (including deductibles, copayments, and coinsurance), prior authorization, or other medical management requirements. The CARES Act was enacted on March 27, 2020 and amended FFCRA to include a broader range of diagnostic items and services that plans and issuers must cover without any cost-sharing requirements, prior authorization, or other medical management requirements. The CARES Act generally requires plans and issuers providing coverage for these items and services to reimburse any provider of COVID-19 diagnostic testing an amount that equals the negotiated rate or, if the plan or issuer does not have a negotiated rate with the provider, the cash price for such service that is listed by the provider on a public website.
- 3) *Recent State and Federal Action*. In July 2020, the Department of Managed Health Care (DMHC) issued emergency regulations regarding COVID-19 diagnostic testing that classify COVID-19 testing as medically necessary urgent care for essential health workers and people with symptoms of or possible exposure to COVID-19. Subsequently, the DMHC issued FAQs after the federal government issued guidance on February 26, 2021 that clarified health plans must cover COVID-19 diagnostic testing for all health plan enrollees by any provider with no cost-sharing. On June 7, 2021, a DMHC All Plan Letter (APL) declared the DMHC's emergency regulation regarding COVID-19 testing expired on May 15, 2021. The APL clarified that health plans must continue to cover certain COVID-19 testing for their enrollees pursuant to federal law. The FFCRA and CARES Act continue to require plans to cover COVID-19 diagnostic testing, regardless of whether enrollees access such tests through in- or out-of-network providers. The APL described the federal guidance requiring coverage of COVID-19 testing specifically that on February 26, 2021, the federal Departments of Labor, Department of Health and Human Services, and the Treasury issued guidance reiterating health plans' obligations to cover COVID-19 diagnostic testing. The guidance requires health plans to cover COVID-19 diagnostic testing "when the purpose of the testing is for individualized diagnosis or treatment of COVID-19." The guidance makes clear that

health plans must cover COVID-19 diagnostic testing even if an enrollee is asymptomatic for COVID-19 and does not have recent known or suspected exposure to COVID-19. The guidance states plans are not required to cover COVID-19 testing for "public health surveillance or employment purposes." The February 26, 2021, guidance does not define the terms "diagnostic," "public health surveillance," or "employment purposes." However, the guidance requires health plans to generally assume that if a person seeks and receives a COVID-19 test from a licensed or authorized provider, "the receipt of the test reflects an 'individualized clinical assessment.'" The CDC issued updated guidance on May 27, 2021, which provides clarity regarding when a test provides an individualized assessment versus when it is for surveillance purposes. Specifically, the CDC defines "diagnostic testing" as testing "intended to identify current infection in individuals and is performed when a person has signs or symptoms consistent with COVID-19, or when a person is asymptomatic but has recent known or suspected exposure to SARS-CoV-2." The CDC defines "screening testing" as testing to identify infected people who are asymptomatic and do not have known, suspected, or reported exposure to SARS-CoV-2. Screening helps to identify unknown cases so that measures can be taken to prevent further transmission.

The CDC states that with both "diagnostic" and "screening" testing, test results provide an individualized assessment of whether a person has a COVID-19 infection, and such results should be reported to the person who was tested and/or to their health care provider. The CDC defines "public health surveillance" testing as testing intended to "monitor community- or population-level outbreaks of disease, or to characterize the incidence and prevalence of disease." On June 7, 2021, the DPH issued updated COVID-19 testing guidance that outlines when diagnostic testing, including diagnostic screening testing, may be appropriate. Notwithstanding the expiration of the DMHC's emergency regulation regarding COVID-19 testing, health plans must continue to cover testing as required by federal law and guidance.

4) *CHBRP analysis.* CHBRP states the following in its analysis of this bill:

- a) *Enrollees covered.* At baseline, CHBRP estimates this bill would mandate benefit coverage for tests and vaccinations for COVID-19 with no cost sharing imposed on the enrollee, for all DMHC-regulated plans and California Department of Insurance (CDI)-regulated policies. Additionally, coverage of vaccinations extends only to vaccines that have been approved for use by the U.S. Food and Drug Administration, most commonly under emergency use authorization. According to a CHBRP survey, 100% of enrollees currently have coverage for COVID-19 tests and vaccinations with no cost sharing for the enrollee and no balance billing, in compliance with federal regulations that require this benefit coverage. Although not required by current law, all enrollees in DMHC-regulated plans and CDI-regulated policies also have coverage for COVID-19 tests and vaccinations with no prior authorization requirements. Since the current declaration of a federal public health emergency is expected to continue (as of late January 2021, expected to extend through the end of the year), this bill would have no measurable postmandate impact on benefit coverage of COVID-19 tests or vaccinations. Although it is possible that COVID-19 vaccine booster shots will be necessary in the long term, CHBRP is unable to project the impact of that possibility.

Future Pandemic Benefit Mandates. This bill would also mandate benefit coverage for tests and vaccinations for future pandemics, as defined by the declaration of a public health emergency. Although it is commonly accepted that another global pandemic will occur, CHBRP states that it

is unclear what the nature of that pandemic will be in terms of potential mortality, testing costs, spread through the community, and need for vaccination. CHBRP is unable to determine any estimates for the impacts of a future global pandemic in the long term.

According to the Author

Many people seeking testing for COVID-19 were met with surprise billing for "administrative fees" or had to pay out-of-pocket expenses for out-of-network providers. Both federal and state law moved quickly to reconcile these issues, but inconsistencies and problems still persist today with insurers and providers charging enrollees inappropriately. This bill requires health plans and insurers to cover COVID-19 testing and vaccination without cost sharing or prior authorization requirements provided both in network and out of network during the public health emergency. The research has been clear from the beginning, testing and immunization against COVID-19 is how we stop the spread and eventually put a stop to this pandemic. According to the author, this bill will also prohibit balance billing by providers for COVID-19 testing and immunization even after the federal public health emergency expires. Individuals need to be able to access these critical services without the fear of receiving a surprise bill. We can already take lessons learned from this pandemic and set in place a framework for allowing federally approved testing and immunizations with no-cost sharing for a future pandemic. The author concludes that California needs a consistent approach among health plan partners, stakeholders, and beneficiaries to combat COVID-19 and to have an existing framework for a future pandemic.

Arguments in Support

The California Medical Association (CMA), sponsor of this bill, states that on October 2, 2020, CDI published guidance outlining requirements on insurers regarding waiving patient cost-sharing and prohibiting prior authorization for COVID-19 testing and screening. Under this guidance, insurers are required to cover testing and screening regardless of network status and insurers are responsible for payment of the waived cost-sharing amounts. CMA writes that this bill is necessary to ensure that the standards that have been in place since July 2020 are maintained in California as it relates to COVID-19 testing and vaccination and to ensure that it is applied in future public health emergencies so patients can receive the care they need in a timely fashion and with no out-of-pocket costs. America's Physician Groups (APG) notes that this bill clarifies several issues that have arisen during the COVID-19 pandemic. It underscores the need for unfettered patient access to diagnosis and treatment free of concern for cost share. It further clarifies those providers rendering treatment for COVID-19 should be compensated fairly and that the Provider Bill of Rights provision of the Knox Keene Act should be followed by health plans for this public health emergency. According to APG, several health plans have ignored the provider bill of rights process, instead arguing that capitated-delegated physician groups have pre-existing risk-shifting clauses in their agreements that make them liable for "all diagnostic testing services."

Arguments in Opposition

The Department of Finance is opposed to this bill because it could potentially create future General Fund cost pressures within state health programs.

Arguments in Opposition Unless Amended

The California Association of Health Plans (CAHP), the Association of California Life and Health Insurance Companies (ACLHIC), and America's Health Insurance Plans (AHIP) are opposed unless amended to delete the retroactivity provisions of this bill. This bill effectively nullifies and impairs existing agreements between plans and providers whereby providers have

agreed to pay for the cost of diagnostic testing and substantially impairs plan-provider contracts which delegates to the health care provider the responsibility of paying for the cost of COVID-19 diagnostic testing and related services. CAHP, ACHLIC, and AHIP are also concerned that this bill is inconsistent with existing federal and state guidance, which will likely cause confusion among payers, providers and patients and request that this bill be amended to include "diagnostic and medically necessary testing," which would conform to state and federal law. CAHP, ACHLIC, and AHIP also state that it is critical that a reasonable, market-based pricing benchmark be established for tests administered out-of-network to ensure against price-gouging, which has been a fairly common occurrence since the beginning of the public health emergency. Finally, CAHP, ACHLIC, and AHIP state that the provisions related to future pandemics are premature.

FISCAL COMMENTS

According to the Assembly Appropriations Committee:

- 1) Based on federal law and regulations, this bill appears to have minimal costs during the COVID-19 pandemic. CHBRP could identify no measurable costs for this bill with respect to the COVID-19 emergency. With respect any yet-unknown future pandemic, costs are unknown.
- 2) According to the Department of Health Care Services, COVID-19 testing and treatment are covered under Medi-Cal managed care plan (MCP) contracts but because the immunization costs are carved out of MCP contracts, it is difficult to determine plan responsibility for services currently paid by the federal government, now or in the future.

Regulatory costs to CDI and DMHC are expected to be minor and absorbable, less than \$10,000 in fiscal year 2021-22, less than \$20,000 in fiscal year 2022-23 and under \$1,000 in ongoing costs (Insurance Fund, Managed Care Fund).

VOTES

SENATE FLOOR: 32-7-1

YES: Allen, Archuleta, Atkins, Becker, Borgeas, Bradford, Caballero, Cortese, Dodd, Durazo, Eggman, Glazer, Gonzalez, Hertzberg, Hueso, Hurtado, Kamlager, Laird, Leyva, Limón, McGuire, Min, Newman, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener

NO: Bates, Dahle, Grove, Jones, Nielsen, Ochoa Bogh, Wilk

ABS, ABST OR NV: Melendez

ASM HEALTH: 11-3-1

YES: Wood, Aguiar-Curry, Arambula, Burke, Carrillo, Maienschein, McCarty, Nazarian, Luz Rivas, Rodriguez, Santiago

NO: Bigelow, Flora, Waldron

ABS, ABST OR NV: Mayes

ASM APPROPRIATIONS: 12-4-0

YES: Lorena Gonzalez, Bryan, Calderon, Carrillo, Chau, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Kalra

NO: Bigelow, Megan Dahle, Davies, Fong

ASSEMBLY FLOOR: 58-19-2

YES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bloom, Boerner Horvath, Bryan, Burke, Calderon, Carrillo, Cervantes, Chau, Chiu, Cooley, Cooper, Daly, Frazier, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Lee, Levine, Low, Maienschein, McCarty, Medina, Mullin, Muratsuchi, Nazarian, O'Donnell, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Stone, Ting, Villapudua, Ward, Akilah Weber, Wicks, Wood, Rendon

NO: Bigelow, Chen, Choi, Cunningham, Davies, Flora, Fong, Gallagher, Kiley, Lackey, Mathis, Mayes, Nguyen, Patterson, Seyarto, Smith, Valladares, Voepel, Waldron

ABS, ABST OR NV: Megan Dahle, Gray

ASSEMBLY FLOOR: 47-18-14

YES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bloom, Boerner Horvath, Bryan, Burke, Calderon, Carrillo, Chau, Chiu, Cooley, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Gray, Holden, Irwin, Jones-Sawyer, Kalra, Lee, Levine, Low, Maienschein, McCarty, Medina, Mullin, Muratsuchi, O'Donnell, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Salas, Santiago, Stone, Ting, Ward, Akilah Weber, Wicks, Wood

NO: Bigelow, Chen, Choi, Cunningham, Megan Dahle, Davies, Flora, Fong, Gallagher, Kiley, Lackey, Patterson, Quirk, Seyarto, Smith, Valladares, Voepel, Waldron

ABS, ABST OR NV: Cervantes, Cooper, Daly, Frazier, Grayson, Mathis, Mayes, Nazarian, Nguyen, Petrie-Norris, Quirk-Silva, Blanca Rubio, Villapudua, Rendon

UPDATED

VERSION: September 3, 2021

CONSULTANT: Kristene Mapile / HEALTH / (916) 319-2097

FN: 0001766