

**Introduced by Senator Pavley**February 10, 2011

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An act to amend Section 1367.635 of the Health and Safety Code, and to amend Section 10123.86 of the Insurance Code, relating to health care coverage.

## LEGISLATIVE COUNSEL'S DIGEST

SB 255, as introduced, Pavley. Health care coverage: breast cancer.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care, and makes a willful violation of its provisions a crime. Existing law provides for the regulation of health insurers by the Department of Insurance. Existing law requires every health care service plan contract and health insurance policy that provides coverage for mastectomies and lymph node dissections to allow the length of any hospital stay to be determined by the attending physician and surgeon in consultation with the patient, to cover prosthetic devices or reconstructive surgery, and to cover all complications from a mastectomy. Existing law defines mastectomy for those purposes as the removal of all or part of the breast for medically necessary reasons, as determined by a licensed physician and surgeon.

This bill would revise and recast the definition of mastectomy and would specify that the partial removal of a breast includes, but is not limited to, lumpectomy, which includes surgical removal of the tumor with clear margins. The bill would require the consultation regarding the length of any hospital stay to be conducted postsurgery.

Because a willful violation of these provisions by a health care service plan is 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.

*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 National Cancer Institute estimates that a woman born
- 4 today in the United States has a one in eight chance of developing
- 5 breast cancer during her lifetime.
- 6 (b) According to the American Cancer Society, excluding
- 7 cancers of the skin, breast cancer is the most frequently diagnosed
- 8 cancer in women.
- 9 (c) According to the American Cancer Society, an estimated
- 10 40,480 women and 450 men died from breast cancer in 2008.
- 11 (d) Nationwide, in 2008, an estimated 182,460 new cases of
- 12 invasive breast cancer were diagnosed in women, and an estimated
- 13 1,990 invasive breast cancer cases were diagnosed in men. In
- 14 addition, an estimated 67,770 new cases of in situ breast cancer
- 15 occurred in women in 2008, and, of these, approximately 85
- 16 percent were ductal carcinoma in situ.
- 17 (e) According to the American Cancer Society, most breast
- 18 cancer patients undergo some type of surgical treatment, which
- 19 may involve breast-conserving surgeries, such as lumpectomy
- 20 (surgical removal of the tumor with clear margins) or mastectomy
- 21 (surgical removal of the breast) with removal of some of the
- 22 axillary (underarm) lymph nodes.
- 23 (f) Currently, 20 states mandate minimum in-patient coverage
- 24 after a patient undergoes a mastectomy, including California.
- 25 (g) Breast cancer patients have reported adverse outcomes,
- 26 including infection, and inadequately controlled pain resulting
- 27 from premature hospital discharge following breast cancer surgery.
- 28 SEC. 2. Section 1367.635 of the Health and Safety Code is
- 29 amended to read:

1 1367.635. (a) Every health care service plan contract that is  
2 issued, amended, renewed, or delivered on or after January 1, 1999,  
3 that provides coverage for surgical procedures known as  
4 mastectomies and lymph node dissections, shall do all of the  
5 following:

6 (1) Allow the length of a hospital stay associated with those  
7 procedures to be determined by the attending physician and surgeon  
8 in consultation with the patient, *postsurgery*, consistent with sound  
9 clinical principles and processes. No health care service plan shall  
10 require a treating physician and surgeon to receive prior approval  
11 from the plan in determining the length of hospital stay following  
12 those procedures.

13 (2) Cover prosthetic devices or reconstructive surgery, including  
14 devices or surgery to restore and achieve symmetry for the patient  
15 incident to the mastectomy. Coverage for prosthetic devices and  
16 reconstructive surgery shall be subject to the deductible and  
17 coinsurance conditions applicable to other benefits.

18 (3) Cover all complications from a mastectomy, including  
19 lymphedema.

20 (b) As used in this section, all of the following definitions apply:

21 (1) “Coverage for prosthetic devices or reconstructive surgery”  
22 means any initial and subsequent reconstructive surgeries or  
23 prosthetic devices, and followup care deemed necessary by the  
24 attending physician and surgeon.

25 (2) “Prosthetic devices” means and includes the provision of  
26 initial and subsequent prosthetic devices pursuant to an order of  
27 the patient’s physician and surgeon.

28 (3) “Mastectomy” ~~shall have the same meaning as in Section~~  
29 *1367.6 means the removal of all or part of the breast for medically*  
30 *necessary reasons, as determined by a licensed physician and*  
31 *surgeon. Partial removal of a breast includes, but is not limited*  
32 *to, lumpectomy, which includes surgical removal of the tumor with*  
33 *clear margins.*

34 (4) “To restore and achieve symmetry” means that, in addition  
35 to coverage of prosthetic devices and reconstructive surgery for  
36 the diseased breast on which the mastectomy was performed,  
37 prosthetic devices and reconstructive surgery for a healthy breast  
38 is also covered if, in the opinion of the attending physician and  
39 surgeon, this surgery is necessary to achieve normal symmetrical  
40 appearance.

1 (c) No individual, other than a licensed physician and surgeon  
2 competent to evaluate the specific clinical issues involved in the  
3 care requested, may deny requests for authorization of health care  
4 services pursuant to this section.

5 (d) No health care service plan shall do any of the following in  
6 providing the coverage described in subdivision (a):

7 (1) Reduce or limit the reimbursement of the attending provider  
8 for providing care to an individual enrollee or subscriber in  
9 accordance with the coverage requirements.

10 (2) Provide monetary or other incentives to an attending provider  
11 to induce the provider to provide care to an individual enrollee or  
12 subscriber in a manner inconsistent with the coverage requirements.

13 (3) Provide monetary payments or rebates to an individual  
14 enrollee or subscriber to encourage acceptance of less than the  
15 coverage requirements.

16 (e) On or after July 1, 1999, every health care service plan shall  
17 include notice of the coverage required by this section in the plan's  
18 evidence of coverage.

19 (f) Nothing in this section shall be construed to limit  
20 retrospective utilization review and quality assurance activities by  
21 the plan.

22 SEC. 3. Section 10123.86 of the Insurance Code is amended  
23 to read:

24 10123.86. (a) Every policy of disability insurance covering  
25 hospital, surgical, or medical expenses that is issued, amended,  
26 renewed, or delivered on or after January 1, 1999, that provides  
27 coverage for surgical procedures known as mastectomies and  
28 lymph node dissections, shall do all of the following:

29 (1) Allow the length of a hospital stay associated with those  
30 procedures to be determined by the attending physician and surgeon  
31 in consultation with the patient, *postsurgery*, consistent with sound  
32 clinical principles and processes. No disability insurer shall require  
33 a treating physician and surgeon to receive prior approval in  
34 determining the length of hospital stay following those procedures.

35 (2) Cover prosthetic devices or reconstructive surgery, including  
36 devices or surgery to restore and achieve symmetry for the patient  
37 incident to the mastectomy. Coverage for prosthetic devices and  
38 reconstructive surgery shall be subject to the deductible and  
39 coinsurance conditions applicable to other benefits.

1 (3) Cover all complications from a mastectomy, including  
2 lymphedema.

3 (b) As used in this section, all of the following definitions apply:

4 (1) “Coverage for prosthetic devices or reconstructive surgery”  
5 means any initial and subsequent reconstructive surgeries or  
6 prosthetic devices, and followup care deemed necessary by the  
7 attending physician and surgeon.

8 (2) “Prosthetic devices” means and includes the provision of  
9 initial and subsequent prosthetic devices pursuant to an order of  
10 the patient’s physician and surgeon.

11 (3) “Mastectomy” ~~shall have the same meaning as in Section~~  
12 ~~10123.8~~ *means the removal of all or part of the breast for medically*  
13 *necessary reasons, as determined by a licensed physician and*  
14 *surgeon. Partial removal of a breast includes, but is not limited*  
15 *to, lumpectomy, which includes surgical removal of the tumor with*  
16 *clear margins.*

17 (4) “To restore and achieve symmetry” means that, in addition  
18 to coverage of prosthetic devices and reconstructive surgery for  
19 the diseased breast on which the mastectomy was performed,  
20 prosthetic devices and reconstructive surgery for a healthy breast  
21 is also covered if, in the opinion of the attending physician and  
22 surgeon, this surgery is necessary to achieve normal symmetrical  
23 appearance.

24 (c) No individual, other than a licensed physician and surgeon  
25 competent to evaluate the specific clinical issues involved in the  
26 care requested, may deny requests for authorization of health care  
27 services pursuant to this section.

28 (d) No insurer shall do any of the following in providing the  
29 coverage described in subdivision (a):

30 (1) Reduce or limit the reimbursement of the attending provider  
31 for providing care to an insured in accordance with the coverage  
32 requirements.

33 (2) Provide monetary or other incentives to an attending provider  
34 to induce the provider to provide care to an insured in a manner  
35 inconsistent with the coverage requirements.

36 (3) Provide monetary payments or rebates to an insured to  
37 encourage acceptance of less than the coverage requirements.

38 (e) On or after July 1, 1999, every insurer shall include notice  
39 of the coverage required by this section in the insurer’s evidence  
40 of coverage or certificate of insurance.

1 (f) Nothing in this section shall be construed to limit  
2 retrospective utilization review and quality assurance activities by  
3 the insurer.

4 (g) This section shall only apply to health benefit plans, as  
5 defined in subdivision (a) of Section 10198.6, except that for  
6 accident only, specified disease, or hospital indemnity insurance,  
7 coverage for benefits under this section shall apply to the extent  
8 that the benefits are covered under the general terms and conditions  
9 that apply to all other benefits under the policy. Nothing in this  
10 section shall be construed as imposing a new benefit mandate on  
11 accident only, specified disease, or hospital indemnity insurance.

12 SEC. 4. No reimbursement is required by this act pursuant to  
13 Section 6 of Article XIII B of the California Constitution because  
14 the only costs that may be incurred by a local agency or school  
15 district will be incurred because this act creates a new crime or  
16 infraction, eliminates a crime or infraction, or changes the penalty  
17 for a crime or infraction, within the meaning of Section 17556 of  
18 the Government Code, or changes the definition of a crime within  
19 the meaning of Section 6 of Article XIII B of the California  
20 Constitution.