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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, Mendoza, V. Manuel Pérez, Saldaña, Solorio, Torres, and Yamada)

(Coauthors: Senators *Calderon*, Leno, Pavley, and Wiggins *Wiggins, and Yee*)

January 11, 2010

An act to add ~~Sections 104151, 104152, and 104153~~ *Section 104152* 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~~ *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~~

~~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 *the* 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 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.

1 (2) The enrollment freeze scheduled to run from January 1,
2 2010, to July 1, 2010, inclusive, has been extended and is still in
3 effect.

4 (d) The two changes set out in subdivision (c) will deny or delay
5 services to approximately 100,000 women, putting an estimated
6 1,000 lives at risk by delaying breast cancer diagnosis.

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

9 (1) About 207,090 new cases of invasive breast cancer will be
10 diagnosed in women, and about 1,970 new cases are expected in
11 men.

12 (2) About 54,010 new cases of carcinoma in situ (CIS) will be
13 diagnosed. CIS is noninvasive and is the earliest form of breast
14 cancer.

15 (3) About 39,840 women and 390 men will die from breast
16 cancer.

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

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

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

1 have shown that early detection saves lives and increases treatment
2 options.

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

12 (j) *The Budget Conference Committee for the 2010–11 fiscal*
13 *year agreed to appropriate an additional \$20.1 million from the*
14 *General Fund for the Every Woman Counts program, working to*
15 *ensure that women 40 years of age and over have access to these*
16 *critical preventive services.*

17 (k) *Additionally, the Budget Conference Committee for the*
18 *2010–11 fiscal year required the Every Woman Counts program*
19 *to biannually submit a program estimate, thereby committing to*
20 *a higher level of transparency and oversight of this life-saving*
21 *program.*

22 ~~SEC. 2. Section 104151 is added to the Health and Safety Code,~~
23 ~~to read:~~

24 ~~104151. In addition to the requirements specified in Section~~
25 ~~104150, a person who receives breast or cervical cancer screening~~
26 ~~through the program established in this article shall meet the~~
27 ~~following requirements:~~

28 ~~(a) Be 40 years of age or older to receive breast cancer screening~~
29 ~~services.~~

30 ~~(b) Be 25 years of age or older to receive cervical cancer~~
31 ~~screening services.~~

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

35 ~~(d) Live in California.~~

36 ~~SEC. 3.~~

37 ~~SEC. 2. Section 104152 is added to the Health and Safety Code,~~
38 ~~to read:~~

1 104152. The department, 90 days prior to making policy
2 changes relating to the program created by this article, shall do
3 both of the following:

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

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

8 ~~SEC. 4. Section 104153 is added to the Health and Safety Code,~~
9 ~~to read:~~

10 ~~104153. Funding for the program provided for under this article~~
11 ~~shall come from the Breast Cancer Fund, created and distributed~~
12 ~~pursuant to Section 30461.6 of the Revenue and Taxation Code,~~
13 ~~and as appropriated by the Legislature in the annual Budget Act~~
14 ~~or other measure.~~

15 ~~SEC. 5.~~

16 *SEC. 3.* Section 30461.6 of the Revenue and Taxation Code is
17 amended to read:

18 30461.6. (a) Notwithstanding Section 30461, the board shall
19 transmit the revenue derived from the increase in the cigarette tax
20 rate of one mill (\$0.001) per cigarette imposed by Section 30101
21 on and after January 1, 1994, to the Treasurer to be deposited in
22 the State Treasury to the credit of the Breast Cancer Fund, which
23 fund is hereby created. The Breast Cancer Fund shall consist of
24 two accounts: the Breast Cancer Research Account and the Breast
25 Cancer Control Account. The revenues deposited in the fund shall
26 be divided equally between the two accounts.

27 (b) The moneys in the accounts within the Breast Cancer Fund
28 shall, upon appropriation by the Legislature, be allocated as
29 follows:

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

33 (A) Ten percent to the Cancer Surveillance Section of the State
34 Department of Public Health for the collection of breast
35 cancer-related data and the conduct of breast cancer-related
36 epidemiological research by the state cancer registry established
37 pursuant to Section 103885 of the Health and Safety Code.

38 (B) Ninety percent to the Breast Cancer Research Program, that
39 is hereby created at the University of California, for the awarding
40 of grants and contracts to researchers for research with respect to

1 the cause, cure, treatment, prevention, and earlier detection of
2 breast cancer and with respect to the cultural barriers to accessing
3 the health care system for early detection and treatment of breast
4 cancer.

5 (2) The moneys in the Breast Cancer Control Account shall be
6 allocated to the Breast Cancer Control Program, that is hereby
7 created for the provision of early breast cancer detection services
8 for uninsured and underinsured women. The Breast Cancer Control
9 Program shall be established in the State Department of Public
10 Health and shall be administered in coordination with the breast
11 and cervical cancer control program established pursuant to Public
12 Law 101-354.

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

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

17 (2) After screening, medical referral of screened women and
18 services necessary for definitive diagnosis, including
19 nonradiological techniques or biopsy.

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

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

25 (d) (1) Any entity funded by the Breast Cancer Control Program
26 shall coordinate with other local providers of breast cancer
27 screening, diagnostic, followup, education, and advocacy services
28 to avoid duplication of effort. Any entity funded by the program
29 shall comply with any applicable state and federal standards
30 regarding mammography quality assurance.

31 (2) To the extent required or permitted by federal law, a provider
32 of breast cancer screening or diagnostic services may employ
33 digital mammography technology for the purposes of
34 mammography screening and diagnostic procedures that are
35 conducted prior to January 1, 2014, when film, otherwise known
36 as analog, mammography technology is unavailable. To the extent
37 required or permitted by federal law and notwithstanding paragraph
38 (3) of subdivision (a) of Section 14105.18 of the Welfare and
39 Institutions Code, the payment rate for all mammography screening

1 that is conducted prior to January 1, 2014, shall be limited to the
2 Medi-Cal payment rate for film mammography screening.

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

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

15 (f) An entity funded by the Breast Cancer Control Program shall
16 collect data and maintain records that are determined by the State
17 Department of Public Health to be necessary to facilitate the state
18 department’s ability to monitor and evaluate the effectiveness of
19 the entities and the program. Commencing with the program’s
20 second year of operation, on or before February 1 of each year,
21 the State Department of Public Health shall submit an annual report
22 to the Legislature and any other appropriate entity. The costs
23 associated with this report shall be paid from the allocation made
24 pursuant to paragraph (2) of subdivision (b). The report shall
25 describe the activities and effectiveness of the program and shall
26 include, but not be limited to, the following types of information
27 regarding those served by the program:

- 28 (1) The number.
29 (2) The ethnic, geographic, and age breakdown.
30 (3) The stages of presentation.
31 (4) The diagnostic and treatment status.
32 (5) The *average* cost per individual served.
33 (6) Information provided to the federal Centers for Disease
34 Control and Prevention on the number of individuals served based
35 on the federal funds provided.
36 ~~(7) Funding for the program, including expenditures by category~~
37 ~~and funding source for the last three fiscal years and estimates for~~
38 ~~the current fiscal year in which the report is due and for the~~
39 ~~following budget year.~~

1 ~~(8) Funding for clinical and nonclinical contractors and how~~
2 ~~these funds are used for each activity for which it contracts.~~

3 ~~(9) The cost of clinical screening, including the cost for certain~~
4 ~~procedures, including, but not limited to, mammograms and~~
5 ~~ultrasounds.~~

6 ~~(10) The number of individuals served and projected to be served~~
7 ~~with the level of funding provided during the fiscal year.~~

8 ~~(11) The number of individuals who received screening services~~
9 ~~during the fiscal year, how many returned for diagnostics and~~
10 ~~followup screenings, and how many were diagnosed with cancer~~
11 ~~and were referred to the Breast Cancer Treatment Program.~~

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

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

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

37 (j) The State Department of Public Health or any entity funded
38 by the Breast Cancer Control Program shall collect personal and
39 medical information necessary to administer this program from
40 any individual applying for services under the program. The

1 information shall be confidential and shall not be disclosed other
2 than for purposes directly connected with the administration of
3 this program or except as otherwise provided by law or pursuant
4 to prior written consent of the subject of the information.

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

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

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

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

- 1 Medi-Cal program's fiscal intermediary shall not be subject to Part
- 2 2 (commencing with Section 10100) of Division 2 of the Public
- 3 Contract Code.

O