

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

AB 789 (Low)
Version: June 28, 2021
Hearing Date: June 29, 2021
Fiscal: Yes
Urgency: No
AWM

SUBJECT

Health care services

DIGEST

This bill requires an adult patient who receives primary care services in specified settings to be offered a hepatitis B and C screening test according to the latest recommendations from the United States Preventive Services Task Force (USPSTF), to the extent these services are covered under the patient's health insurance

EXECUTIVE SUMMARY

California has more adults with chronic hepatitis B virus or hepatitis C virus than any other state, and many do not realize they have the virus. Undiagnosed hepatitis B and hepatitis C can lead to permanent, even fatal, liver conditions. This bill is intended to increase early diagnoses of hepatitis B and hepatitis C infections by requiring certain primary care health care providers to offer hepatitis B and hepatitis C screenings tests in certain conditions, to the extent the tests are covered by the patient's health insurance; if the results are positive, the provider must offer appropriate follow-up care. The bill does not create penalties for failure to offer a test, and expressly provides that the failure to offer a screening test will not result in a negative licensure action or civil or criminal liability on the part of the health care provider.

This bill is co-sponsored by The Health Trust and State Treasurer Fiona Ma, and supported by a wide range of health care advocacy groups, hepatitis-focused organizations, and Asian American and Pacific Islander groups, as well as 34 individuals, including doctors, professors, and college and high school students. There is no known opposition. This bill passed out of the Senate Health Committee with vote of 11-0.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the Department of Public Health (Department) within the California Health and Human Services Agency, which is tasked with protecting and improving the health of all Californians, including from the threat of preventable infectious diseases such as viral hepatitis. (Health & Saf. Code, §§ 131000, 131051.)
- 2) Requires the Department to make available protocols and guidelines developed by the National Institutes of Health, the University of California at San Francisco, and the California legislative advisory committees on hepatitis C, for educating physicians and health professionals and training community service professionals and community service providers on the most recent scientific and medical information on hepatitis C detection, transmission, diagnosis, treatment, and therapeutic decision making. (Health & Saf. Code, § 122410.)
- 3) Establishes a statewide program for prenatal testing that includes testing for the presence of hepatitis B surface antigen. (Health & Saf. Code, § 125085.)
- 4) Prohibits the governing authority of a school or other institution from unconditionally admitting any person as a pupil of any private or public elementary or secondary school, child care center, day nursery, nursery school, family day care home, or development center, unless prior to their first admission to that institution they have been fully immunized against various diseases including Hepatitis B. (Health & Saf. Code, §§ 120335, 120390.5.)

This bill:

- 1) Requires that a patient who receives primary care services in a facility, clinic, unlicensed clinic center, office, or other setting where primary care services are provided shall be offered a hepatitis B screening test and a hepatitis C screening test, to the extent these services are covered under the patient's health insurance, based on the latest screening indications recommended by the USPSTF, unless the health care provider reasonably believes that one of the following conditions applies:
 - a) The patient is being treated for a life-threatening emergency.
 - b) The patient has been previously offered or has been the subject of a hepatitis B screening test or a hepatitis C screening test; however, the health care provider may offer one or both tests if they determine the screening(s) should be offered again.
 - c) The patient lacks capacity to consent to a screening test.
 - d) The patient is being treated in the emergency department of a general acute hospital.

- 2) Provides the following requirements if the patient accepts the offer of either or both screening tests:
 - a) If the hepatitis B test comes back as hepatitis B surface antigen (HBsAg) positive, a health care provider shall offer the patient followup health care or refer the patient to a health care provider who can provide followup health care.
 - b) If the hepatitis C test comes back positive, the health care provider shall offer the patient followup health care or refer the patient to a health care provider who can provide followup health care. The followup health care shall include a hepatitis C diagnostic test (HCV RNA).
- 3) Requires the offering of the hepatitis B and hepatitis C screening tests to be culturally and linguistically appropriate.
- 4) Provides that the requirement to offer hepatitis B and hepatitis C screening tests does not affect the scope of practice of any health care provider or diminish any authority or legal professional obligation of any health care provider to offer a hepatitis B or hepatitis C screening test, or both, or to provide services or care for a patient of those tests or a hepatitis C diagnostic test.
- 5) Provides that a health care provider that fails to comply with the requirements of this section shall not be subject to any disciplinary actions related to their licensure or certification, or to any civil or criminal liability, because of the health care provider's failure to comply with the requirements of this section.
- 6) Defines the following terms:
 - a) "Followup health care" includes providing medical management and antiviral treatment for chronic hepatitis B or hepatitis C according to the latest national clinical practice guidelines recommended by the American Association for the Study of Liver Diseases.
 - b) "Hepatitis B screening test" includes any laboratory tests or tests that detect the presence of hepatitis B surface antigen (HBsAg) and provides confirmation of whether the patient has a chronic hepatitis B infection.
 - c) "Hepatitis C diagnostic test" includes any laboratory tests or tests that detect the presence of the hepatitis C virus in the blood and provides confirmation of whether the patient has an active hepatitis C virus infection.
 - d) "Hepatitis C screening test" includes any laboratory screening tests or tests that detect the presence of hepatitis C virus antibodies in the blood and provides confirmation of whether the patient has ever been infected with the hepatitis C virus.

COMMENTS

1. Author's comment

According to the author:

Even before the pandemic, we saw firsthand the devastating inequities in California's health care system. Hepatitis B and C affect communities of color – most notably Asian and Pacific Islander Americans and the Black community – at a disproportionate scale that is unjust and demands immediate action. We can save lives, as well as improve the quality of life for thousands of people, by increasing screening and ensuring referral to treatment.

2. This bill requires health care providers to offer hepatitis B and C screening tests under certain circumstances

According to the federal Centers for Disease Control and Prevention (CDC), hepatitis B “is a vaccine-preventable liver infection caused by the hepatitis B virus.”¹ It spreads via blood, semen, or other bodily fluids, through sexual contact; sharing needles, syringes, or other drug-injection equipment; or from a mother to baby at birth.² Hepatitis B can be a short-term illness for some, but for others “it can become a long-term chronic infection that can lead to serious, even life-threatening health issues like cirrhosis or liver cancer.”³

With respect to hepatitis C, the CDC says that it is spread through contact with the blood of an infected person.⁴ As with hepatitis B, hepatitis C is a short-term illness for some, “but for more than half of people who become infected with the hepatitis C virus, it becomes a long-term, chronic infection,” leading to life-threatening health issues like cirrhosis of the liver and cancer.⁵ The nature of hepatitis C means that persons with chronic hepatitis C often do not feel sick, and do not experience symptoms until they appear as signs of advanced liver disease.⁶

The human toll of the hepatitis B and C viruses is real, and significant. According to many of the bill's supporters, only one third of patients with hepatitis B and 60 percent of patients with hepatitis C are aware of their infection. One individual bill supporter writes about how his partner – a doctor – died during his residency from liver cancer

¹ CDC, *Hepatitis B Information*, <https://www.cdc.gov/hepatitis/hbv/index.htm> (Jun. 22, 2020) [last visited Jun. 15, 2021].

² *Ibid.*

³ *Ibid.*

⁴ CDC, *Hepatitis C Information*, <https://www.cdc.gov/hepatitis/hcv/index.htm> (Jul. 28, 2020) [last visited Jun. 15, 2021].

⁵ *Ibid.*

⁶ *Ibid.*

caused by chronic hepatitis B at the age of 31. Another individual supporter writes that, while she grew up in a country with a generally high standard of health care, she was never tested for the hepatitis viruses, and it was not until she was 21 years old and suffering from jaundice that she asked to be tested; by that time, the virus was so severe that it was actively attacking her liver.⁷ The hepatitis viruses also disproportionately affect specific ethnic and racial groups: as a coalition of bill supporters notes, an estimated 88 percent of adults living with chronic hepatitis B in California are Asian, and an estimated 15 percent of adults living with chronic hepatitis B are Black. According to the federal Office of Minority Health, non-Hispanic Black people are 1.5 times more likely to die of hepatitis viruses than non-Hispanic white people.⁸

The USPTSF recommends screening for hepatitis B infection in adolescents and adults at increased risk for infection, and screening for hepatitis C infection in adults 18 to 79.⁹ This bill would require health care providers providing primary care services in an outpatient setting – excluding situations where the patient is being treated for a life-saving emergency, the patient is being treated in the emergency department of a general acute hospital, or the patient is unable to consent – to offer hepatitis B and C screenings. The bill permits the provider to decide not to offer the screenings if they believe the patient has already had a screening, but further provides that, if the provider believes that the screening should be offered again (e.g., because of elevated risk factors), the provider may offer the screenings anew.

The Senate Health Committee has considered the impact of the bill with respect to the impact on patient health; this analysis incorporates the analysis of that committee herein by reference. Relevant to this committee is the bill's provision that, notwithstanding the requirement that a health care provider offer hepatitis B and C screenings in certain settings, there is no enforcement mechanism to ensure the recommendations are being made.

⁷ This supporter is, today, a Regional Director at an organ procurement organization that saves thousands of lives every year through organ transplantation. She credits the hepatitis testing with saving her life.

⁸ U.S. Department of Health and Human Services, Office of Minority Health, *Hepatitis and African Americans* (Dec. 31, 2020) <https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=4&lvlid=20> [last visited Jun. 15, 2021].

⁹ USPSTF, Final Recommendation Statement, *Hepatitis B Virus Infection in Adolescents and Adults: Screening* (Dec. 15, 2020), available at <https://uspreventiveservicestaskforce.org/uspstf/recommendation/hepatitis-b-virus-infection-screening> [last visited Jun. 15, 2021]; USPSTF, Final Recommendation Statement, *Hepatitis C Virus Infection in Adolescents and Adults: Screening* (Mar. 2, 2020), available at <https://www.uspreventiveservicestaskforce.org/uspstf/recommendation/hepatitis-c-screening> [last visited Jun. 15, 2021].

3. This bill provides no penalty for failing to offer a hepatitis B or C screening, and expressly provides that a health care provider who fails to do so cannot be subject to licensing consequences or civil or criminal liability

While this bill states that a patient receiving certain outpatient care “shall” be offered a hepatitis B and hepatitis C screening under certain circumstances, the bill contains no enforcement mechanism by which to encourage compliance and penalize noncompliance. Without enforcement mechanisms, it seems likely that the bill will have only a salutary effect on provider practices. According to the author, this is by design: they believe that the bill, as drafted, will be successful in getting covered primary care providers to include the offer of hepatitis screenings into their ERDs (essentially the script for patient interactions) even without a penalty for failing to do so. The bill’s supporters – many of whom are medical professionals – also have not expressed concern that health care providers will not take this bill’s mandate seriously without a penalty provision.

It appears that existing testing requirements take different approaches to mandated testing requests. Existing law requiring patients receiving a blood draw at a primary care clinic to be offered an HIV test, like this bill, has no enforcement mechanism.¹⁰ Pending legislation would expand the list of facilities that are required to offer an HIV test along with a blood draw but still would not introduce any penalties for failing to do so.¹¹ On the other end of the spectrum is the requirement that a physician attending to prenatal care obtain a blood specimen of the pregnant person at the time of the first professional visit or within 10 days after; failure to seek permission for the blood specimen is a misdemeanor.¹² On balance, the requirement in this bill appears much closer to the current law requiring an offer of an HIV test than the prenatal blood draw requirement.

In addition to providing no enforcement mechanism, this bill provides that a health care provider’s failure to ask if a patient wants a hepatitis screening cannot give rise to professional disciplinary or licensing consequences, or to civil or criminal liability. This is consistent with the bill’s lack of an enforcement mechanism and the author’s primary goal of having hepatitis screenings incorporated into ERDs. The bill does specify that the requirement set forth in the bill does not affect the scope of practice of any health care provider or diminish the requirement of a health care provider to offer a hepatitis screening in any other context, and nothing in this bill prevents a malpractice suit in the case where a health care provider overlooks obvious symptoms of hepatitis. It therefore appears that the bill’s provisions would simply prevent an automatic finding of administrative, civil or criminal wrongdoing for failing to ask if a patient wants a test, which appears reasonable in light of the rest of the bill.

¹⁰ Health & Saf. Code, § 120991.

¹¹ AB 835 (Nazarian, 2021).

¹² Health & Saf. Code, §§ 120685, 120715.

4. Arguments in support

According to bill sponsor The Health Trust:

Hepatitis B and C are viral infections that have greater impact on people of color, bearing significant racial disparities. We know that 88 percent of those living with hepatitis B are members of the Asian and Pacific Islander (API) community.² Black Americans have the second highest prevalence of chronic hepatitis B infection. Further, the occurrence of hepatitis C cases are 2.9 times higher in Black Americans than other racial groups. As our veterans have become more racially and ethnically diverse, hepatitis C is four times more common in veterans than in the general population.³

Testing costs are inexpensive: \$10.33 and \$14.27 for hepatitis B and hepatitis C tests respectively. Hepatitis B is treatable, and hepatitis C can be cured within a few months. California can lead the nation as the first state to require these low-cost tests be offered to patients.

AB 789 provides simple, common sense direction by requiring health facilities and clinics offering primary care to offer screening tests for hepatitis B and hepatitis C, with the following exceptions:

- The patient is being treated for a life threatening emergency
- The patient has previously been offered or received screening tests
- The patient lacks the capacity to consent to a screening test

If a patient tests positive (hepatitis B) or is reactive (hepatitis C), the health care provider shall provide follow-up treatment to the patient or refer the patient to a health care provider who can provide follow-up care.

This measure is a critical bill that will significantly reduce health care costs in California, and more importantly, will save lives.

SUPPORT

The Health Trust (co-sponsor)
State Treasurer Fiona Ma (co-sponsor)
Access Community Health Centers
African American Community Health Services Agency
American Association for the Study of Liver Disease
American Gastroenterological Association
American Liver Foundation
Asian Americans Advancing Justice – California
Asian Americans for Community Advancement

Asian and Pacific Islander American Health Forum
Asian Pacific American Health Collaboration, Access, Resource, and Education
Asian Health Services
Asian Liver Center at Stanford University School of Medicine
Asian American Bar Association of Los Angeles County
Asian American Bar Association Silicon Valley
Asian Pacific Community in Action
Asian Pacific Health Foundation
Asian Pacific Liver Center
Asian Pacific Partners for Empowerment, Advocacy, and Leadership
Asianweek Foundation
Bhagat Puran Singh Health Initiative
Black AIDS Institute
California Association of Black Lawyers
California Hepatitis Alliance
California Hepatitis C Task Force
California Primary Care Association
CaliforniaHealth+ Advocates
Chinese American Lawyers of Bay Area
Coalition for Global Hepatitis Elimination
Community Liver Alliance
County of San Mateo
County of Santa Clara Public Health Department
CTT Inc.
Cupertino Hep B Free
End Hep C SF
End the Epidemics
Fair Foundation
Filipino American Lawyers of Orange County
Fresno Metro Black Chamber of Commerce
Hepatitis B Foundation
Hep B Free Los Angeles
Hep Free Hawaii
Hepatitis C Mentor and Support Group HCMSG
HIV+ Hepatitis Policy Institute
Kar Seva Health Sanctuary Society
Kimochi Inc.
Korean American Community Foundation of San Francisco
Liver Coalition of San Diego
Mendocino County AIDS/Viral Hepatitis Network
National Alliance of State and Territorial AIDS Directors
National Association of Social Workers, California Chapter
National Council of Asian Pacific Islander Physicians
National Task Force of Hepatitis B

National Virus Hepatitis Roundtable
New Hope Chinese Cancer Care Foundation
North East Medical Services
Paragon Imex Co.
Peninsula Chinese Business Association
Rafiki Coalition
San Diego Asian Americans for Equality
San Francisco AIDS Foundation
Santa Clara County Black Lawyers Association
Santa Rosa Community Health
SF Hep B Free - Bay Area
Stanford CARE
Stanford Health Care
Stanford Center for Asian Health Research
Taiwanese American Professionals San Diego
The 1990 Institute
The AIDS Institute
The Health Trust
The Wall Las Memorias
Treatment Action Group
Vietnamese American Cancer Foundation
34 individuals

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation:

SB 306 (Pan, 2021) would expand the practice of “expedited partner therapy” for STD prescriptions and require health care service plans and insurers to cover home STD kits and the cost of processing those kits. SB 306 is pending before the Assembly Business and Professions Committee.

AB 835 (Nazarian, 2021) requires every patient who has blood drawn at a hospital emergency department to be offered an HIV test, as specified AB 835 is pending before the Senate Health Committee.

Prior Legislation:

AB 2179 (Gipson, 2016) would have created the classification of hepatitis C counselor and authorized those counselors to perform an HCV test and to order and report HCV

test results. AB 2179 was vetoed by Governor Edmund G. Brown, Jr., who stated in his veto message that the existing counselor classifications were more protective of public health.

AB 383 (Gipson, 2015) would have, until January 1, 2023, required a primary care clinic to offer each patient who received primary care services in the clinic, and conduct upon agreement, a hepatitis C screening or diagnostic test, as specified, and specified the manner in which the results of that test are provided. AB 383 died in the Assembly Appropriations Committee.

PRIOR VOTES:

Senate Health Committee (Ayes 11, Noes 0)
Assembly Floor (Ayes 78, Noes 0)
Assembly Appropriations Committee (Ayes 16, Noes 0)
Assembly Health Committee (Ayes 15, Noes 0)
