Office of Senate Floor Analyses
(916) 651-1520 Fax: (916) 327-4478

UNFINISHED BUSINESS

Bill No: SB 510
Author: Pan (D)
Amended: 9/3/21
Vote: 21 - Majority

SENATE HEALTH COMMITTEE: 9-1, 4/7/21
AYES: Pan, Eggman, Gonzalez, Hurtado, Leyva, Limón, Roth, Rubio, Wiener
NOES: Grove
NO VOTE RECORDED: Melendez

SENATE APPROPRIATIONS COMMITTEE: 5-2, 5/20/21
AYES: Portantino, Bradford, Kamlager, Laird, Wieckowski
NOES: Bates, Jones

SENATE FLOOR: 32-7, 6/1/21
AYES: 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
NOES: Bates, Dahle, Grove, Jones, Nielsen, Ochoa Bogh, Wilk
NO VOTE RECORDED: Melendez

ASSEMBLY FLOOR: 55-17, 9/9/21 - See last page for vote

SUBJECT: Health care coverage: COVID-19 cost sharing

SOURCE: California Medical Association

DIGEST: This bill requires health plans and insurers to cover the costs associated with COVID-19 testing, immunization, and health care services related to testing with no cost-sharing or prior authorization or other utilization management during and following the federal public health emergency.

Assembly Amendments clarify that the bill requires coverage for diagnostic and screening testing and includes definitions for diagnostic and screening testing,

including testing of workers in workplace settings and students, faculty and staff in school settings; and remove the urgency clause.

ANALYSIS:

Existing federal law:

1) Requires health plans and issuers to provide coverage with no cost sharing, prior authorization, or other medical management requirements, for diagnostic products to detect COVID-19 and the administration of diagnostic products that are approved, cleared, authorized, or emergency use authorization has been requested by the federal Food and Drug Administration (FDA). [Section 6001 of the federal Families First Coronavirus Response Act (Public Law 116-136)]

2) Requires health plans and issuers to reimburse the provider of COVID-19 diagnostic tests at the negotiated rate in effect before the public health emergency for the duration of the public health emergency. Requires health plans and issuers to reimburse providers that have no negotiated rate in an amount that equals the cash price for such service as listed by the provider on a public website or the plan or issuer may negotiate a rate with the provider for less than the cash price. [Section 3202 of the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act. (Public Law 116-136)]

3) Requires health plans and issuers to cover, without cost sharing any qualifying coronavirus preventative service, including an item, service, or immunization that is intended to prevent or mitigate COVID-19 that is an evidence based item or service that has in effect a rating of "A" or "B" in the current recommendations of the United States Preventive Services Task Force (USPSTF) or an immunization that has in effect a recommendation from the Advisory Committee on Immunization Practices (ACIP) of the federal Centers for Disease Control and Prevention (CDC). [Section 3203 of the federal CARES Act (Public Law 116-136)]

Existing state law establishes the Department of Managed Health Care (DMHC) to regulate health plans, the California Department of Insurance (CDI) to regulate health insurance, and the California Department of Public Health (CDPH) to examine the causes of communicable diseases in man and animals occurring or likely to occur in the state. [HSC §1340, et seq., INS §106, et seq., and HSC §120125, et seq.]

This bill:

1) Requires health plans and disability insurers that cover medical, surgical, and hospital benefits to cover the costs for COVID-19 diagnostic and screening testing and health care services related to testing approved or granted emergency use authorization by the FDA for COVID-19.

2) Prohibits health plans and disability insurers from imposing a copayment, coinsurance, deductible, or any other form of cost sharing. Requires COVID-19 diagnostic and screening testing and services coverage to include, but not be limited to, hospital or health care provider office visits for the purpose of testing, products related to testing, administering testing, and items and services furnished to an enrollee or insured as part of testing.

3) Prohibits health plans and disability insurers from imposing prior authorization or any other utilization management requirements on COVID-19 diagnostic and screening testing or any item, service, or immunization intended to mitigate or prevent COVID-19.

4) Requires health plans and insurers to reimburse the provider of COVID-19 diagnostic and screening testing and immunizations at the specifically negotiated rate during the public health emergency, or if there is no specifically negotiated rate, allows plans and insurers to negotiate a rate with providers. Requires health plans and insurers to reimburse out-of-network providers, which do not have a negotiated rate, for all testing items or services at a reasonable rate as determined in comparison to prevailing market rates for items or services in the geographic region.

5) Requires a change to a contract between a health plan and a health care provider that delegates financial risk for testing or immunizations, related to a public health emergency, to be a material change to the parties' contract, and prohibits a health plan from delegating the financial risk to a contracted health care provider unless the parties have specifically negotiated and agreed upon a new contract provision, as specified.

6) Requires health plans and insurers to cover, without cost sharing, any item, service, or immunization intended to prevent or mitigate COVID-19, regardless of the service being delivered by an in-network or out-of-network provider, that meets either of the criteria with respect to the individual enrollee:

a) Evidence-based item or service that has in effect a rating of "A" or "B" in the current recommendations of the USPSTF; or,
b) An immunization that has in effect a recommendation from the ACIP of the CDC, regardless of whether the immunization is recommended for routine use.

7) Requires health plans and insurers to cover the item, service, or immunization that is intended to prevent or mitigate COVID-19 no later than 15 business days after the date that USPSTF or ACIP make a recommendation relating to the item, service, or immunization.

8) Requires 1) - 7) above to remain in effect after the expiration of the federal public health emergency. Requires health plans and insurers to cover COVID-19 diagnostic and screening testing and items or services necessary for furnishing items, service or immunizations without cost-sharing when delivered by an out-of-network provider except following the expiration of the federal public health emergency.

9) Applies 1) – 7) retroactively beginning from the Governor's declared State of Emergency related to the SARS-CoV-2 (COVID-19) pandemic on March 4, 2020.

10) Requires health plan and insurers that cover medical, surgical, and hospital benefits to cover health care services to prevent or mitigate a disease when the Governor of California has declared a public health emergency due to that disease. The item, service, or immunization must be covered no later than 15 business days after the date on which USPSTF or the ACIP makes a recommendation relating to the item, service, or immunization. Requires the following to be covered without cost sharing or prior authorization or other utilization management:

a) Item, or service, or immunization recommended by USPSTF or ACIP; and,
b) Health care service or product related to testing for the pandemic disease that is approved or granted emergency use authorization by the FDA, or is recommended by CDPH or the CDC.

11) 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.
e) Testing a person after an individualized clinical assessment by a licensed health care provider.

12) 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.
d) 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.

13) Permits DMHC and CDI to adopt regulations to implement this bill.

14) Includes a severability provision in the event any of this bill's provisions is held invalid.

Comments

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 for out-of-network providers. Both federal and state lawmakers moved quickly to attempt to reconcile these issues, but 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. 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 disease related public health emergency. California needs a consistent approach among health plan partners, stakeholders, and beneficiaries to combat COVID-19 and to have an existing framework for the future.

COVID-19 public health emergency. On March 11, 2020, the novel Coronavirus (SARS-CoV-2), which causes the infection known as COVID-19, was declared a global pandemic and set in motion public health emergency declarations across the U.S. The COVID-19 outbreak was declared a nationwide public health emergency on January 31, 2020 (retroactive to January 27, 2020), and a national emergency on March 13, 2020. On March 4, 2020, Governor Newsom declared a state of emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies, and help the state prepare for broader spread of COVID-19. The U.S. Health and Human Services Agency has indicated the federal public health emergency is likely to remain in place for the entirety of 2021. As of September 9, 2021, COVID19.CA.GOV reports 4,322,361 positive cases of COVID-19 and 66,257 deaths in California, with a disproportionate impact on communities of color. Also, as of this date, 85,232,285 tests and 47,621,874 vaccines have been administered.

Federal law and guidance. In March 2020, two federal legislative efforts passed: the Families First Coronavirus Response Act (FFCRA) and the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which among other provisions, required most health plans and insurers to provide coverage for COVID-19 testing and related services with no cost sharing to beneficiaries. Federal guidance from CMS has been published since the passage of FFCRA and the CARES Act to clarify health plans and insurer's responsibility regarding testing and vaccinations. CMS published guidance on February 26, 2021 clarifying that private group health plans generally cannot use medical screening criteria to deny coverage for COVID-19 tests for asymptomatic individuals or those without known exposure. The guidance also states health plans must cover point-of-care COVID-19 tests and tests that are administered at a state or local testing site. CMS guidance does permit health plans and insurers to deny coverage for COVID-19 tests for public health surveillance or employment purposes. However, CMS guidance also states that when an individual receives a COVID-19 test from a licensed or authorized provider, plans and insurers generally must assume the test reflects an "individualized clinical assessment" and should be covered without any cost sharing.

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

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. The California Health Benefit Review Program (CHBRP) could identify no measurable costs for this bill with respect 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 MPC contracts, it is difficult to determine plan responsibility for services currently paid by the federal government, now or in the future.

3) Regulatory costs to the California Departments of Insurance and Managed Health Care are expected to be minor and absorbable, less than $10,000 in fiscal year 2021-22, less than $20,000 in FY 2022-23 and under $1,000 in ongoing costs (Insurance Fund, Managed Care Fund).

SUPPORT: (Verified 9/9/21)

California Medical Association (source)
Altamed Health Services Corporation
America's Physician Groups
California Academy of Family Physicians
California Association of Health Facilities
California Chapter of American College of Emergency Physicians
California Chronic Care Coalition
California Clinical Laboratory Association
California Department of Insurance
California Federation of Teachers, AFL-CIO
California Orthopedic Association
California Retired Teachers Association
California Society of Health-System Pharmacists
California Teachers Association
CaliforniaHealth+ Advocates
Health Access California
National Association of Social Workers, California
Psychiatric Physicians Alliance of California
SEIU California

Western Center on Law and Poverty

OPPOSITION: (Verified 9/9/21)

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

ARGUMENTS IN SUPPORT: The California Medical Association (CMA), the sponsor of this bill, writes that this bill is necessary to ensure that the COVID-19 testing and vaccination standard is maintained in California 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. Federal and state policies have been adopted to mandate private health insurance coverage without cost sharing and many directives have been issued through regulatory and subregulatory guidance. On October 2, 2020, CDI published guidance outlining requirement on insurers regarding waiving cost-sharing and prohibiting prior authorization for COVID-19 testing and screening. CMA states in contrast, that DMHC released emergency regulations on July 17, 2020 which created a tiered system, whereby there were different criteria for testing eligibility, whether a patient cost-sharing is allowed, and whether a prior authorization may be required for each tier. This created confusion about what testing and vaccine coverage requirements are and whether patients may be held responsible for cost-sharing amounts. Federal guidance has since clarified that patients would not be held responsible for cost-sharing amounts and would not be subject to utilization management requirements through the end of the declared emergency. Health Access California writes throughout the pandemic, discrepancies have occurred between guidance issued federally and by the state, which has at times resulted in confusion over who may qualify for testing and immunization free of cost-sharing, and via which providers. The Psychiatric Physicians Alliance of California write that psychiatrists think it is important to codify current emergency executive orders related to testing and vaccinations so that patients and providers can confidently predict the costs and conditions imposed by the state moving forward in the current pandemic, moving out of the current pandemic, and is prepared to face future pandemics.

ARGUMENTS IN OPPOSITION: America's Health Insurance Plans (AHIP), the Association of California Life and Health Insurance Companies (ACLHIC), and the California Association of Health Plans (CAHP), believe the retroactivity

provisions are unconstitutional, and the bill is inconsistent with federal guidance. The opposition writes that federal law and state regulations are clear that health plans and insurers must provide diagnostic and medically appropriate testing for COVID-19. AHIP, ACLHIC and CAHP believe that clinical testing of an individual for diagnosis and to guide medical care is appropriate and are concerned that omitting this distinction could cause confusion among patients seeking a test, and recommend that the bill be amended to include "diagnostic and medically necessary testing," which would conform to state and federal law. AHIP, ACLHIC and CAHP are also concerned that this bill does not establish a clear methodology for reimbursing out-of-network providers. Currently the bill requires health plans and insurers to reimburse out-of-network providers for all testing items or services at a "reasonable" rate. Understanding that there is often much disagreement with respect to what constitutes a "reasonable rate" they recommend considering the Medicare rate as an appropriate alternative. Lastly, AHIP, ACLHIC and CAHP believe that the provision addressing future pandemics contained in this bill are premature. The Department of Finance believes this bill could potentially create future cost pressures within state health programs.

ASSEMBLY FLOOR: 55-17, 9/9/21
AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bloom, Boerner Horvath, Mia Bonta, Bryan, Burke, Calderon, Carrillo, Cervantes, Chau, Chiu, Cooper, Daly, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Lee, Levine, Low, Maienschein, McCarty, Medina, Mullin, Muratsuchi, O'Donnell, Petrie-Norris, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Stone, Ting, Ward, Akilah Weber, Wicks, Wood, Rendon
NOES: Bigelow, Chen, Choi, Cunningham, Megan Dahle, Davies, Flora, Fong, Gallagher, Kiley, Lackey, Patterson, Seyarto, Smith, Valladares, Voepel, Waldron
NO VOTE RECORDED: Cooley, Frazier, Mathis, Mayes, Nazarian, Nguyen, Quirk, Villapudua

Prepared by: Teri Boughton / HEALTH / (916) 651-4111
9/9/21 21:01:04

****** END ******