

Introduced by Senator PanFebruary 17, 2021

An act to add Sections 1342.2 and 1342.3 to the Health and Safety Code, and to add Sections 10110.7 and 10110.75 to the Insurance Code, relating to health care coverage, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 510, as introduced, Pan. Health care coverage: COVID-19 cost sharing.

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 also provides for the regulation of health insurers by the Department of Insurance. Existing law limits the copayment, coinsurance, deductible, and other cost sharing that may be imposed for specified health care services.

This bill would require a health care service plan contract or a disability insurance policy that provides coverage for hospital, medical, or surgical benefits, to cover the costs for health care services related to the testing for COVID-19, or a future pandemic disease when declared a public health emergency by the Governor of the State of California, and would prohibit that contract or policy from imposing cost sharing or prior authorization requirements for that coverage. The bill would also require a contract or policy to cover without cost sharing or prior authorization an item, service, or immunization intended to prevent or mitigate COVID-19, or a future pandemic disease when declared a public health emergency by the Governor of the State of California, that is recommended by the United States Preventive Services Task

Force or the federal Centers for Disease Control and Prevention, as specified. The bill would only extend the prohibition on cost sharing for COVID-19 testing, or an item, service, or immunization intended to prevent or mitigate COVID-19, with respect to an out-of-network provider for the duration of the federal public health emergency. The bill would also make related findings and declarations. Because a violation of this requirement by a health care service plan 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.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. 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 that a
2 significant public health crisis, including the crisis posed by the
3 COVID-19 pandemic that is the subject of the state of emergency
4 declared by the Governor of the State of California on March 4,
5 2020, necessitates legislation to ensure that individuals are not
6 discouraged from seeking testing or vaccination due to cost sharing
7 or prior authorization requirements. To ensure that health care
8 service plans and health insurers do not impose cost sharing or
9 prior authorization requirements that might discourage individuals
10 from seeking and receiving testing and vaccinations for a pandemic
11 condition, it is the intent of the Legislature in enacting this act to
12 require coverage for testing costs without cost sharing or prior
13 authorization and to require coverage for prevention recommended
14 by the United States Preventive Services Task Force or the
15 Advisory Committee on Immunization Practices of the federal
16 Centers for Disease Control and Prevention. In this regard, the
17 Legislature further finds and declares that this exercise of the police
18 power imposes a reasonable condition that is of a character
19 appropriate to the public purpose of ensuring that as many

1 individuals as possible receive necessary testing and vaccination
2 in response to a pandemic.

3 SEC. 2. Section 1342.2 is added to the Health and Safety Code,
4 to read:

5 1342.2. (a) Notwithstanding any other law, a health care
6 service plan contract that covers medical, surgical, and hospital
7 benefits shall cover the costs for health care services related to
8 testing approved or granted emergency use authorization by the
9 federal Food and Drug Administration for COVID-19, regardless
10 of whether the services are provided by an in-network or
11 out-of-network provider. Coverage required by this section shall
12 not be subject to copayment, coinsurance, deductible, or any other
13 form of cost sharing. Services related to COVID-19 testing include,
14 but are not limited to, hospital or health care provider office visits
15 for the purposes of receiving testing, products related to testing,
16 the administration of testing, and items and services furnished to
17 an enrollee as part of testing.

18 (1) To the extent a health care provider would have been entitled
19 to receive cost sharing but for this section, the health care service
20 plan shall reimburse the health care provider the amount of that
21 lost cost sharing.

22 (2) A health care service plan contract shall not impose prior
23 authorization or any other utilization management requirements
24 on COVID-19 testing.

25 (3) With respect to an enrollee, a health care service plan shall
26 reimburse the provider of the testing according to either of the
27 following:

28 (A) If the health plan has a negotiated rate with such provider
29 in effect before the public health emergency declared under Section
30 319 of the Public Health Service Act (42 U.S.C. 247d), such
31 negotiated rate shall apply throughout the period of such
32 declaration.

33 (B) If the health plan does not have a negotiated rate with such
34 provider, the plan may negotiate a rate with such provider.

35 (4) (A) For an out-of-network provider with whom a health
36 care service plan does not have a negotiated rate for health care
37 services related to testing, a plan shall reimburse the provider for
38 all testing items or services in an amount that is reasonable, as
39 determined in comparison to prevailing market rates for testing
40 items or services in the geographic region where the item or service

1 is rendered. An out-of-network provider shall accept this payment
2 as payment in full and shall not seek additional remuneration from
3 an enrollee for services related to testing.

4 (B) The requirement in this subdivision to cover testing without
5 cost sharing, when delivered by an out-of-network provider, shall
6 not apply with respect to testing furnished on, or after, the
7 expiration of the federal public health emergency. All other
8 requirements of this subdivision shall remain in effect after the
9 federal public health emergency expires.

10 (5) Changes to a contract between a health care service plan
11 and a provider delegating financial risk for testing related to a
12 declared public health emergency shall be considered a material
13 change to the parties' contract. A health care service plan shall not
14 delegate the financial risk to a contracted provider for the cost of
15 enrollee services provided under this section unless the parties
16 have negotiated and agreed upon a new provision of the parties'
17 contract pursuant to Section 1375.7.

18 (b) (1) A health care service plan contract that covers medical,
19 surgical, and hospital benefits shall cover without cost sharing any
20 item, service, or immunization that is intended to prevent or
21 mitigate COVID-19 and that is either of the following with respect
22 to the individual enrollee:

23 (A) An evidence-based item or service that has in effect a rating
24 of "A" or "B" in the current recommendations of the United States
25 Preventive Services Task Force.

26 (B) An immunization that has in effect a recommendation from
27 the Advisory Committee on Immunization Practices of the federal
28 Centers for Disease Control and Prevention, regardless of whether
29 the immunization is recommended for routine use.

30 (2) The item, service, or immunization covered pursuant to
31 paragraph (1) shall be covered no later than 15 business days after
32 the date on which the United States Preventive Services Task Force
33 or the Advisory Committee on Immunization Practices of the
34 federal Centers for Disease Control and Prevention makes a
35 recommendation relating to the item, service, or immunization. A
36 recommendation from the Advisory Committee on Immunization
37 Practices of the federal Centers for Disease Control and Prevention
38 is considered in effect after it has been adopted, or granted
39 emergency use authorization, by the Director of the Centers for
40 Disease Control and Prevention.

1 (3) (A) A health care service plan subject to this subdivision
2 shall not impose any cost-sharing requirements, including a
3 copayment, coinsurance, or deductible, for any item, service, or
4 immunization described in paragraph (1), regardless of whether
5 such service is delivered by an in-network or out-of-network
6 provider.

7 (B) To the extent a health care provider would have been entitled
8 to receive cost sharing but for this section, the health care service
9 plan shall reimburse the health care provider the amount of that
10 lost cost sharing.

11 (C) With respect to an enrollee, a health care service plan shall
12 reimburse the provider of the immunization according to either of
13 the following:

14 (i) If the health plan has a negotiated rate with such provider in
15 effect before the public health emergency declared under Section
16 319 of the Public Health Service Act (42 U.S.C. 247d), such
17 negotiated rate shall apply throughout the period of such
18 declaration.

19 (ii) If the health plan does not have a negotiated rate with such
20 provider, the plan may negotiate a rate with such provider.

21 (D) A health care service plan shall not impose cost sharing for
22 any items or services that are necessary for the furnishing of an
23 item, service, or immunization described in paragraph (1), including,
24 but not limited to, provider office visits and vaccine administration.

25 (E) (i) For an out-of-network provider with whom a health care
26 service plan does not have a negotiated rate for an item, service,
27 or immunization described in paragraph (1), a health care service
28 plan shall reimburse the provider for all related items or services,
29 including any items or services that are necessary for the furnishing
30 of an item, service, or immunization described in paragraph (1),
31 in an amount that is reasonable, as determined in comparison to
32 prevailing market rates for such items or services in the geographic
33 region in which the item or service is rendered. An out-of-network
34 provider shall accept this payment as payment in full and shall not
35 seek additional remuneration from an insured for items, services,
36 and immunizations described in subdivision (b), including any
37 items or services that are necessary for the furnishing of an item,
38 service, or immunization described in paragraph (1).

39 (ii) The requirement in this paragraph to cover any item, service,
40 or immunization described in paragraph (1) without cost sharing

1 when delivered by an out-of-network provider will not apply with
2 respect to an item, service, or immunization furnished on or after
3 the expiration of the federal public health emergency. All other
4 requirements of this section shall remain in effect after the federal
5 public health emergency expires.

6 (4) A health care service plan subject to this subdivision shall
7 not impose prior authorization or any other utilization management
8 requirements on any item, service, or immunization described in
9 paragraph (1).

10 (5) Changes to a contract between a health care service plan
11 and a provider delegating financial risk for immunization related
12 to a declared public health emergency, shall be considered a
13 material change to the parties' contract. A health plan shall not
14 delegate the financial risk to a contracted provider for the cost of
15 enrollee services provided under this section unless the parties
16 have negotiated and agreed upon a new provision of the parties'
17 contract pursuant to Section 1375.7.

18 (c) The director may issue guidance to health care service plans
19 regarding compliance with this section. This guidance shall not
20 be subject to the Administrative Procedure Act (Chapter 3.5
21 (commencing with Section 11340) of Part 1 of Division 3 of Title
22 2 of the Government Code). The department shall consult with the
23 Department of Insurance in issuing the guidance specified in this
24 subdivision.

25 SEC. 3. Section 1342.3 is added to the Health and Safety Code,
26 to read:

27 1342.3. (a) A health care service plan contract that covers
28 medical, surgical, and hospital benefits shall cover, without cost
29 sharing or prior authorization, the costs of the following health
30 care services to prevent or mitigate a pandemic disease when the
31 Governor of the State of California has declared a public health
32 emergency due to that pandemic disease:

33 (1) An evidence-based item, service, or immunization that is
34 intended to prevent or mitigate a pandemic disease as
35 recommended by the United States Preventive Services Task Force
36 or the Advisory Committee on Immunization Practices of the
37 federal Centers for Disease Control and Prevention.

38 (2) A health care service or product related to testing for the
39 pandemic disease that is approved or granted emergency use
40 authorization by the federal Food and Drug Administration, or is

1 recommended by the State Department of Public Health or the
2 federal Centers for Disease Control and Prevention.

3 (b) The item, service, or immunization covered pursuant to
4 paragraph (1) of subdivision (a) shall be covered no later than 15
5 business days after the date on which the United States Preventive
6 Services Task Force or the Advisory Committee on Immunization
7 Practices of the federal Centers for Disease Control and Prevention
8 makes a recommendation relating to the item, service, or
9 immunization.

10 SEC. 4. Section 10110.7 is added to the Insurance Code, to
11 read:

12 10110.7. (a) This section applies to a disability insurance
13 policy that provides coverage for hospital, medical, or surgical
14 benefits.

15 (b) Notwithstanding any other law, a disability insurance policy
16 shall cover the costs for health care services related to the testing
17 approved or granted emergency use authorization by the federal
18 Food and Drug Administration for COVID-19, regardless of
19 whether the services are provided by an in-network or
20 out-of-network provider. Coverage required by this section shall
21 not be subject to copayment, coinsurance, deductible, or any other
22 form of cost sharing. Services related to COVID-19 testing include,
23 but are not limited to, hospital or health care provider office visits
24 for the purposes of receiving testing, products related to testing,
25 the administration of testing, and items and services furnished to
26 an insured as part of testing.

27 (1) To the extent a health care provider would have been entitled
28 to receive cost sharing but for this section, the insurer shall
29 reimburse the health care provider the amount of that lost cost
30 sharing.

31 (2) A disability insurance policy shall not impose prior
32 authorization or any other utilization management requirements
33 on COVID-19 testing.

34 (3) With respect to an insured, a health insurer shall reimburse
35 the provider of the testing according to either of the following:

36 (A) If the health insurer has a negotiated rate with such provider
37 in effect before the public health emergency declared under Section
38 319 of the Public Health Service Act (42 U.S.C. 247d), such
39 negotiated rate shall apply throughout the period of such
40 declaration.

1 (B) If the health insurer does not have a negotiated rate with
2 such provider, the insurer may negotiate a rate with such provider.

3 (4) (A) For an out-of-network provider with whom an insurer
4 does not have a negotiated rate for health care services related to
5 testing, an insurer shall reimburse the provider for all testing items
6 or services in an amount that is reasonable, as determined in
7 comparison to prevailing market rates for testing items or services
8 in the geographic region where the item or service is rendered. An
9 out-of-network provider shall accept this payment as payment in
10 full and shall not seek additional remuneration from an insured
11 for services related to testing.

12 (B) The requirement in this subdivision to cover testing without
13 cost sharing when delivered by an out-of-network provider will
14 not apply with respect to testing furnished on or after the expiration
15 of the federal public health emergency. All other requirements of
16 this subdivision shall remain in effect after the federal public health
17 emergency expires.

18 (c) (1) A disability insurance policy shall cover without cost
19 sharing any item, service, or immunization that is intended to
20 prevent or mitigate COVID-19 and that is either of the following
21 with respect to the individual insured:

22 (A) An evidence-based item or service that has in effect a rating
23 of “A” or “B” in the current recommendations of the United States
24 Preventive Services Task Force.

25 (B) An immunization that has in effect a recommendation from
26 the Advisory Committee on Immunization Practices of the federal
27 Centers for Disease Control and Prevention regardless of whether
28 the immunization is recommended for routine use.

29 (2) To the extent a health care provider would have been entitled
30 to receive cost sharing but for this section, the insurer shall
31 reimburse the health care provider the amount of that lost cost
32 sharing.

33 (3) The item, service, or immunization covered pursuant to
34 paragraph (1) shall be covered no later than 15 business days after
35 the date on which the United States Preventive Services Task Force
36 or the Advisory Committee on Immunization Practices of the
37 federal Centers for Disease Control and Prevention makes a
38 recommendation relating to the item, service, or immunization. A
39 recommendation from the Advisory Committee on Immunization
40 Practices of the federal Centers for Disease Control and Prevention

1 is considered in effect after it has been adopted, or granted
2 emergency use authorization, by the Director of the Centers for
3 Disease Control and Prevention.

4 (4) (A) A disability insurance policy subject to this subdivision
5 shall not impose any cost-sharing requirements, including a
6 copayment, coinsurance, or deductible, for any item, service, or
7 immunization described in paragraph (1), regardless of whether
8 such service is delivered by an in-network or out-of-network
9 provider.

10 (B) A disability insurance policy shall not impose cost sharing
11 for any items or services that are necessary for the furnishing of
12 an item, service, or immunization described in paragraph (1),
13 including, but not limited to, provider office visits and vaccine
14 administration.

15 (C) With respect to an insured, a health insurer shall reimburse
16 the provider of the immunization according to either of the
17 following:

18 (i) If the health insurer has a negotiated rate with such provider
19 in effect before the public health emergency declared under Section
20 319 of the Public Health Service Act (42 U.S.C. 247d), such
21 negotiated rate shall apply throughout the period of such
22 declaration.

23 (ii) If the health insurer does not have a negotiated rate with
24 such provider, the insurer may negotiate a rate with such provider.

25 (D) For an out-of-network provider with whom a disability
26 insurer does not have a negotiated rate for an item, service, or
27 immunization described in paragraph (1), an insurer shall reimburse
28 the provider for all such items or services, including any items or
29 services that are necessary for the furnishing of an item, service,
30 or immunization described in paragraph (1), in an amount that is
31 reasonable, as determined in comparison to prevailing market rates
32 for such items or services in the geographic region in which the
33 item or service is rendered. An out-of-network provider shall accept
34 this payment as payment in full and shall not seek additional
35 remuneration from an insured for items, services, and
36 immunizations described in paragraph (1), including any items or
37 services that are necessary for the furnishing of an item, service,
38 or immunization described in paragraph (1).

39 (E) The requirement in this subdivision to cover any item,
40 service, or immunization described in paragraph (1) without cost

1 sharing when delivered by an out-of-network provider will not
2 apply with respect to an item, service, or immunization furnished
3 on or after the expiration of the federal public health emergency.
4 All other requirements of this section shall remain in effect after
5 the federal public health emergency expires.

6 (5) A disability insurer subject to this subdivision shall not
7 impose prior authorization or any other utilization management
8 requirements on any item, service, or immunization described in
9 paragraph (1).

10 (d) The commissioner may issue guidance to insurers regarding
11 compliance with this section. This guidance shall not be subject
12 to the Administrative Procedure Act (Chapter 3.5 (commencing
13 with Section 11340) of Part 1 of Division 3 of Title 2 of the
14 Government Code). The department shall consult with the
15 Department of Managed Health Care in issuing the guidance
16 specified in this subdivision.

17 SEC. 5. Section 10110.75 is added to the Insurance Code,
18 immediately following Section 10110.7, to read:

19 10110.75. (a) This section applies to a disability insurance
20 policy that provides coverage for hospital, medical, or surgical
21 benefits.

22 (b) (1) A disability insurance policy shall cover, without cost
23 sharing or prior authorization, the costs of the following health
24 care services to prevent or mitigate a pandemic disease when the
25 Governor of the State of California has declared a public health
26 emergency due to that pandemic disease:

27 (A) An evidence-based item, service, or immunization that is
28 intended to prevent or mitigate a pandemic disease as
29 recommended by the United States Preventive Services Task Force
30 or the Advisory Committee on Immunization Practices of the
31 federal Centers for Disease Control and Prevention.

32 (B) A health care service or product related to testing for the
33 pandemic disease that is approved or granted emergency use
34 authorization by the federal Food and Drug Administration, or is
35 recommended by the State Department of Public Health or the
36 federal Centers for Disease Control and Prevention.

37 (2) The item, service, or immunization covered pursuant to
38 subparagraph (A) of paragraph (1) shall be covered no later than
39 15 business days after the date on which the United States
40 Preventive Services Task Force or the Advisory Committee on

1 Immunization Practices of the federal Centers for Disease Control
2 and Prevention makes a recommendation relating to the item,
3 service, or immunization.

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

13 SEC. 7. This act is an urgency statute necessary for the
14 immediate preservation of the public peace, health, or safety within
15 the meaning of Article IV of the California Constitution and shall
16 go into immediate effect. The facts constituting the necessity are:

17 In order to encourage as many people as possible to be tested
18 and treated for COVID-19 as soon as possible, it is necessary that
19 this act take effect immediately.