

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 1355 (Levine)
Version: May 23, 2022
Hearing Date: June 14, 2022
Fiscal: Yes
Urgency: No
AM

SUBJECT

Medi-Cal: Independent Medical Review System

DIGEST

This bill requires the Department of Health Care Services (DHCS) to establish an Independent Medical Review (IMR) process for the Medi-Cal program modeled on the IMR process overseen by the Department of Managed Health Care (DMHC) as required by the Knox-Keene Health Care Service Plan Act (Knox-Keene), as specified. The bill revises procedures under the fair hearing process for DHCS. The bill requires the names of the reviewers to be kept confidential, except as specified, and for the names of parties to a determination made by and IMR organization adopted by the Director of DHCS to be removed before being posted on the website of DHCS.

EXECUTIVE SUMMARY

This bill seeks to address an inequity under existing law where persons enrolled in certain Medi-Cal plans are able to appeal the denial of a medical service through an IMR process, whereas others are not afforded this right and must use a fair hearing process. The bill would require DHCS to establish an IMR process for Medi-Cal plans regulated by DHCS and specified other services in a substantially similar manner to the existing IMR process overseen by DMHC. The bill would also make changes to the existing fair hearing process under DHCS. The bill would make certain information confidential and prohibit the names of parties to an IMR proceeding from being posted on a specified website.

The bill is sponsored by the Western Center on Law and Poverty and supported by various advocacy organizations. There is no known opposition. The bill passed out of the Senate Health Committee on a vote of 9 to 0.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the Medi-Cal program, which is administered by DHCS, under which qualified low-income individuals receive health care services. (Welf. & Inst. Code § 14000, et. seq.¹)
- 2) Establishes a state fair hearing process for individuals dissatisfied with public social services they have received, dissatisfied with any action of the county relating to their application, or refused the opportunity to submit an application (including Medi-Cal services). (§§ 10950-10967.)
- 3) Establishes the Department of Managed Health Care (DMHC) to regulate health plans under Knox-Keene. (Health & Saf. Code §1340 et. seq.)
 - a) Establish an IMR system under which an enrollee can seek an external IMR whenever health care services have been denied, modified, or delayed by a health plan on the basis of medical necessity. (Health & Saf. Code § 1374.30 et. seq.)
 - b) Requires the independent medical review organization to keep the names of the reviewers confidential in all communications with entities or individuals outside the independent medical review organization, except in cases where the reviewer is called to testify and in response to court orders. (Health & Saf. Code §1374.33(e).)
 - c) Requires the adopted decision of the determination of an IMR organization to be posted on the website of DMHC, but requires that the names of the parties, including, but not limited to, the enrollee, all medical providers, the plan, and any of the plan's employees or contractors be removed prior to posting. (Health & Saf. Code §1374.33(g).)
- 4) Provides, pursuant to the California Constitution, that the people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies are required to be open to public scrutiny. (Cal. Const. art. I, § 3 (b)(1).)
 - a) Requires a statute that limits the public's right of access to be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest. (Cal. const. art. I, § 3(b)(1).)
 - b) Governs the disclosure of information collected and maintained by public agencies pursuant to the CPRA. (Gov. Code §§ 6250 et seq.)
 - c) States that, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the

¹ All further references are to the Welfare and Institutions Code unless specified otherwise.

- people's business is a fundamental and necessary right of every person in this state. (Gov. Code § 6250.)
- d) Provides that all public records are accessible to the public upon request, unless the record requested is exempt from public disclosure. (Gov. Code § 6253.)
 - e) Recodifies the CPRA in Division 10 of Title 1 (§§ 7920.000 - 7931.000) of the Government Code effective January 1, 2023.

This bill:

- 1) Authorizes a Medi-Cal recipient to file for a fair hearing within 90 days of receipt of an unfavorable IMR decision.
 - a) Authorizes the Director of DHCS to adopt the proposed decision of an administrative law judge under a fair hearing, decide the matter themselves after reviewing the transcript or recording of a fair hearing, or conduct another hearing that allows parties to present additional evidence once a hearing has been conducted.
 - b) Requires an alternate decision by the Director of DHCS to contain a statement of the facts and evidence, including references to the applicable sections of law and regulations, and the analysis that supports the Director's decision.
- 2) Requires DHCS to establish an IMR system for the Medi-Cal program, which is substantially similar to the IMR system required by Knox-Keene.
 - a) Authorizes a Medi-Cal beneficiary to apply for an IMR within six months of receipt of a notice of adverse benefits determination or notice of action if there is any denial, modification, or delay based on medical necessity involving a disputed health care service.
 - b) Requires a Medi-Cal beneficiary to first file a grievance with the plan for services to be provided, except as specified.
 - c) Requires the confidentiality of any beneficiary medical information to be maintained pursuant to applicable state and federal laws.
- 3) Requires the IMR organization to determine whether the disputed health care service was medically necessary based on the specific medical needs of the enrollee or insured, as specified.
 - a) Requires the Director of DHCS to immediately adopt the determination of the IMR organization and promptly issue a written decision to the parties that is binding.
 - f) Requires the independent medical review organization to keep the names of the reviewers confidential in all communications with entities or individuals outside the independent medical review organization, except in cases where the reviewer is called to testify and in response to court orders.
 - g) Requires the adopted decision of the determination of an IMR organization to be posted on the website of DHCS, but requires that the names of the parties,

- including, but not limited to, the enrollee, all medical providers, the plan, and any of the plan's employees or contractors be removed prior to posting.
- 4) States that the Legislature finds and declares that provisions of the bill impose a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution.
- a) Pursuant to that constitutional provision, the Legislature makes the findings in b) to demonstrate the interest protected by this limitation and the need for protecting that interest.
 - b) Protecting the privacy of individuals who perform independent medical reviews and the parties involved, including medical providers and patients, such as maintaining the confidentiality of their names, enhances the protection of their individual rights, thereby furthering the purposes of Section 3 of Article I of the California Constitution.

COMMENTS

1. Stated need for the bill

The author writes:

AB 1355 would expand the right to independent medical review (IMRs) to all Medi-Cal members regardless of their health plan and if their requested service is outside the plan. Access to appeals should not depend on if you are member of the fee-for-service system or a plan licensed by the DMHC. Existing IMRs under the DMHC have shown to be favorable to beneficiaries obtaining medically necessary care; about 60 percent of these reviews have resulted in people receiving their requested service. In stark contrast, less than 10 percent of state fair hearings involving Medi-Cal managed care plan members were granted. This bill would bring parity among Medi-Cal members and their rights to IMRs, and allow services outside the Medi-Cal plan like specialty mental health services to be eligible for IMRs, ensuring more Medi-Cal members can access the medically necessary care that they're entitled to.

In addition, the bill improves the state fair hearing process by requiring department directors, when overturning decisions by the judge, to review hearing files, provide detailed reasoning to support divergence from the judge's ruling and reopen the record if they take on additional evidence. The bill would also allow members to obtain their state fair hearing past deadline if they receive an unfavorable IMR to ensure they can utilize all their available options to appeal.

2. Background

The provisions of this bill that are in the jurisdiction of this Committee relate to the imposition of a limitation of the public's right to access public records. Specifically, the provisions that:

- require the independent medical review organization to keep the names of the reviewers confidential in all communications with entities or individuals outside the independent medical review organization, except in cases where the reviewer is called to testify and in response to court orders; and
- require the adopted decision of the determination of an IMR organization to be posted on the website of DHCS, but requires that the names of the parties, including, but not limited to, the enrollee, all medical providers, the plan, and any of the plan's employees or contractors be removed prior to posting.

This analysis will focus on the issue areas in this Committee's jurisdiction, but will provide a brief overview of the IMR process, fair hearing process, and changes this bill makes for context. For a more in-depth analysis of those issues please refer to the Senate Health Committee analysis. (Sen. Health Com. Analysis of Asm. Bill 1355 (2021-2022 Reg. Sess.) as amended May 23, 2022.)

An IMR process allows for review of a denial of a medical service based on medical necessity by an independent panel of physicians, and the determination made by the panel is binding on all parties. Under existing law, a person receiving services from a Medi-Cal plan (beneficiary) that is regulated by DHCS or receiving certain other services² does not have the right to have a denial of a medical service be reviewed through an IMR process. Instead of an IMR process, that beneficiary can only contest denial of a medical service based on medical necessity under a fair hearing process. However, if the Medi-Cal plan is regulated by DMHC then the beneficiary would have the right to have their denial of medical service reviewed under an IMR process. Under the fair hearing process, appeals are heard by administrative law judges (ALJ) who do not have the medical expertise that a panel of reviewing physicians does. As a result, the beneficiary has the burden of bringing in their own expert medical witnesses to testify. Under this process, even if a beneficiary receives a favorable determination from an ALJ, that determination can be overturned by the Director of DHCS. According to the sponsor, the existing IMR process has proven to be favorable for enrollees with roughly 60 percent of enrollees who used the IMR process receiving their requested treatment,³ whereas only 10 percent of fair hearings involving individuals in Medi-Cal managed care plans were granted.

² This includes specialty mental health services, dental services in the fee-for-service system, In-Home Supportive Services, and prescription drugs provided under Medi-Cal Rx.

³ Dept. of Managed Health Care, 2019 Annual Report p. 2, available at <https://www.dmhc.ca.gov/Portals/0/Docs/DO/2019ARFinalAccessible.pdf>

This bill seeks to address this inequity by requiring DHCS to establish an IMR process for the Medi-Cal program modeled on the existing IMR process used by DMHC. (*see* Health & Saf. Code § 1374.30 et. seq.) The bill would make the names of the reviewers confidential in all communications with entities or individuals outside the independent medical review organization (which would include members of the public requesting this information), with limited exceptions related to court proceedings. The bill would also require the names of parties to a case, including, but not limited to, the enrollee, all medical providers, the plan, and any of the plan's employees or contractors be removed prior to posting the determination on the website of the DHCS.

The bill provides that by protecting the confidentiality and privacy of individuals who perform independent medical reviews and the parties involved, including medical providers and patients, the bill enhances and protects their individual privacy rights. These provisions are consistent with the existing IMR process for the DMHC, which provides the same confidentiality protections for individuals who perform independent medical reviews and the parties involved in a proceeding. (*see* Health & Saf. Code §1374.33(e) & (g).) As such, the bill's finding on the need for protecting their privacy seems warranted.

3. Statements in support

The Western Center on Law & Poverty, sponsor of the bill, writes:

[...] By expanding access to Independent Medical Reviews, this bill would provide parity for over four (4) million Medi-Cal beneficiaries who are enrolled in fee-for-service Medi-Cal or in a plan not regulated by the Department of Managed Health Care and for all Medi-Cal members seeking "carved-out" services.

Existing Independent Medical Reviews under the Department of Managed Health Care have shown to be favorable for health plan enrollees in obtaining medically necessary care. Consistently over the past three years, about 60% of these reviews conducted through the Department of Managed Health Care resulted in consumers receiving their requested service. In contrast, over the same time period, less than 10% of state fair hearings involving individuals in Medi-Cal managed care plans were granted, while about half were withdrawn or dismissed for non-appearance. [...] (footnotes omitted)

SUPPORT

Western Center on Law & Poverty (sponsor)
Association of Regional Center Agencies
Autism Speaks
Bay Area Legal Aid
California Children's Hospital Association

California Chronic Care Coalition
California Medical Association
California Pan-Ethnic Health Network
Center for Autism and Related Disorders
Children's Specialty Care Coalition
Children Now
Community Legal Aid SoCal
Disability Rights California
Disability Rights Education and Defense Fund
Health Access California
Justice in Aging
National Health Law Program
Neighborhood Legal Services of Los Angeles County
PRC

OPPOSITION

None known.

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

SB 1410 (Hernandez, Ch. 872, Stats. 2012), among other things, required decisions made by an IMR organization to be made available at no charge in a searchable database on the Internet Web site of the DMHC or the Department of Insurance, as applicable, and required the databases to include specified information.

PRIOR VOTES:

Senate Health Committee (Ayes 9, Noes 0)
Assembly Floor (Ayes 68, Noes 0)
Assembly Appropriations Committee (Ayes 15, Noes 0)
Assembly Health Committee (Ayes 15, Noes 0)
