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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 *Eng, Hall, Huffman, Jones, Lieu, Ma, V. Manuel Pérez, Saldaña, and Torres, and Yamada*)

~~(Coauthor: Senator~~ *Coauthors: Senators Leno, Pavley, and Wiggins)*

January 11, 2010

An act 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 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~~ *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 *and*
- 5 *underinsured* 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.~~
- 14 (2) *The enrollment freeze scheduled to run from January 1,*
- 15 *2010, to July 1, 2010, inclusive, has been extended and is still in*
- 16 *effect.*

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 (e) *According to the American Cancer Society's most recent*
5 *estimates for breast cancer in the United States for 2010:*

6 (1) *About 207,090 new cases of invasive breast cancer will be*
7 *diagnosed in women, and about 1,970 new cases are expected in*
8 *men.*

9 (2) *About 54,010 new cases of carcinoma in situ (CIS) will be*
10 *diagnosed. CIS is noninvasive and is the earliest form of breast*
11 *cancer.*

12 (3) *About 39,840 women and 390 men will die from breast*
13 *cancer.*

14 (f) *According to the California Cancer Facts and Figures, 2010,*
15 *published by the American Cancer Society, it is estimated that*
16 *about 22,115 new cases of breast cancer will be diagnosed in*
17 *women and 130 in men, and 4,170 women and 30 men will die*
18 *from the disease.*

19 (g) *While breast cancer in young women accounts for a small*
20 *percentage of all breast cancer cases, breast cancer is the leading*
21 *cause of cancer death among women 15 years of age to 50 years*
22 *of age, inclusive. Breast cancer in women under 50 years of age*
23 *is most likely to be diagnosed in later stages due to lack of breast*
24 *health education and access to mammography or other breast*
25 *cancer screening. According to the Young Survivor Coalition*
26 *Statistics, breast cancer in younger women is generally more*
27 *aggressive, less responsive to treatment, and results in lower*
28 *survival rates.*

29 (h) *Early detection is the best defense against breast cancer.*
30 *The American Cancer Society reports that, when breast cancer is*
31 *detected early, the five-year relative survival rate for localized*
32 *breast cancer, that is cancer that has not spread to lymph nodes*
33 *or other locations outside the breast, is 98 percent. The five-year*
34 *relative survival rate declines to 84 percent for regional stage*
35 *cancer, cancer that has spread to nearby lymph nodes or organs,*
36 *and to 23 percent for distant stage cancer, cancer that has*
37 *metastasized or spread to other parts of the body. Numerous studies*
38 *have shown that early detection saves lives and increases treatment*
39 *options.*

1 (i) According to *The Economic Burden of Breast Cancer in*
 2 *California, a 2001 study with an updated estimate for 2008, the*
 3 *total economic cost of breast cancer in California was \$1.43 billion*
 4 *in 2001, or \$1.91 billion in 2008 dollars. Breast cancer is costly*
 5 *both in terms of health care dollars and in the value of the lost*
 6 *lives. Early detection and diagnosis of breast cancer not only saves*
 7 *lives, it is also less costly than treating women diagnosed with*
 8 *later stage breast cancer who require more costly, higher risk*
 9 *interventions and have lower survival rates.*

10 SEC. 2. Section 104151 is added to the Health and Safety Code,
 11 to read:

12 104151. In addition to the requirements specified in Section
 13 104150, a person who receives breast or cervical cancer screening
 14 through the program established in this article shall meet the
 15 following requirements:

16 (a) Be 40 years of age or older to receive breast cancer screening
 17 services.

18 (b) Be 25 years of age or older to receive cervical cancer
 19 screening services.

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

23 (d) ~~Be a resident of~~ *Live in* California.

24 SEC. 3. Section 104152 is added to the Health and Safety Code,
 25 to read:

26 104152. The department, 90 days prior to making policy
 27 changes relating to the program created by this article, shall do
 28 both of the following:

29 (a) Send written notice outlining the proposed changes to
 30 contractors providing services pursuant to this program.

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

33 SEC. 4. Section 104153 is added to the Health and Safety Code,
 34 to read:

35 104153. Funding for the program provided for under this article
 36 shall come from the Breast Cancer Fund, created and distributed
 37 pursuant to Section 30461.6 of the Revenue and Taxation Code,
 38 and as appropriated by the Legislature in the annual Budget Act
 39 or other measure.

1 SEC. 5. Section 30461.6 of the Revenue and Taxation Code
2 is amended to read:

3 30461.6. (a) Notwithstanding Section 30461, the board shall
4 transmit the revenue derived from the increase in the cigarette tax
5 rate of one mill (\$0.001) per cigarette imposed by Section 30101
6 on and after January 1, 1994, to the Treasurer to be deposited in
7 the State Treasury to the credit of the Breast Cancer Fund, which
8 fund is hereby created. The Breast Cancer Fund shall consist of
9 two accounts: the Breast Cancer Research Account and the Breast
10 Cancer Control Account. The revenues deposited in the fund shall
11 be divided equally between the two accounts.

12 (b) The moneys in the accounts within the Breast Cancer Fund
13 shall, upon appropriation by the Legislature, be allocated as
14 follows:

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

18 (A) Ten percent to the Cancer Surveillance Section of the State
19 Department of Public Health for the collection of breast
20 cancer-related data and the conduct of breast cancer-related
21 epidemiological research by the state cancer registry established
22 pursuant to Section 103885 of the Health and Safety Code.

23 (B) Ninety percent to the Breast Cancer Research Program, that
24 is hereby created at the University of California, for the awarding
25 of grants and contracts to researchers for research with respect to
26 the cause, cure, treatment, prevention, and earlier detection of
27 breast cancer and with respect to the cultural barriers to accessing
28 the health care system for early detection and treatment of breast
29 cancer.

30 (2) The moneys in the Breast Cancer Control Account shall be
31 allocated to the Breast Cancer Control Program, that is hereby
32 created for the provision of early breast cancer detection services
33 for uninsured and underinsured women. The Breast Cancer Control
34 Program shall be established in the State Department of Public
35 Health and shall be administered in coordination with the breast
36 and cervical cancer control program established pursuant to Public
37 Law 101-354.

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

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

3 (2) After screening, medical referral of screened women and
4 services necessary for definitive diagnosis, including
5 nonradiological techniques or biopsy.

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

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

11 (d) (1) Any entity funded by the Breast Cancer Control Program
12 shall coordinate with other local providers of breast cancer
13 screening, diagnostic, followup, education, and advocacy services
14 to avoid duplication of effort. Any entity funded by the program
15 shall comply with any applicable state and federal standards
16 regarding mammography quality assurance.

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

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

33 (2) Administrative costs of the State Department of Public
34 Health shall not exceed 10 percent of the funds allocated to the
35 Breast Cancer Control Program created pursuant to paragraph (2)
36 of subdivision (b). Indirect costs of the entities funded by this
37 program shall not exceed 12 percent. The department shall define
38 "indirect costs" in accordance with applicable state and federal
39 law.

1 (f) An entity funded by the Breast Cancer Control Program shall
2 collect data and maintain records that are determined by the State
3 Department of Public Health to be necessary to facilitate the state
4 department's ability to monitor and evaluate the effectiveness of
5 the entities and the program. Commencing with the program's
6 second year of operation, on or before February 1 of each year,
7 the State Department of Public Health shall submit an annual report
8 to the Legislature and any other appropriate entity. The costs
9 associated with this report shall be paid from the allocation made
10 pursuant to paragraph (2) of subdivision (b). The report shall
11 describe the activities and effectiveness of the program and shall
12 include, but not be limited to, the following types of information
13 regarding those served by the program:

14 (1) The number.

15 (2) The ethnic, geographic, and age breakdown.

16 (3) The stages of presentation.

17 (4) The diagnostic and treatment status.

18 (5) The cost per individual served.

19 (6) Information provided to the federal Centers for Disease
20 Control and Prevention on the number of individuals served based
21 on the federal funds provided.

22 (7) *Funding for the program, including expenditures by category
23 and funding source for the last three fiscal years and estimates for
24 the current fiscal year in which the report is due and for the
25 following budget year.*

26 (8) *Funding for clinical and nonclinical contractors and how
27 these funds are used for each activity for which it contracts.*

28 (9) *The cost of clinical screening, including the cost for certain
29 procedures, including, but not limited to, mammograms and
30 ultrasounds.*

31 (10) *The number of individuals served and projected to be served
32 with the level of funding provided during the fiscal year.*

33 (11) *The number of individuals who received screening services
34 during the fiscal year, how many returned for diagnostics and
35 followup screenings, and how many were diagnosed with cancer
36 and were referred to the Breast Cancer Treatment Program.*

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

1 (h) In implementing the Breast Cancer Control Program, the
2 State Department of Public Health may appoint and consult with
3 an advisory panel appointed by the Public Health Officer and
4 consisting of one ex officio, nonvoting member from the Breast
5 Cancer Research Program, breast cancer researchers, and
6 representatives from voluntary, nonprofit health organizations,
7 health care professional organizations, breast cancer survivor
8 groups, and breast cancer and health care-related advocacy groups.
9 It is the intent of the Legislature that breast cancer-related survivors
10 and advocates and health advocates for low-income women
11 compose at least one-third of the advisory panel. It is also the intent
12 of the Legislature that the State Department of Public Health
13 collaborate closely with the panel.

14 (i) It is the intent of the Legislature in enacting the Breast Cancer
15 Control Program to decrease cancer mortality rates attributable to
16 breast cancer among uninsured and underinsured women, with
17 special emphasis on low-income, Native American, and minority
18 women. It is also the intent of the Legislature that the communities
19 served by the Breast Cancer Control Program reflect the ethnic,
20 racial, cultural, and geographic diversity of the state and that the
21 Breast Cancer Control Program fund entities where uninsured and
22 underinsured women are most likely to seek their health care.

23 (j) The State Department of Public Health or any entity funded
24 by the Breast Cancer Control Program shall collect personal and
25 medical information necessary to administer this program from
26 any individual applying for services under the program. The
27 information shall be confidential and shall not be disclosed other
28 than for purposes directly connected with the administration of
29 this program or except as otherwise provided by law or pursuant
30 to prior written consent of the subject of the information.

31 The State Department of Public Health or any entity funded by
32 the Breast Cancer Control Program may disclose the confidential
33 information to medical personnel and fiscal intermediaries of the
34 state to the extent necessary to administer this program, and to
35 other state public health agencies or medical researchers when the
36 confidential information is necessary to carry out the duties of
37 those agencies or researchers in the investigation, control, or
38 surveillance of breast cancer.

39 (k) The State Department of Public Health shall adopt
40 regulations to implement this act in accordance with the

1 Administrative Procedure Act (Chapter 3.5 (commencing with
2 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
3 Code). The initial adoption of implementing regulations shall be
4 deemed an emergency and shall be considered as necessary for
5 the immediate preservation of the public peace, health and safety,
6 or general welfare, within the meaning of Section 11346.1.
7 Emergency regulations adopted pursuant to this section shall
8 remain in effect for no more than 180 days.

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

13 (m) To implement the Breast Cancer Control Program, the State
14 Department of Public Health may contract, to the extent permitted
15 by Section 19130 of the Government Code, with public and private
16 entities, or utilize existing health care service provider enrollment
17 and payment mechanisms, including the Medi-Cal program’s fiscal
18 intermediary. However, the Medi-Cal program’s fiscal intermediary
19 shall only be utilized if services provided under the program are
20 specifically identified and reimbursed in a manner that does not
21 claim federal financial reimbursement. Any contracts with, and
22 the utilization of, the Medi-Cal program’s fiscal intermediary shall
23 not be subject to Chapter 3 (commencing with Section 12100) of
24 Part 2 of Division 2 of the Public Contract Code. Contracts to
25 implement the Breast Cancer Control Program entered into by the
26 State Department of Public Health with entities other than the
27 Medi-Cal program’s fiscal intermediary shall not be subject to Part
28 2 (commencing with Section 10100) of Division 2 of the Public
29 Contract Code.

O