

AMENDED IN SENATE APRIL 28, 2011

SENATE BILL

No. 136

Introduced by Senator Yee

January 31, 2011

~~An act to add Section 1367.667 to the Health and Safety Code, and to add Section 10123.25 to the Insurance Code, relating to health care coverage. An act to amend Section 14132.725 of the Welfare and Institutions Code, relating to Medi-Cal.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 136, as amended, Yee. ~~Health care coverage: tobacco cessation. Medi-Cal: telemedicine.~~

Existing law establishes the Medi-Cal program, administered by the State Department of Health Care Services, under which basic health care services are provided to qualified low-income persons. The Medi-Cal program is, in part, governed and funded by federal Medicaid Program provisions. Existing law provides, to the extent that federal financial participation is available, that face-to-face contact between a health care provider and a patient shall not be required under the Medi-Cal program for teleophthalmology and teledermatology by store and forward, as defined. Existing law requires the department to report to the Legislature, on or before January 1, 2008, the number and type of services provided, and the payments made related to the application of store and forward telemedicine as a Medi-Cal benefit. Existing law repeals these provisions on January 1, 2013.

This bill would delete the reporting requirement and would extend the implementation of these provisions until January 1, 2018.

~~Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the regulation of health care service plans by the~~

~~Department of Managed Health Care and makes a violation of the act a crime. Existing law provides for the regulation of health insurers by the Department of Insurance. Existing law requests the University of California to establish the California Health Benefit Review Program to assess legislation proposing to mandate a benefit or service and legislation proposing to repeal a mandated benefit or service, as specified.~~

~~This bill would require certain health care service plan contracts and health insurance policies issued, amended, renewed, or delivered on or after January 1, 2012, to provide coverage for tobacco cessation treatment that includes specified courses of treatment and medication. The bill would request the University of California, as part of the California Health Benefit Review Program, to prepare a report regarding any state savings as a result of this coverage requirement. The bill would make the coverage requirement inoperative upon a determination that it will result in the state assuming additional costs, as specified.~~

~~Because a willful violation of the bill's provisions relative to health care service plans would be 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-no*.

The people of the State of California do enact as follows:

- 1 *SECTION 1. Section 14132.725 of the Welfare and Institutions*
- 2 *Code is amended to read:*
- 3 14132.725. (a) Commencing July 1, 2006, to the extent that
- 4 federal financial participation is available, face-to-face contact
- 5 between a health care provider and a patient shall not be required
- 6 under the Medi-Cal program for teleophthalmology and
- 7 teledermatology by store and forward. Services appropriately
- 8 provided through the store and forward process are subject to
- 9 billing and reimbursement policies developed by the department.
- 10 (b) For purposes of this section, "teleophthalmology and
- 11 teledermatology by store and forward" means an asynchronous

1 transmission of medical information to be reviewed at a later time
2 by a physician at a distant site who is trained in ophthalmology or
3 dermatology or, for teleophthalmology, by an optometrist who is
4 licensed pursuant to Chapter 7 (commencing with Section 3000)
5 of Division 2 of the Business and Professions Code, where the
6 physician or optometrist at the distant site reviews the medical
7 information without the patient being present in real time. A patient
8 receiving teleophthalmology or teledermatology by store and
9 forward shall be notified of the right to receive interactive
10 communication with the distant specialist physician or optometrist,
11 and shall receive an interactive communication with the distant
12 specialist physician or optometrist, upon request. If requested,
13 communication with the distant specialist physician or optometrist
14 may occur either at the time of the consultation, or within 30 days
15 of the patient's notification of the results of the consultation. If the
16 reviewing optometrist identifies a disease or condition requiring
17 consultation or referral pursuant to Section 3041 of the Business
18 and Professions Code, that consultation or referral shall be with
19 an ophthalmologist or other appropriate physician and surgeon, as
20 required.

21 (c) Notwithstanding Chapter 3.5 (commencing with Section
22 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
23 the department may implement, interpret, and make specific this
24 section by means of all-county letters, provider bulletins, and
25 similar instructions.

26 ~~(d) On or before January 1, 2008, the department shall report~~
27 ~~to the Legislature the number and type of services provided, and~~
28 ~~the payments made related to the application of store and forward~~
29 ~~telemedicine as provided, under this section as a Medi-Cal benefit.~~

30 ~~(e)~~

31 (d) The health care provider shall comply with the informed
32 consent provisions of subdivisions (c) to (g), inclusive, of, and
33 subdivisions (i) and (j) of, Section 2290.5 of the Business and
34 Professions Code when a patient receives teleophthalmology or
35 teledermatology by store and forward.

36 ~~(f)~~

37 (e) This section shall remain in effect only until January 1, ~~2013~~
38 ~~2018~~, and as of that date is repealed, unless a later enacted statute,
39 that is enacted before January 1, ~~2013~~ ~~2018~~, deletes or extends
40 that date.

1 SECTION 1. ~~The Legislature hereby finds and declares the~~
2 ~~following:~~

3 ~~(a) It is the intent of the Legislature that this act diminish the~~
4 ~~statewide economic and personal cost of tobacco addiction by~~
5 ~~making tobacco cessation treatments available to all smokers.~~

6 ~~(b) Cigarette smoking and other uses of tobacco remain the~~
7 ~~leading cause of preventable death in California, as well as the~~
8 ~~cause of many other serious health problems, including heart~~
9 ~~disease, emphysema, and other chronic illnesses.~~

10 ~~(c) The treatment of tobacco-related diseases continues to~~
11 ~~impose a significant burden on California's health care system,~~
12 ~~including local and state-funded health care systems. Tobacco use~~
13 ~~costs Californians billions of dollars a year in medical expenses~~
14 ~~and lost productivity.~~

15 ~~(d) Providing tobacco cessation counseling and medication is~~
16 ~~one of the most clinically effective and cost-effective health~~
17 ~~services available, second only to inoculations.~~

18 ~~(e) Reducing the smoking rate in California by one percentage~~
19 ~~point will result in approximately \$91 million saved over five years~~
20 ~~from fewer smoking-caused heart attacks and strokes.~~

21 ~~(f) The United States Public Health Service Clinical Practice~~
22 ~~Guideline entitled Treating Tobacco Use and Dependence has~~
23 ~~identified the medications and counseling that are scientifically~~
24 ~~proven to be effective in helping smokers quit.~~

25 SEC. 2. ~~Section 1367.667 is added to the Health and Safety~~
26 ~~Code, to read:~~

27 ~~1367.667. (a) (1) A health care service plan contract issued,~~
28 ~~amended, renewed, or delivered on or after January 1, 2012, shall~~
29 ~~cover a minimum of two courses of treatment in a 12-month period~~
30 ~~for all smoking cessation treatments rated "A" or "B" by the United~~
31 ~~States Preventive Services Task Force, which shall include~~
32 ~~counseling and over-the-counter medication and prescription~~
33 ~~pharmacotherapy approved by the federal Food and Drug~~
34 ~~Administration.~~

35 ~~(2) The coverage provided pursuant to this section shall only~~
36 ~~be available upon the order of an authorized provider. Nothing in~~
37 ~~this section shall preclude a health care service plan from allowing~~
38 ~~enrollees to access tobacco cessation services on a self-referral~~
39 ~~basis.~~

1 ~~(3) As used in this section, “course of treatment” shall be defined~~
2 ~~to consist of the following:~~

3 ~~(A) As applied to counseling, at least four sessions of~~
4 ~~counseling, which may be telephone, group, or individual~~
5 ~~counseling with each session lasting at least 10 minutes.~~

6 ~~(B) As applied to a prescription or over-the-counter medication,~~
7 ~~the duration of treatment approved by the federal Food and Drug~~
8 ~~Administration for that medication.~~

9 ~~(4) Enrollees shall not be required to enter counseling in order~~
10 ~~to receive tobacco cessation medications after the patient’s first~~
11 ~~course of treatment.~~

12 ~~(5) A health care service plan may not impose prior authorization~~
13 ~~or stepped-care requirements on tobacco cessation treatments after~~
14 ~~the patient’s first course of treatment.~~

15 ~~(b) This section shall not apply to Medicare supplement plan~~
16 ~~contracts or to specialized health care service plan contracts.~~

17 ~~(e) The Legislature hereby requests that the University of~~
18 ~~California, as part of the California Health Benefit Review Program~~
19 ~~established under Section 127660, prepare a report by December~~
20 ~~31, 2014, evaluating the requirements of this section and~~
21 ~~determining any state savings as a result of those requirements.~~
22 ~~The Legislature requests that this report be made available to the~~
23 ~~Legislature, the Department of Insurance, and the Department of~~
24 ~~Managed Health Care.~~

25 ~~(d) This section shall become inoperative on the date that the~~
26 ~~state determines that, taking into account any state savings~~
27 ~~identified under subdivision (e), the requirements of this section~~
28 ~~will result in the state assuming additional costs pursuant to~~
29 ~~subparagraph (B) of paragraph (3) of subsection (d) of Section~~
30 ~~1311 of the federal Patient Protection and Affordable Care Act~~
31 ~~(Public Law 111-148), as amended by subsection (e) of Section~~
32 ~~10104 of Title X of that act.~~

33 ~~SEC. 3. Section 10123.25 is added to the Insurance Code, to~~
34 ~~read:~~

35 ~~10123.25. (a) (1) A health insurance policy issued, amended,~~
36 ~~renewed, or delivered on or after January 1, 2012, shall cover a~~
37 ~~minimum of two courses of treatment in a 12-month period for all~~
38 ~~smoking cessation treatments rated “A” or “B” by the United States~~
39 ~~Preventive Services Task Force, which shall include counseling~~

1 and over-the-counter medication and prescription pharmacotherapy
2 approved by the federal Food and Drug Administration.

3 (2) ~~The coverage provided pursuant to this section shall only~~
4 ~~be available upon the order of an authorized provider. Nothing in~~
5 ~~this section shall preclude an insurer from allowing insureds to~~
6 ~~access tobacco cessation services on a self-referral basis.~~

7 (3) ~~As used in this section, “course of treatment” shall be defined~~
8 ~~to consist of the following:~~

9 (A) ~~As applied to counseling, at least four sessions of~~
10 ~~counseling, which may be telephone, group, or individual~~
11 ~~counseling with each session lasting at least 10 minutes.~~

12 (B) ~~As applied to a prescription or over-the-counter medication,~~
13 ~~the duration of treatment approved by the federal Food and Drug~~
14 ~~Administration for that medication.~~

15 (4) ~~Insureds shall not be required to enter counseling in order~~
16 ~~to receive tobacco cessation medications after the patient’s first~~
17 ~~course of treatment.~~

18 (5) ~~A health insurer shall not impose prior authorization or~~
19 ~~stepped-care requirements on tobacco cessation treatments after~~
20 ~~the patient’s first course of treatment.~~

21 (b) ~~This section shall not apply to Medicare supplement policies~~
22 ~~or to specialized health insurance policies.~~

23 (c) ~~The Legislature hereby requests that the University of~~
24 ~~California, as part of the California Health Benefit Review Program~~
25 ~~established under Section 127660 of the Health and Safety Code,~~
26 ~~prepare a report by December 31, 2014, evaluating the requirements~~
27 ~~of this section and determining any state savings as a result of~~
28 ~~those requirements. The Legislature requests that this report be~~
29 ~~made available to the Legislature, the Department of Insurance,~~
30 ~~and the Department of Managed Health Care.~~

31 (d) ~~This section shall become inoperative on the date that the~~
32 ~~state determines that, taking into account any state savings~~
33 ~~identified under subdivision (c), the requirements of this section~~
34 ~~will result in the state assuming additional costs pursuant to~~
35 ~~subparagraph (B) of paragraph (3) of subsection (d) of Section~~
36 ~~1311 of the federal Patient Protection and Affordable Care Act~~
37 ~~(Public Law 111-148), as amended by subsection (c) of Section~~
38 ~~10104 of Title X of that act.~~

39 SEC. 4. ~~No reimbursement is required by this act pursuant to~~
40 ~~Section 6 of Article XIII B of the California Constitution because~~

1 ~~the only costs that may be incurred by a local agency or school~~
2 ~~district will be incurred because this act creates a new crime or~~
3 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
4 ~~for a crime or infraction, within the meaning of Section 17556 of~~
5 ~~the Government Code, or changes the definition of a crime within~~
6 ~~the meaning of Section 6 of Article XIII B of the California~~
7 ~~Constitution.~~

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