

Assembly Bill No. 1640

Passed the Assembly August 26, 2010

Chief Clerk of the Assembly

Passed the Senate August 25, 2010

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2010, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add 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, 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.

The bill would 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.

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.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) The Every Woman Counts program provides breast and cervical cancer screening services to low-income, uninsured and underinsured women.

(b) The State Department of Public Health estimates that the program serves approximately 350,000 women per year.

(c) In December 2009, the department announced the following significant policy changes that went into effect January 1, 2010:

(1) The minimum age to receive breast cancer screening services has been raised from 40 years of age to 50 years of age.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) (1) The State Department of Public Health shall provide for breast cancer screening services 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.

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

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

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

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

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

(i) It is the intent of the Legislature in enacting the Breast Cancer Control Program to decrease cancer mortality rates attributable to breast cancer among uninsured and underinsured women, with

special emphasis on low-income, Native American, and minority women. It is also the intent of the Legislature that the communities served by the Breast Cancer Control Program reflect the ethnic, racial, cultural, and geographic diversity of the state and that the Breast Cancer Control Program fund entities where uninsured and underinsured women are most likely to seek their health care.

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

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

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

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

(m) To implement the Breast Cancer Control Program, the State Department of Public Health may contract, to the extent permitted by Section 19130 of the Government Code, with public and private entities, or utilize existing health care service provider enrollment

and payment mechanisms, including the Medi-Cal program's fiscal intermediary. However, the Medi-Cal program's fiscal intermediary shall only be utilized if services provided under the program are specifically identified and reimbursed in a manner that does not claim federal financial reimbursement. Any contracts with, and the utilization of, the Medi-Cal program's fiscal intermediary shall not be subject to Chapter 3 (commencing with Section 12100) of Part 2 of Division 2 of the Public Contract Code. Contracts to implement the Breast Cancer Control Program entered into by the State Department of Public Health with entities other than the Medi-Cal program's fiscal intermediary shall not be subject to Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code.

Approved _____, 2010

Governor