
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2019 - 2020 Regular

Bill No: AB 45 **Hearing Date:** June 25, 2019
Author: Mark Stone
Version: February 20, 2019
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Inmates: Medical Care: Fees*

HISTORY

Source: ACLU of California
California Coalition for Women Prisoners
Ella Baker Center for Human Rights
Initiate Justice
Union of American Physicians and Dentists

Prior Legislation: AB 2533 (Stone), Ch. 764, Stats. 2018
AB 2261 (Valadao), failed passage in Senate Public Safety in 2012
AB 2232 (Nielsen), not heard in Assembly Public Safety in 2010

Support: ACCESS Women's Health Justice; ACT for Women and Girls; AFSCME, AFL-CIO; Alliance for Boys and Men of Color; Anti-Recidivism Coalition; Bay Area Regional Health Inequities Initiative; Bay Rising; California Catholic Conference; California Latinas for Reproductive Justice; California Public Defenders Association; Californians United for a Responsible Budget; Center for Health Justice; Center on Juvenile and Criminal Justice; Citizens for Choice; Disability Rights Legal Center; Fair Chance Project; Friends Committee on Legislation of California; Greenling Institute; Harm Reduction Coalition; Health Access California; HealthRIGHT 360; Homeboy Industries; Human Impact Partners; Justice Teams Network; Lawyers' Committee for Civil Rights of San Francisco; League of Women Voters of California; Legal Services for Prisoners with Children; LitLab; MILPA; National Association of Social Workers, California Chapter; National Health Law Program; Positive Women's Network-USA; Prison Law Office; Prison Policy Initiative; Project Rebound at California State University, Fullerton; Public Health Justice Collective; Re:store Justice; Root & Rebound; Rubicon Programs; San Francisco Bay Area Physicians for Social Responsibility; San Francisco District Attorney's Office; San Francisco Public Defender's Office; Showing Up for Racial Justice, Bay Area; SIA Legal Team; Successful Reentry; Tides Advocacy; TGI Justice Project; Transitions Clinic; Unite the People; W. Haywood Burns Institute; Western Center on Law and Poverty; Women's Foundation of California; Youth Justice Coalition; individuals

Opposition: California State Sheriffs' Association; Riverside Sheriffs' Association

Assembly Floor Vote:

47 - 24

PURPOSE

The purposes of this bill are to prohibit the California Department of Corrections and Rehabilitation (CDCR) and city and county jails from charging inmates a co-pay for medical visits, and to prohibit those entities from charging a fee for durable medical equipment or medical supplies provided to an inmate as medically necessary.

Existing law authorizes a sheriff, chief or director of corrections, or chief of police to charge a fee in the amount of \$3 for each inmate-initiated medical visit of an inmate confined in a county or city jail. (Pen. Code, § 4011.2, subd. (a).)

Existing law provides that if an inmate has no money in his or her personal account, there shall be no charge for the medical visit. (Pen. Code, § 4011.2, subd. (b).)

Existing law prohibits an inmate from being denied medical care because of a lack of funds in his or her personal account at the facility. (Pen. Code, § 4011.2, subd. (c).)

Existing law authorizes the medical provider to waive the fee for any inmate-initiated treatment and requires the fee to be waived in any life-threatening or emergency situation, as defined. (Pen. Code, § 4011.2, subd. (d).)

Existing law prohibits an inmate from being charged for follow up medical visits at the direction of the medical staff. (Pen. Code, § 4011.2, subd. (e).)

This bill repeals the provisions of law authorizing a county or city jail to charge a \$3 fee for an inmate-initiated medical visit, and instead prohibits a county or city jail from charging a fee for an inmate-initiated medical visit.

This bill prohibits a sheriff, chief or director of corrections, or chief of police from charging a fee for durable medical equipment or medical supplies provided to an inmate confined in a county or city jail as medically necessary to ensure the inmate has equal access to jail services, programs, or activities.

This bill defines “durable medical equipment” as equipment that is prescribed by a licensed provider to meet the medical needs of an inmate and that meets all of the following criteria:

- The equipment can withstand repeated use.
- The equipment is used to serve a medical purpose.
- The equipment is not normally useful to an individual in the absence of an illness, injury, functional impairment, or congenital anomaly.
- The equipment is appropriate for use in or out of the prison.

This bill provides that durable medical equipment includes, but is not limited to, eyeglasses, artificial eyes, dentures, artificial limbs, orthopedic braces and shoes, and hearing aids.

This bill defines “medical supplies” as supplies that are prescribed by a licensed provider to meet the medical needs of an inmate and that meet all of the following criteria:

- The supplies cannot withstand repeated use.
- The supplies are usually disposable in nature.
- The supplies are used to serve a medical purpose.
- The supplies are not normally useful to an individual in the absence of an illness, injury, functional impairment, or congenital anomaly.
- The supplies are intended for use in an outpatient setting.

Existing law authorizes the Director of CDCR to charge a \$5 fee for each inmate-initiated medical visit to the prison account of the inmate. (Pen. Code, § 5007.5, subd. (a).)

Existing law provides that if an inmate has no money in her personal account, there shall be no charge for the medical visit. (Pen. Code, § 5007.5, subd. (b).)

Existing law prohibits an inmate from being denied medical care because of a lack of funds. (Pen. Code, § 5007.5, subd. (c).)

Existing law authorizes the medical provider to waive the fee for any inmate-initiated treatment and requires the fee to be waived in any life-threatening or emergency situation, as defined. (Pen. Code, § 5007.5, subd. (d).)

Existing law prohibits an inmate from being charged for follow up medical visits at the direction of medical staff. (Pen. Code, § 5007.5, subd. (e).)

This bill repeals the provisions of law authorizing CDCR to charge a \$5 fee for an inmate-initiated medical visit, and instead prohibits CDCR from charging a fee for an inmate-initiated medical visit.

This bill prohibits CDCR from charging a fee for durable medical equipment or medical supplies provided to an inmate as medically necessary to ensure the inmate has equal access to prison services, programs, or activities.

This bill defines “durable medical equipment” as equipment that is prescribed by a licensed provider to meet the medical needs of an inmate and that meets all of the following criteria:

- The equipment can withstand repeated use.
- The equipment is used to serve a medical purpose.
- The equipment is not normally useful to an individual in the absence of an illness, injury, functional impairment, or congenital anomaly.
- The equipment is appropriate for use in or out of the prison.

This bill provides that durable medical equipment includes, but is not limited to, eyeglasses, artificial eyes, dentures, artificial limbs, orthopedic braces and shoes, and hearing aids.

This bill defines “medical supplies” as supplies that are prescribed by a licensed provider to meet the medical needs of an inmate and that meet all of the following criteria:

- The supplies cannot withstand repeated use.
- The supplies are usually disposable in nature.

- The supplies are used to serve a medical purpose.
- The supplies are not normally useful to an individual in the absence of an illness, injury, functional impairment, or congenital anomaly.
- The supplies are intended for use in an outpatient setting.

Existing law requires CDCR to provide hepatitis C screening to all inmates who request it, and offer it to inmates that have a history of intravenous drug use or other risk factors for hepatitis C. Prohibits the medical copayment authorized by law from being charged for hepatitis C testing, treatment, or any follow up testing. (Pen. Code, § 5008.2, subd. (b).)

This bill removes the reference to the inmate copayment.

COMMENTS

1. Need For This Bill

According to the author:

The California Department of Corrections and Rehabilitation (CDCR) is currently authorized to charge incarcerated people in state prisons a \$5 fee for every self-initiated medical or dental visit. Jails are authorized to charge up to \$3 per copayment.

Copayments prevent incarcerated people from accessing the care they need. In surveys of incarcerated people, copayments are cited as one of their leading concerns, with more than half reporting that they avoid health care due to costly copays.

The decision not to seek care can have serious consequences: existing conditions become chronic, infectious diseases are more likely to spread, and minor health concerns become serious (and more expensive to treat). Not only does this lead to unnecessary suffering for people without the resources to afford copays, it also endangers other incarcerated individuals, staff, and the public at correctional facilities.

A California State Auditor Report from 2000 found that the copayment program did not generate the expected revenue and recommended that it be discontinued. Analyses of copayment programs in other states have similarly found that the administration of copayment programs in correctional institutions often costs more than the revenue collected from incarcerated people.

A memo released by California Correctional Health Care Services on February 21, 2019 announced that, starting March 1st 2019, CDCR would no longer be charging for copayments because they are not fiscally beneficial and are not in line with the Department's "Complete Care Model" which focuses on early detection and preventative health care. Specifically, the memo states that "copayments may hinder patients from seeking care for health issues which,

without early detection and intervention, may become exacerbated, resulting in decreased treatment efficacy and/or increased treatment cost.”

This bill will also create a statutory definition for Durable Medical Equipment that includes but is not limited to eyeglasses, artificial eyes, dentures, artificial limbs, orthopedic braces and shoes, and hearing aids. The bill will prohibit California state prisons and jails from charging inmates for Durable Medical Equipment and medical supplies, as medically necessary to ensure that patients have equal access to prison services, programs, or activities.

2. Medical Visits in Correctional Facilities

The government has an obligation to provide medical care for those whom it punishes by incarceration and cannot be deliberately indifferent to the medical needs of its prisoners. (See *Estelle v. Gamble* (1976) 429 U.S. 97, 104.) In CDCR facilities, inmates are charged a \$5 copay drawn from their trust account for inmate-initiated medical visits. (Pen. Code, § 5007.5, subd. (a).) An inmate who has no money in his or her inmate trust account is not charged for the medical visit, and cannot be denied medical care because of a lack of funds in his or her trust account. (Pen. Code, § 5007.5, subds. (b) & (c).) The medical provider may waive the fee for any inmate-initiated treatment. (Pen. Code, § 5007.5, subd. (d).) Follow up medical visits, at the direction of medical staff, are not charged to inmates. (Pen. Code, § 5007.5, subd. (e).)

The Penal Code contains similar provisions with respect to medical visits for inmates of county and city jails. Inmates in county and city jails are charged a \$3 copay for inmate-initiated medical visits. (Pen. Code, § 4011.2, subd. (a).) An inmate who has no money in his or her account is not charged for the medical visit, and cannot be denied medical care because of a lack of funds in his or her account. (Pen. Code, § 4011.2, subds. (b) & (c).) Current law permits the medical provider to waive the fee for any inmate-initiated treatment. (Pen. Code, § 4011.2, subd. (d).) Finally, follow up medical visits, at the direction of medical staff, are not charged to inmates. (Pen. Code, § 4011.2, subd. (e).)

This bill would repeal the provisions of law authorizing CDCR and county and city jails to charge a fee for inmate-initiated medical visits. Instead, this bill would explicitly prohibit these fees from being charged.

3. Medical Equipment and Supplies

CDCR regulations provide that a patient’s need for appliances including, but not limited to, eyeglasses, artificial eyes, dental prosthesis, artificial limbs, orthopedic braces and shoes, and hearing aids, must be based on medical necessity and require that prescribed appliances be provided at state expense. (Cal. Code Regs., tit. 15, § 3399.366, subd. (a).) “Medically necessary” is defined as “health care services that are determined by the attending or primary medical, mental health, or dental care provider(s) to be needed to protect life, prevent significant illness or disability, or alleviate severe pain, and are supported by health outcome data or clinical evidence as being an effective health care service for the purpose intended or in the absence of available health outcome data is judged to be necessary and is supported by diagnostic information or specialty consultation.” (Cal. Code Regs., tit. 15, § 3399.98.)

This bill would prohibit CDCR and county and city jails from charging a fee for durable medical equipment or medical supplies provided to an inmate as medically necessary. This bill defines “durable medical equipment” as equipment that is prescribed by a licensed provider to meet the medical needs of an inmate and that meets all of the following criteria: the equipment can withstand repeated use; the equipment is used to serve a medical purpose; the equipment is not normally useful to an individual in the absence of an illness, injury, functional impairment, or congenital anomaly; and the equipment is appropriate for use in or out of the prison. This bill specifies that durable medical equipment includes, but is not limited to, eyeglasses, artificial eyes, dentures, artificial limbs, orthopedic braces and shoes, and hearing aids. Additionally, this bill defines “medical supplies” as supplies that are prescribed by a licensed provider to meet the medical needs of an inmate and that meet all of the following criteria: the supplies cannot withstand repeated use; the supplies are usually disposable in nature; the supplies are used to serve a medical purpose; the supplies are not normally useful to an individual in the absence of an illness, injury, functional impairment, or congenital anomaly; and the supplies are intended for use in an outpatient setting.

4. Argument in Support

The ACLU of California, one of the bill’s co-sponsors, writes:

AB 45 ... eliminates copays for medical and dental services inside California prisons and jails. Copays for incarcerated people – many of whom make no income, or make as little as eight cents per hour – discourage people from seeking medical care until their condition becomes a more threatening and costly emergency. This barrier to healthcare jeopardizes the health not just of those who are imprisoned and who work in prisons and jails, but also of the general public.

In order to see a doctor or dentist, people in most county jails must pay a \$3 copay to initiate a visit. While this may not seem like an onerous sum, most people in jail earn no wages. Although people without the required funds are able to access care, a hold is placed on their account as long as six months after the healthcare visit, during which time any contributions are withdrawn towards the copay. Medical debt then prevents people from being able to purchase needed items like over-the-counter medicine, basic toiletries, phone cards, stamps, and paper to maintain contact with family and loved ones. A number of California counties do not charge copays in their jails, including Napa, San Francisco, Santa Clara, Inyo and San Luis Obispo.

On March 1, 2019, the California Department of Corrections and Rehabilitation eliminated the \$5 copayment that had been in place since 1994, after determining that “copayments have minimal fiscal benefit and are not aligned with patient care. Specifically, copayments may hinder patients from seeking care for health issues which, without early detection and intervention, may become exacerbated, resulting in decreased treatment efficacy and/or increased treatment cost.” AB 45 would remove the authorization for CDCR to charge copays to ensure this harmful practice does not return. At least eight other states do not charge copays in their prisons. . . .

People who are incarcerated are the most at-risk for chronic and infectious diseases due to crowding, malnutrition, stress, and trauma. Medical copays only serve to further existing problematic conditions. . . .

... Medical copays exacerbate racial inequities in public health, and promote a two-tiered system in which those with funds can access healthcare when needed, while those without funds who are forced to wait until minor issues become serious or life-threatening.

5. Argument in Opposition

According to the California State Sheriff's Association:

To be clear, sheriffs are acutely aware of the medical needs of the inmates in their care and custody and strive to provide them with appropriate treatment. That said, eliminating the ability to assess this modest fee, which is statutorily limited to \$3, will remove a useful tool that discourages inmates from seeking frivolous medical visits.

Under current law, no charge is permitted for a medical visit if the inmate has no funds in his or her personal account and no inmate may be denied medical care because of a lack of funds in his or her personal account. Existing law allows the medical provider to waive the fee for any inmate-initiated treatment and requires the medical provider to waive the fee in any life-threatening or emergency situation ... Additionally, follow-up medical visits at the direction of the medical staff cannot be charged to the inmate.

We believe existing law strikes the appropriate balance between ensuring appropriate medical care for inmates and discouraging frivolous requests for medical attention or drug-seeking behavior.

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