

AMENDED IN SENATE JUNE 21, 2010

AMENDED IN ASSEMBLY MAY 28, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1640

Introduced by Assembly Members Evans and Nava

(Principal coauthor: Senator Oropeza)

(Coauthors: Assembly Members Hall, *Huffman*, Jones, Ma,

***V. Manuel Pérez*, Saldana, and Torres)**

(Coauthor: Senator Wiggins)

January 11, 2010

An act to amend Section 104150 of , and to add Section 104151 to, add Sections 104151, 104152, and 104153 to the Health and Safety Code, and to amend Section 30461.6 of the Revenue and Taxation Code, relating to cancer screening.

LEGISLATIVE COUNSEL'S DIGEST

AB 1640, as amended, Evans. Breast and cervical cancer screening.

Existing law, *the Every Woman Counts Program*, requires the State Department of Public Health to provide breast cancer and cervical cancer screening services to eligible low-income individuals under a federal grant made under the federal Centers for Disease Control and Prevention breast and cervical cancer early detection program. Funding for these services is provided by a combination of federal and state moneys.

Existing law requires these services to be provided at the level of funding budgeted from state and other resources during the fiscal year in which the Legislature has appropriated funds to the department for this purpose.

~~This bill would express the intent of the Legislature that the screening services meet the demand based on eligibility requirements in place as of December 31, 2009, and would require the department to notify the Joint Legislative Budget Committee at least 90 days prior to changing eligibility requirements for services or reducing access to screening services.~~

This bill would add specified requirements to receive services under the program. The bill would also require the department, 90 days prior to making policy changes, to send written notice outlining the proposed changes to contractors providing services pursuant to this program and to notify the Legislature, in writing, if the changes would restrict access or reduce services offered.

This bill would specify that funding for the program *comes from the Breast Cancer Fund* and is contingent upon an appropriation by the Legislature.

Existing law establishes the Breast Cancer Fund, which funds various programs through the Breast Cancer Control Program for the detection, treatment, and cure of breast and cervical cancer, as specified. Entities funded by the Breast Cancer Control Program are required to submit a specified report annually to the Legislature.

This bill would require that report be submitted on or before February 1 of each year and would add specified information to that report.

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

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 Every Woman Counts program provides breast and
- 4 cervical cancer screening services to low-income, uninsured
- 5 women.
- 6 (b) The State Department of Public Health estimates that the
- 7 program serves approximately 350,000 women per year.
- 8 (c) In December 2009, the department announced the following
- 9 significant policy changes that went into effect January 1, 2010:
- 10 (1) The minimum age to receive breast cancer screening services
- 11 has been raised from 40 years of age to 50 years of age.
- 12 (2) All new enrollment has been frozen for the first six months
- 13 of 2010.

1 (d) The two changes set out in subdivision (c) will deny or delay
2 services to approximately 100,000 women, putting an estimated
3 1,000 lives at risk by delaying breast cancer diagnosis.

4 *SEC. 2. Section 104151 is added to the Health and Safety Code,*
5 *to read:*

6 *104151. In addition to the requirements specified in Section*
7 *104150, a person who receives breast or cervical cancer screening*
8 *through the program established in this article shall meet the*
9 *following requirements:*

10 (a) *Be 40 years of age or older to receive breast cancer*
11 *screening services.*

12 (b) *Be 25 years of age or older to receive cervical cancer*
13 *screening services.*

14 (c) *Be uninsured or underinsured. For purposes of this*
15 *subdivision, “uninsured” and “underinsured” shall have the same*
16 *meaning as those terms are defined in Section 104161.*

17 (d) *Be a resident of California.*

18 *SEC. 3. Section 104152 is added to the Health and Safety Code,*
19 *to read:*

20 *104152. The department, 90 days prior to making policy*
21 *changes relating to the program created by this article, shall do*
22 *both of the following:*

23 (a) *Send written notice outlining the proposed changes to*
24 *contractors providing services pursuant to this program.*

25 (b) *Notify the Legislature, in writing, of changes if those changes*
26 *would restrict access or reduce services offered.*

27 *SEC. 4. Section 104153 is added to the Health and Safety Code,*
28 *to read:*

29 *104153. Funding for the program provided for under this*
30 *article shall come from the Breast Cancer Fund, created and*
31 *distributed pursuant to Section 30461.6 of the Revenue and*
32 *Taxation Code, and as appropriated by the Legislature in the*
33 *annual Budget Act or other measure.*

34 *SEC. 5. Section 30461.6 of the Revenue and Taxation Code is*
35 *amended to read:*

36 30461.6. (a) Notwithstanding Section 30461, the board shall
37 transmit the revenue derived from the increase in the cigarette tax
38 rate of one mill (\$0.001) per cigarette imposed by Section 30101
39 on and after January 1, 1994, to the Treasurer to be deposited in
40 the State Treasury to the credit of the Breast Cancer Fund, which

1 fund is hereby created. The Breast Cancer Fund shall consist of
2 two accounts: the Breast Cancer Research Account and the Breast
3 Cancer Control Account. The revenues deposited in the fund shall
4 be divided equally between the two accounts.

5 (b) The moneys in the accounts within the Breast Cancer Fund
6 shall, upon appropriation by the Legislature, be allocated as
7 follows:

8 (1) The moneys in the Breast Cancer Research Account shall
9 be allocated for research with respect to the cause, cure, treatment,
10 earlier detection, and prevention of breast cancer as follows:

11 (A) Ten percent to the Cancer Surveillance Section of the State
12 Department of Public Health for the collection of breast
13 cancer-related data and the conduct of breast cancer-related
14 epidemiological research by the state cancer registry established
15 pursuant to Section 103885 of the Health and Safety Code.

16 (B) Ninety percent to the Breast Cancer Research Program, that
17 is hereby created at the University of California, for the awarding
18 of grants and contracts to researchers for research with respect to
19 the cause, cure, treatment, prevention, and earlier detection of
20 breast cancer and with respect to the cultural barriers to accessing
21 the health care system for early detection and treatment of breast
22 cancer.

23 (2) The moneys in the Breast Cancer Control Account shall be
24 allocated to the Breast Cancer Control Program, that is hereby
25 created for the provision of early breast cancer detection services
26 for uninsured and underinsured women. The Breast Cancer Control
27 Program shall be established in the State Department of Public
28 Health and shall be administered in coordination with the breast
29 and cervical cancer control program established pursuant to Public
30 Law 101-354.

31 (c) The early breast cancer detection services provided by the
32 Breast Cancer Control Program shall include all of the following:

33 (1) Screening, including mammography, of women for breast
34 cancer as an early detection health care measure.

35 (2) After screening, medical referral of screened women and
36 services necessary for definitive diagnosis, including
37 nonradiological techniques or biopsy.

38 (3) If a positive diagnosis is made, then assistance and advocacy
39 shall be provided to help the person obtain necessary treatment.

1 (4) Outreach and health education activities to ensure that
2 uninsured and underinsured women are aware of and appropriately
3 utilize the services provided by the Breast Cancer Control Program.

4 (d) (1) Any entity funded by the Breast Cancer Control Program
5 shall coordinate with other local providers of breast cancer
6 screening, diagnostic, followup, education, and advocacy services
7 to avoid duplication of effort. Any entity funded by the program
8 shall comply with any applicable state and federal standards
9 regarding mammography quality assurance.

10 (2) To the extent required or permitted by federal law, a provider
11 of breast cancer screening or diagnostic services may employ
12 digital mammography technology for the purposes of
13 mammography screening and diagnostic procedures that are
14 conducted prior to January 1, 2014, when film, otherwise known
15 as analog, mammography technology is unavailable. To the extent
16 required or permitted by federal law and notwithstanding paragraph
17 (3) of subdivision (a) of Section 14105.18 of the Welfare and
18 Institutions Code, the payment rate for all mammography screening
19 that is conducted prior to January 1, 2014, shall be limited to the
20 Medi-Cal payment rate for film mammography screening.

21 (e) (1) The State Department of Public Health shall provide for
22 breast cancer screening services at the level of funding budgeted
23 from state and other resources during the fiscal year in which the
24 Legislature has appropriated funds to the department for this
25 purpose.

26 (2) Administrative costs of the State Department of Public
27 Health shall not exceed 10 percent of the funds allocated to the
28 Breast Cancer Control Program created pursuant to paragraph (2)
29 of subdivision (b). Indirect costs of the entities funded by this
30 program shall not exceed 12 percent. The department shall define
31 “indirect costs” in accordance with applicable state and federal
32 law.

33 (f) ~~Any~~ An entity funded by the Breast Cancer Control Program
34 shall collect data and maintain records that are determined by the
35 State Department of Public Health to be necessary to facilitate the
36 state department’s ability to monitor and evaluate the effectiveness
37 of the entities and the program. Commencing with the program’s
38 second year of operation, *on or before February 1 of each year*,
39 the State Department of Public Health shall submit an annual report
40 to the Legislature and any other appropriate entity. The costs

1 associated with this report shall be paid from the allocation made
2 pursuant to paragraph (2) of subdivision (b). The report shall
3 describe the activities and effectiveness of the program and shall
4 include, but not be limited to, the following types of information
5 regarding those served by the program:

- 6 (1) The number.
- 7 (2) The ethnic, geographic, and age breakdown.
- 8 (3) The stages of presentation.
- 9 (4) The diagnostic and treatment status.
- 10 (5) *The cost per individual served.*
- 11 (6) *Information provided to the federal Centers for Disease*
12 *Control and Prevention on the number of individuals served based*
13 *on the federal funds provided.*

14 (g) The Breast Cancer Control Program shall be conducted in
15 consultation with the Breast Cancer Research Program created
16 pursuant to subparagraph (B) of paragraph (1) of subdivision (b).

17 (h) In implementing the Breast Cancer Control Program, the
18 State Department of Public Health may appoint and consult with
19 an advisory panel appointed by the Public Health Officer and
20 consisting of one ex officio, nonvoting member from the Breast
21 Cancer Research Program, breast cancer researchers, and
22 representatives from voluntary, nonprofit health organizations,
23 health care professional organizations, breast cancer survivor
24 groups, and breast cancer and health care-related advocacy groups.
25 It is the intent of the Legislature that breast cancer-related survivors
26 and advocates and health advocates for low-income women
27 compose at least one-third of the advisory panel. It is also the intent
28 of the Legislature that the State Department of Public Health
29 collaborate closely with the panel.

30 (i) It is the intent of the Legislature in enacting the Breast Cancer
31 Control Program to decrease cancer mortality rates attributable to
32 breast cancer among uninsured and underinsured women, with
33 special emphasis on low-income, Native American, and minority
34 women. It is also the intent of the Legislature that the communities
35 served by the Breast Cancer Control Program reflect the ethnic,
36 racial, cultural, and geographic diversity of the state and that the
37 Breast Cancer Control Program fund entities where uninsured and
38 underinsured women are most likely to seek their health care.

39 (j) The State Department of Public Health or any entity funded
40 by the Breast Cancer Control Program shall collect personal and

1 medical information necessary to administer this program from
2 any individual applying for services under the program. The
3 information shall be confidential and shall not be disclosed other
4 than for purposes directly connected with the administration of
5 this program or except as otherwise provided by law or pursuant
6 to prior written consent of the subject of the information.

7 The State Department of Public Health or any entity funded by
8 the Breast Cancer Control Program may disclose the confidential
9 information to medical personnel and fiscal intermediaries of the
10 state to the extent necessary to administer this program, and to
11 other state public health agencies or medical researchers when the
12 confidential information is necessary to carry out the duties of
13 those agencies or researchers in the investigation, control, or
14 surveillance of breast cancer.

15 (k) The State Department of Public Health shall adopt
16 regulations to implement this act in accordance with the
17 Administrative Procedure Act (Chapter 3.5 (commencing with
18 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
19 Code). The initial adoption of implementing regulations shall be
20 deemed an emergency and shall be considered as necessary for
21 the immediate preservation of the public peace, health and safety,
22 or general welfare, within the meaning of Section 11346.1.
23 Emergency regulations adopted pursuant to this section shall
24 remain in effect for no more than 180 days.

25 (l) It is the intent of the Legislature in enacting this section that
26 this section supersede and be operative in place of Section 30461.6
27 of the Revenue and Taxation Code as added by Assembly Bill 478
28 of the 1993–94 Regular Session.

29 (m) To implement the Breast Cancer Control Program, the State
30 Department of Public Health may contract, to the extent permitted
31 by Section 19130 of the Government Code, with public and private
32 entities, or utilize existing health care service provider enrollment
33 and payment mechanisms, including the Medi-Cal program’s fiscal
34 intermediary. However, the Medi-Cal program’s fiscal intermediary
35 shall only be utilized if services provided under the program are
36 specifically identified and reimbursed in a manner that does not
37 claim federal financial reimbursement. Any contracts with, and
38 the utilization of, the Medi-Cal program’s fiscal intermediary shall
39 not be subject to Chapter 3 (commencing with Section 12100) of
40 Part 2 of Division 2 of the Public Contract Code. Contracts to

1 implement the Breast Cancer Control Program entered into by the
2 State Department of Public Health with entities other than the
3 Medi-Cal program's fiscal intermediary shall not be subject to Part
4 2 (commencing with Section 10100) of Division 2 of the Public
5 Contract Code.

6 ~~SEC. 2. Section 104150 of the Health and Safety Code is~~
7 ~~amended to read:~~

8 ~~104150. (a) A provider or entity that participates in the grant~~
9 ~~made to the department by the federal Centers for Disease Control~~
10 ~~and Prevention breast and cervical cancer early detection program~~
11 ~~established under Title XV of the Public Health Service Act (42~~
12 ~~U.S.C. Sec. 300k et seq.) in accordance with requirements of~~
13 ~~Section 1504 of that act (42 U.S.C. Sec. 300n) may only render~~
14 ~~screening services under the grant to an individual if the provider~~
15 ~~or entity determines that the individual's family income does not~~
16 ~~exceed 200 percent of the federal poverty level.~~

17 ~~(b) The department shall provide for breast cancer and cervical~~
18 ~~cancer screening services under the grant at the level of funding~~
19 ~~budgeted from state and other resources during the fiscal year in~~
20 ~~which the Legislature has appropriated funds to the department~~
21 ~~for this purpose. These screening services shall not be deemed to~~
22 ~~be an entitlement.~~

23 ~~(c) It is the intent of the Legislature that the screening services~~
24 ~~provided under this section fully meet the demand based on~~
25 ~~eligibility restrictions in place as of December 31, 2009. The~~
26 ~~department shall provide notification to the Joint Legislative~~
27 ~~Budget Committee at least 90 days prior to changing eligibility~~
28 ~~requirements for services or reducing access to screening services.~~

29 ~~(d) To implement the federal breast and cervical cancer early~~
30 ~~detection program specified in this section, the department may~~
31 ~~contract, to the extent permitted by Section 19130 of the~~
32 ~~Government Code, with public and private entities, or utilize~~
33 ~~existing health care service provider enrollment and payment~~
34 ~~mechanisms, including the Medi-Cal program's fiscal intermediary.~~
35 ~~However, the Medi-Cal program's fiscal intermediary shall only~~
36 ~~be utilized if services provided under the program are specifically~~
37 ~~identified and reimbursed in a manner that does not claim federal~~
38 ~~financial reimbursement. Any contracts with, and the utilization~~
39 ~~of, the Medi-Cal program's fiscal intermediary shall not be subject~~
40 ~~to Chapter 3 (commencing with Section 12100) of Part 2 of~~

1 ~~Division 2 of the Public Contract Code. Contracts to implement~~
2 ~~the federal breast and cervical cancer early detection program~~
3 ~~entered into by the department with entities other than the Medi-Cal~~
4 ~~program's fiscal intermediary shall not be subject to Part 2~~
5 ~~(commencing with Section 10100) of Division 2 of the Public~~
6 ~~Contract Code.~~

7 ~~SEC. 3.~~ Section 104151 is added to the Health and Safety Code,
8 to read:

9 104151. Funding for the program provided for under this article
10 is contingent on an appropriation in the annual Budget Act or other
11 measure.

O