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CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 1621

Introduced by Assembly Members Figueroa and Leach
(Principal coauthor: Assembly Member Thomson)
(Principal coauthor: Senator Maddy)
(Coauthors: Assembly Members Bordonaro, Cunneen, and
Kuehl)
(Coauthor: Senator Watson)

January 5, 1998

An act to add Section 1367.63 to the Health and Safety Code, to add Section 10123.88 to the Insurance Code, and to add Section 14132.62 to the Welfare and Institutions Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

AB 1621, as amended, Figueroa. Health care coverage: reconstructive surgery.

Under existing law, health care service plans are subject to licensure and regulation by the Commissioner of

Corporations. Under existing law, disability insurers are subject to licensure and regulation by the Insurance Commissioner. Existing law establishes the Medi-Cal program to provide health care benefits to low-income individuals. Willful violation of the law regulating health care service plans is a crime.

This bill would require certain health care service plan contracts, and certain policies of disability insurance, issued, amended, renewed, or delivered on or after January 1, 1999, to cover reconstructive surgery, as defined, but would exclude coverage for cosmetic surgery, as defined. The bill *would authorize denial of proposed surgery under specified circumstances.* It would also require reconstructive surgery to be ~~deemed medically necessary and to be~~ covered under the Medi-Cal program.

By changing the definition of a crime relative to health care service plans, the bill would impose a state-mandated local program.

The bill would require the State Department of Health Services to report to the Legislature on the effect of these provisions on or before January 1, 2001.

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.

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

1 SECTION 1. *In enacting this act, it is the intent of the*
2 *Legislature that health care service plans and disability*
3 *insurers shall cover surgical procedures for enrollees and*
4 *insureds if it is determined that the surgical procedures*
5 *meet the definition of reconstructive surgery set forth in*
6 *this act. However, in enacting subdivision (e) of Section*
7 *1367.63 of the Health and Safety Code, Section 10123.88*
8 *of the Insurance Code, and Section 14132.62 of the*



1 *Welfare and Institutions Code, it is the intent of the*
2 *Legislature that health care service plans and disability*
3 *insurers shall not be required to cover a surgical*
4 *procedure that will only result in a minimal improvement*
5 *in the appearance of the patient. The determination of*
6 *whether a surgery will produce only a minimal*
7 *improvement shall be based upon the standard of care as*
8 *practiced by physicians specializing in reconstructive*
9 *surgery within the community.*

10 SEC. 2. Section 1367.63 is added to the Health and
11 Safety Code, to read:

12 1367.63. (a) Every health care service plan contract,
13 except a specialized health care service plan contract,
14 that is issued, amended, renewed, or delivered in this
15 state on or after January 1, 1999, shall cover reconstructive
16 surgery, as defined in subdivision (c). Nothing in this
17 section shall be construed to require a plan to provide
18 coverage for cosmetic surgery, as defined in subdivision
19 (d).

20 (b) No individual, other than a licensed physician
21 competent to evaluate the specific clinical issues involved
22 in the care requested, may deny initial requests for
23 authorization of coverage for treatment pursuant to this
24 section. For a treatment authorization request submitted
25 by a podiatrist or an oral and maxillofacial surgeon, the
26 request may be reviewed by a similarly licensed
27 individual, competent to evaluate the specific clinical
28 issues involved in the care requested.

29 (c) "Reconstructive surgery" means ~~medically~~
30 ~~necessary and appropriate~~ surgery performed to correct
31 or repair abnormal structures of the body caused by
32 congenital defects, developmental abnormalities,
33 trauma, infection, tumors, or disease to do either of the
34 following:

35 (1) To improve function.

36 (2) To create a normal appearance, to the extent
37 possible.

38 (d) "Cosmetic surgery" means surgery that is
39 performed to alter or reshape normal structures of the
40 body in order to improve appearance.



1 ~~SEC. 2.—~~

2 *(e) In interpreting the definition of reconstructive*
3 *surgery, a health care service plan may do either of the*
4 *following:*

5 *(1) Deny the proposed surgery if there is another*
6 *surgical procedure that will be approved as more*
7 *appropriate for the enrollee.*

8 *(2) Deny the proposed surgery if the procedure, in*
9 *accordance with the standard of care as practiced by*
10 *physicians specializing in reconstructive surgery in the*
11 *community, offers only a minimal improvement in the*
12 *appearance of the enrollee.*

13 *SEC. 3.* Section 10123.88 is added to the Insurance
14 Code, to read:

15 10123.88. (a) Every policy of disability insurance
16 covering hospital, medical, or surgical expenses that is
17 issued, amended, renewed, or delivered in this state on or
18 after January 1, 1999, shall cover reconstructive surgery,
19 as defined in subdivision (c). Nothing in this section shall
20 be construed to require a policy to provide coverage for
21 cosmetic surgery, as defined in subdivision (d). ~~This~~
22 ~~section shall apply to accident only, specified disease,~~
23 ~~hospital indemnity, Medicare supplement, or long-term~~
24 ~~care health insurance policies, subject to any general~~
25 ~~benefit or payment limitations. However, these policies~~
26 ~~may not specifically exclude coverage in cases of~~
27 ~~reconstructive surgery.~~ (d). *This section shall only apply*
28 *to health benefit plans, as defined in subdivision (a) of*
29 *Section 10198.6, except that for accident only, specified*
30 *disease, or hospital indemnity insurance, coverage for*
31 *benefits under this section shall apply to the extent that*
32 *the benefits are covered under the general terms and*
33 *conditions that apply to all other benefits under the*
34 *policy. Nothing in this section shall be construed as*
35 *imposing a new benefit mandate on accident only,*
36 *specified disease, or hospital indemnity insurance.*

37 (b) No individual, other than a licensed physician
38 competent to evaluate the specific clinical issues involved
39 in the care requested, may deny initial requests for
40 authorization of coverage for treatment pursuant to this



1 section. For a treatment authorization request submitted
2 by a podiatrist or an oral and maxillofacial surgeon, the
3 request may be reviewed by a similarly licensed
4 individual, competent to evaluate the specific clinical
5 issues involved in the care requested.

6 (c) “Reconstructive surgery” means surgery
7 performed to correct or repair abnormal structures of the
8 body caused by congenital defects, developmental
9 abnormalities, trauma, infection, tumors, or disease to do
10 either of the following:

11 (1) To improve function.

12 (2) To create a normal appearance, to the extent
13 possible.

14 (d) Nothing in this section shall be construed to
15 require an insurer to provide coverage for cosmetic
16 surgery. “Cosmetic surgery” means surgery that is
17 performed to alter or reshape normal structures of the
18 body in order to improve the patient’s appearance.

19 ~~SEC. 3.—~~

20 (e) *In interpreting the definition of reconstructive*
21 *surgery, an insurer may do either of the following:*

22 (1) *Deny the proposed surgery if there is another*
23 *surgical procedure that will be approved as more*
24 *appropriate for the enrollee.*

25 (2) *Deny the proposed surgery if the procedure, in*
26 *accordance with the standard of care as practiced by*
27 *physicians specializing in reconstructive surgery in the*
28 *community, offers only a minimal improvement in the*
29 *appearance of the enrollee.*

30 *SEC. 4.* Section 14132.62 is added to the Welfare and
31 Institutions Code, to read:

32 14132.62. (a) Reconstructive surgery shall be
33 covered under this chapter, as defined in subdivision (c).
34 Nothing in this section shall be construed to require a ~~plan~~
35 ~~to provide~~ coverage for cosmetic surgery, as defined in
36 subdivision (d).

37 (b) No individual, other than a licensed physician
38 competent to evaluate the specific clinical issues involved
39 in the care requested, may deny initial requests for
40 authorization of coverage for treatment pursuant to this



1 section. For a treatment authorization request submitted
2 by a podiatrist or an oral and maxillofacial surgeon, the
3 request may be reviewed by a similarly licensed
4 individual competent to evaluate the specific clinical
5 issues involved in the care requested.

6 (c) "Reconstructive surgery" means ~~medically~~
7 ~~necessary and appropriate~~ surgery performed on
8 abnormal structures of the body caused by congenital
9 defects, developmental abnormalities, trauma, infection,
10 tumors, or disease to do either of the following:

- 11 (1) To improve function.
- 12 (2) To create a normal appearance, to the extent
13 possible.

14 (d) "Cosmetic surgery" means surgery that is
15 performed to alter or reshape normal structures of the
16 body in order to improve appearance.

17 ~~SEC. 4.—~~

18 (e) *In connection with the interpretation of the*
19 *definition of reconstructive surgery, a proposed surgical*
20 *procedure may be denied under either of the following*
21 *circumstances:*

- 22 (1) *There is another surgical procedure that will be*
23 *approved as more appropriate for the enrollee.*
- 24 (2) *The proposed procedure offers only a minimal*
25 *improvement in the appearance of the enrollee in*
26 *accordance with the standard of care as practiced by*
27 *physicians specializing in reconstructive surgery in the*
28 *community.*

29 ~~SEC. 5.~~ Relative to the issue of medically necessary
30 reconstructive surgery, the State Department of Health
31 Services shall monitor the effect of the definition of
32 reconstructive surgery, as set forth in Sections 1 to 3 4,
33 inclusive, of this act, to determine whether, in the general
34 opinion of reconstructive surgeon specialists, the effect of
35 the definition permits surgeries that are excessive and not
36 medically necessary to return patients to a normal
37 appearance. The department shall report its results to the
38 Legislature on or before January 1, 2001.

39 ~~SEC. 5.—~~



1 SEC. 6. No reimbursement is required by this act
2 pursuant to Section 6 of Article XIII B of the California
3 Constitution because the only costs that may be incurred
4 by a local agency or school district will be incurred
5 because this act creates a new crime or infraction,
6 eliminates a crime or infraction, or changes the penalty
7 for a crime or infraction, within the meaning of Section
8 17556 of the Government Code, or changes the definition
9 of a crime within the meaning of Section 6 of Article
10 XIII B of the California Constitution.

11 Notwithstanding Section 17580 of the Government
12 Code, unless otherwise specified, the provisions of this act
13 shall become operative on the same date that the act
14 takes effect pursuant to the California Constitution.

