



CALIFORNIA LEGISLATIVE SUMMARY: EMPLOYEE BENEFITS 2021 MID-SESSION

March 12, 2021 was the last day that California legislators could amend placeholder (so-called “spot” bills) with substantive legislation. Accordingly, we now have a good idea of what kinds of legislation we will see that could impact California employee benefit plans this year. Not surprisingly, considering the ongoing coronavirus pandemic, many of these bills are focused on expanding employee leave rights. Many other bills would expand coverage for California’s fully insured plans—ranging from improving timely access to mental health providers, to expanding covered benefits and all the way to another proposal for single-payer legislation. We will continue to update you on developments in these bills as we go through the legislative session.

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COVERAGE EXPANSION

AB 570 – Dependent Parent Health Care Coverage

This bill would require a fully-insured group health plan issued, amended or renewed on or after January 1, 2022 that provides dependent coverage to make that coverage available to a qualified dependent parent or stepparent. It would also expand the definition of “dependent” for an individual or small employer plan to include a qualified dependent parent or stepparent.

AB 1400 – Guaranteed Health Care for All

This bill, the California Guaranteed Health Care for All Act, would create the California Guaranteed Health Care for All program, or CalCare, to provide comprehensive universal single-payer health care coverage and a health care cost control system for the benefit of all residents of the state. Like many similar such bills in the past, this legislation will be a political football. If enacted, it would face significant financial and legal barriers, and would likely require new taxes. While the measure does not assign a price tag to the overhaul, a separate single-payer bill that failed in 2017 would have cost an estimated \$400 billion each year.

SB 221 – Health Care Coverage: Timely Access to Care

Current regulations require a health care service plan or an insurer to ensure that their contracted provider networks have adequate capacity and availability of licensed health care providers to offer enrollees and insureds appointments that meet specified timeframes. Under California’s bifurcated system of health plan regulation, the timely access rules of the Department of Managed Care (DMHC) are limited in application to mental health care providers, while those regulations of the Department of Insurance (CDI) are applicable to both mental health care and substance use disorder providers. This bill would codify the regulations adopted by DMHC and the CDI to provide timely access standards for health care service plans and insurers for nonemergency health care services, and would further require all fully-insured plans to ensure that an enrollee or insured that is undergoing a course of treatment for an ongoing mental health or substance use disorder condition is able to get a follow-up appointment with a mental health care or substance use disorder provider within 10 business days of the prior appointment. The bill would also require that if a fully insured plan is operating in a service area that has a shortage of providers and the plan is not able to meet the geographic and timely access standards for providing mental health or substance use disorder services with an in-network provider, the plan must arrange for coverage outside the plan’s contracted network.

SB 280 – Health Insurance: Large Group Health Insurance

This bill would require fully-insured large group health insurance policies issued, amended, or renewed on or after July 1, 2022, to cover medically necessary “basic health care services,” which the bill defines to include physician services, hospital inpatient and ambulatory care, diagnostic laboratory and diagnostic and therapeutic radiology, home health services, preventive health services, and emergency health care services, including ambulance and transport services and out-of-area coverage and hospice care. The bill would also prohibit an insurer from marketing practices or benefit designs that will have the effect of discouraging the enrollment of individuals with significant health needs or discriminating based on an individual’s race, color, national origin, present or predicted disability, age, sex, gender identity, sexual orientation, expected length of life, degree of medical dependency, quality of life, or other health conditions.



SB 523 – Health Care Coverage: Contraceptives

This bill, the Contraceptive Equity Act of 2021, would make various changes to expand coverage of contraceptives by a fully-insured health plan issued, amended, renewed, or delivered on and after January 1, 2022, including requiring such plans to provide point-of-sale coverage for over-the-counter FDA-approved contraceptive drugs, devices, and products at in-network pharmacies without cost-sharing or medical management restrictions and to reimburse enrollees and insureds for out-of-pocket costs for over-the-counter birth control methods purchased at any out-of-network pharmacy in California, without medical management restrictions.

EMPLOYEE LEAVES

AB 95 – Employees: Bereavement Leave

This bill would enact the Bereavement Leave Act of 2021, which would require an employer with 25 or more employees to grant an employee up to 10 business days of unpaid bereavement leave upon the death of a spouse, child, parent, sibling, grandparent, grandchild, or domestic partner. The bill would further require an employer with fewer than 25 employees to grant up to 3 business days of leave, in accordance with these provisions, and it would prohibit an employer of any size from interfering with or restraining the exercise or attempt to exercise the employee’s right to take this leave.

AB 123 – Paid Family Leave: Weekly Benefit Amount

This bill would revise the formula for determining benefits available pursuant to the family temporary disability insurance program, for periods of disability commencing after January 1, 2022, by redefining the weekly benefit amount to be equal to 90% of the wages paid to an individual for employment by employers during the quarter of the individual’s disability base period in which these wages were highest, divided by 13, but not exceeding the maximum workers’ compensation temporary disability indemnity weekly benefit amount established by the Department of Industrial Relations.

AB 867 – Family Care Leave: Child Deceased in Childbirth

AB 867 would expand eligibility for benefits under the paid family leave program by expanding bonding leave relating to a child’s birth to include leave for a parent who was pregnant with a child, if the child dies unexpectedly during childbirth at 37 weeks or more of pregnancy.

AB 995 – Paid Sick Days: Accrual and Use

Existing law entitles an employee to paid sick days for certain purposes if the employee works in California for the same employer for 30 or more days within a year from the commencement of employment. The law requires the leave to be accrued at a rate of no less than one hour for every 30 hours worked, and to be available for use beginning on the 90th day of employment, but it authorizes an employer to use a different accrual method as long as an employee has at least 24 hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year, or in each 12-month period. An employer can also satisfy the accrual requirements by providing at least 24 hours, or 3 days, of paid sick leave that is available to the employee to use by the completion of the employee’s 120th calendar day of employment. This bill would modify the employer’s



alternate sick leave accrual method to require that an employee have no less than 40 hours of accrued sick leave or paid time off by the 200th calendar day of employment or each calendar year, or in each 12-month period.

AB 1033 – Small Employer Family Leave Mediation: Pilot Program

The California Family Rights Act (CFRA) makes it an unlawful employment practice for an employer to refuse to grant a request by an eligible employee to take up to 12 workweeks of unpaid protected leave during any 12-month period for qualified family care and medical leave. This bill would include leave to care for a parent-in-law within the definition of family care and medical leave.

AB 1041 – Leave

This bill would include leave to care for any individual related by blood or whose close association with the employee is the equivalent of a family relationship into the definitions of available leave for purposes of California Family Rights Act (CFRA) leave, California paid sick leave, and California paid family leave.

AB 1179 – Employer Provided Benefit: Backup Childcare

AB 1179 would require an employer to provide an employee who works in California for the same employer for 30 or more days within a year from the commencement of employment, with up to 60 hours of paid backup childcare benefits. The bill would define “backup childcare” as childcare provided by a qualified backup childcare provider to the employee’s child when the employee’s regular childcare provider cannot be utilized, and “paid backup childcare” as an employee benefit consisting of the employer paying for a qualified backup childcare provider to provide backup childcare for an employee’s child that is compensated at the state minimum wage or the federal minimum wage, whichever is higher.