

Date of Hearing: April 5, 2022

ASSEMBLY COMMITTEE ON HEALTH  
Jim Wood, Chair  
AB 2530 (Wood) – As Introduced February 17, 2022

**SUBJECT:** California Health Benefit Exchange: financial assistance.

**SUMMARY:** Requires California's state based exchange (the Exchange or Covered California), upon appropriation by the Legislature, to administer a financial assistance program to help Californians obtain and maintain health benefits through the Exchange if the individual loses employer health care coverage as a result of a labor dispute. Designates an individual who has lost minimum essential coverage (MEC) from an employer or joint labor management trust fund as a result of a strike, lockout, or other labor dispute to receive the same premium assistance and cost-sharing reductions (CSRs) as an individual with a household income of 133% of the federal poverty level (FPL), and not subject to a deductible for any covered benefit. Specifically, **this bill:**

- 1) Requires the Exchange to administer a financial assistance program to help Californians obtain and maintain health benefits through the Exchange if they lose employer health care coverage as a result of a labor dispute.
- 2) Designates an individual who has lost MEC from an employer or joint labor management trust fund as a result of a strike, lockout, or other labor dispute to be a prospective enrollee for purposes of financial assistance, including premium assistance and CSRs subsidies. Prohibits any household income of the prospective enrollee in excess of 133% of the FPL for a family of the prospective enrollee's size from being taken into account for the prospective enrollee and the members of their tax household.
- 3) Requires an individual described in 2) above, to receive subsidies for health insurance premiums and CSRs that provide the same assistance that is provided to other individuals with incomes of 133% of the FPL who qualify for financial assistance through the Exchange. Requires the CSRs to have an actuarial value (AV) of 94% or greater, and the program design to have zero deductibles for any covered benefit.
- 4) Prohibits the modified adjusted gross income (MAGI) or household income of an individual described in 2) above from being calculated to include strike benefits, lockout benefits, or unemployment compensation.
- 5) Requires the state-funded advance premium tax credit (APTC) of an individual described in 2) above to be reconciled consistent with this bill.
- 6) Requires an individual, receiving assistance pursuant to this bill, to provide a self-attestation regarding the loss of MEC as a result of a dispute. Requires the Exchange, if further documentation is required, to contact the affected collective bargaining agent, and authorizes the Exchange to contact the employer.
- 7) Requires the date of coverage to be the date of the completed application or a later date, at the discretion of the enrollee.

- 8) Requires the Exchange, on a monthly basis, to notify an enrollee receiving financial assistance pursuant to this bill that the enrollee is required to notify the Exchange if their household income changes or MEC provided by the enrollee's employer is reinstated.
- 9) Requires the Exchange to maximize federal affordability assistance for an individual enrolled pursuant to this bill.
- 10) Requires financial assistance provided pursuant to this bill to be funded upon appropriation by the Legislature.
- 11) Defines members of the tax household to include individuals offered MEC by an employer, whether or not the coverage is affordable coverage of minimum value, as defined in subsection (c) of Section 36B of the Internal Revenue Service Code (family glitch).

**EXISTING LAW:**

- 1) Establishes the federal Patient Protection and Affordable Care Act (ACA), which enacts various health care coverage market reforms, including the availability of health insurance exchanges, coverage of essential health benefits, a prohibition against imposing a preexisting condition provision, a requirement to maintain MEC, imposing a shared responsibility penalty (individual mandate) on an applicable individual who does not maintain MEC, to fairly and affirmatively offer, market, and sell all of the health plan's health benefit plans that are sold in the individual and small group market, and to provide federal financial assistance in the form of APTC or CSRs to specified eligible individuals.
- 2) Establishes, in state government, Covered California, as an independent public entity not affiliated with an agency or department, and requires the Exchange to compare and make available through selective contracting health insurance for individual and small business purchasers as authorized under the ACA. Specifies the powers and duties of the board governing the Exchange, and requires the board to facilitate the purchase of qualified health plans through the Exchange by qualified individuals and small employers.
- 3) Requires the board in 2) above to determine the criteria and process for eligibility, enrollment, and disenrollment of enrollees and potential enrollees in the Exchange and coordinate that process with state and local government entities administering other specified health care coverage programs, as specified.
- 4) Establishes special enrollment period (SEP) triggering events, such as if the individual loses other coverage due to termination of employment or reduction in the number of hours of employment, under which an individual may enroll in or change plans during a time that is not the annual enrollment period.
- 5) Specifies enrollment periods for individual health benefit plans offered outside of the Exchange and through the Exchange for policy years beginning on or after 2020, to be from November 1 to January 31. Requires the effective date of coverage for plan selection made from December 16 to January 31, to be February 1 of the benefit year for individual health benefit plans offered outside and through the Exchange.

- 6) Defines levels of coverage for the nongrandfathered individual and small group market as follows:
  - a) Bronze level as the health care service plan (health plan) contract to provide a level of coverage that is actuarially equivalent to 60% of the full AV of the benefits provided under the plan contract;
  - b) Silver level to 70%, as specified;
  - c) Gold level to 80%, as specified; and,
  - d) Platinum level to 90%, as specified.
- 7) Creates, until January 1, 2023, the Individual Market Assistance program, which authorizes the Exchange to provide health care coverage financial assistance to California residents with household incomes at or below 600% of the FPL, including advanced premium assistance subsidies.
- 8) Requires the Exchange, in consultation with stakeholders and the Legislature, to develop options for providing CSR subsidies to reduce cost sharing for low- and middle-income Californians, and requires the Exchange to report the developed options on or before January 1, 2022. Requires the options to include, among other things, options for all Covered California enrollees with income up to 400% of the FPL to reduce cost sharing, including copays, deductibles, coinsurance, and maximum out-of-pocket (OOP) costs.

**FISCAL EFFECT:** Unknown. This bill has not yet been analyzed by a fiscal committee.

**COMMENTS:**

- 1) **PURPOSE OF THIS BILL.** According to the author, this bill would provide workers who lose health benefits due to a labor dispute a slightly improved version of the most affordable coverage package offered by Covered California. This is similar to what the American Rescue Plan (ARP) has done for those on unemployment insurance during the COVID-19 pandemic, providing premium subsidies and cost-sharing assistance as if the worker's income was just over the Medi-Cal eligibility level. Additionally, this bill would eliminate any waiting periods associated with signing up through Covered California.

- 2) **BACKGROUND.**

- a) **ACA.** Enacted in March 2010, the ACA provides the framework, policies, regulations and guidelines for the implementation of comprehensive health care reform by the states and expands access to quality, affordable insurance and health care. Under the ACA, qualified individuals are able to obtain financial assistance, also known as APTCs and CSRs for health insurance purchased on the Exchange. A person must be a citizen or lawfully present, must have qualifying income, and not be eligible for government programs or not have affordable coverage through an employer (which is considered affordable for the employee only, not including dependents). This bill requires Covered California to administer a financial assistance program for workers without employer sponsored health insurance coverage due to a labor dispute.
- b) **Coverage Options For Employees on Strike.** No federal or state law requires an employer to continue employee health insurance coverage for unionized employees while they are out on strike. Workers on strike have the following health care coverage options:

- i) **COBRA:** The Consolidated Omnibus Budget Reconciliation Act (COBRA) gives workers and their families who lose their health benefits the right to choose to continue group health benefits provided by their group health plan for limited periods of time under certain circumstances such as voluntary or involuntary job loss, reduction in the hours worked, transition between jobs, death, divorce, and other life events. Qualified individuals may be required to pay the entire premium for coverage up to 102% of the cost to the plan. Under COBRA, group health plans must provide temporary continuation of group health coverage that might otherwise end (for example, through layoffs or voluntarily leaving job). COBRA continuation coverage is available to covered employees and their spouses, former spouses and dependent children if certain events would otherwise end their group health coverage. Costs vary and are often more expensive than what is paid before, since the employer no longer covers any part of the cost. An individual generally must apply within 60 days of receiving a COBRA election notice;
  - ii) **Medi-Cal:** If a worker loses employer coverage, the individual may be eligible for Medi-Cal for income under \$17,000 and based on family income at the time of application. Unlike Covered California, there is no reconciliation and potential to pay back APTC based on changes of income; and,
  - iii) **Covered California:** While a worker who loses employer coverage is eligible for Covered California subsidies, according to the sponsors of this bill, this coverage may be much less affordable than union benefits. There may also be potential delays in coverage as coverage does not kick in until the first of the next month (or even the first of the month after that depending on when you sign up). APTCs are available in advance, based on income information provided to Covered California, household size, age, and the cost of coverage in the area where individuals live. APTCs are reconciled based on actual income when a person files income taxes. Eligibility under the ACA is calculated by the household MAGI which is governed by the Internal Revenue Service, Medicaid, and Treasury regulations. If the worker's income goes up (when the strike ends), the worker may owe money on their federal income taxes.
- c) **Family glitch.** According to the sponsors of this bill, family members of an individual on strike would also be eligible for coverage on the Exchange. According to a recent Legislative Analyst Office (LAO) brief on Health Care Access and Affordability, under the ACA, households that have access to affordable health insurance through other sources such as an employer are ineligible for APTC on the Exchange. Under the ACA, the LAO notes that households are considered to have access to affordable insurance if at least one member of the household has access to health insurance in which the cost of self-only coverage is less than a certain percent of household income (currently 9.66%). The definition does not consider the cost of coverage for other household members and accordingly has become known as the family glitch because of its potentially adverse impact on families being able to access affordable coverage through the Exchange. In some circumstances, such as if an employer contributes little to nothing for the coverage of spouses and dependents, households may find it cost-prohibitive to either add other family members to an employer-sponsored plan or purchase nonsubsidized coverage through Covered California. While this issue could be addressed through a change in federal legislation, Minnesota recently passed legislation to address the family glitch at the state level.

- d) **Recent Federal Relief.** On March 11, 2021, President Biden signed into law the ARP Act of 2021 (H.R. 1319). The wide-ranging COVID-19 relief legislation includes a number of key provisions that strengthen both public and private health insurance coverage. Among its private insurance provisions, the ARP provides full premium subsidies for COBRA coverage, substantially increases subsidies for the purchase of health plans offered through Covered California, and targets additional marketplace subsidies to those receiving unemployment benefits. Additionally, individuals who receive or were approved to receive unemployment compensation (UC) for any week beginning in 2021 are eligible for enhanced APTC subsidies to obtain health insurance and to pay for care as of July 1, 2021. APTCs are newly available for taxpayers receiving UC with household income less than 100% of the FPL, while those with higher household incomes now generally qualify for zero-premium benchmark plans, since the ARP treats taxpayers receiving UC benefits as if their household income was at least 100% and no more than 133% of the FPL.
- e) **Federal proposals.** Earlier this year, a federal bill was introduced which would make it illegal for employers to cut off healthcare benefits to striking workers. The Striking Workers Healthcare Protection Act would subject employers to a fine, which could be doubled by the National Labor Relations Board for employers who have been in violation of the policy within the past five years. If passed, the legislation could better position workers to negotiate with their employers for better wages, benefits and working conditions. In October 2021, 10,000 members of the United Auto Workers (UAW) went on strike at John Deere for the first time in 35 years, demanding better salaries and overtime pay while opposing proposed increased healthcare premiums and a two-tiered wage system. The company threatened to eliminate healthcare benefits for workers and their families over the duration of the strike, before ultimately reversing course. Had John Deere cut workers off from their healthcare, the UAW promised to pick up the cost of COBRA payments, but members would have lost coverage for dental and vision. The UAW has a strike fund, while other striking workers are not always afforded this benefit. Nearly 25,000 workers went out on strike last October across a range of industries, including healthcare, steel, telecommunications, coal mining, production plants and carpentry. The 1,400 striking workers in Kellogg's production plants lost their healthcare for the duration of their 11 week strike, and were left with COBRA payments of up to \$2,980, with one workers' daughter undergoing open-heart surgery during this period.
- 3) **SUPPORT.** California Labor Federation (CLF) and the Los Angeles County Federation of Labor, co-sponsors of this bill, write that this bill will ensure that no worker who exercises their legal right to strike will lose access to health coverage. According to CLF, the Governor signed AB 237 (Gray), Chapter 740, Statutes of 2021, the Public Employee Health Protection Act, which prohibits public employers from terminating the health care coverage of employees and their families during a strike. However, AB 237 only applies to public employers. The right to strike is embodied in several areas of law, most notably in Section 7 of the National Labor Relations Act (NLRA). Under the NLRA, workers may lawfully strike on economic grounds (higher wages, shorter hours, better working conditions) or unfair labor practice grounds. Strikes are a tool of last resort and inflict significant hardship on the workers and their families. Last year, workers from all over the country exercised this right to ensure workplace safety and fair wages. In Iowa, John Deere threatened to take away the health care benefits from the 10,000 members of the UAW and their families who were on

strike last fall. Similarly, companies like Kellogg's used this strike-breaking tactic among the 1,400 striking workers at their cereal plants last year. It is a matter of statewide concern that access to health and other medical care continue, particularly in the wake of a worldwide pandemic. The temporary loss of coverage during a strike harms not only the striking worker, but also harms dependent family members, and further strains the public social safety net. Employers weaponize health benefits to discourage workers from going on strike or to push workers to end a strike without winning needed concessions. Although striking workers are eligible to apply for health insurance through Covered California, many barriers remain including, delays in coverage and affordability. Covered California provides a subsidy to cover the cost of monthly premiums, this means that if the worker's income goes up following a strike, the worker may owe money on their federal income taxes. If a family member has an offer of "affordable" coverage from the family member's employer, then the worker is locked out of Covered California. This bill will make coverage under Covered California more accessible and affordable by allowing workers who lose coverage as a result of a labor dispute to receive the same premium assistance and cost-sharing reductions as an individual with a household income of 133% of the FPL, with no deductibles, and make coverage available immediately upon application. The COVID-19 pandemic demonstrated unmistakably that public health impacts everyone. There should never be any incentive to eject people from their health coverage because the consequences, to them, to their families, and to the entire population, can be disastrous.

- 4) **OPPOSE UNLESS AMENDED.** The California Association of Health Plans (CAHP) contends that a loss of employer coverage due to a labor dispute would be considered loss of MEC, and is already a qualifying event that triggers an existing SEP allowing individuals to enroll at Covered California, or qualify for Medi-Cal. CAHP also states that this bill tries to address what is commonly known as the "family glitch" whereby individuals are not eligible for subsidies if another family member has an offer of affordable employer coverage. The "solution" in this bill would provide enhanced benefits to an entire family even if another family member has an offer of affordable coverage from their employer and would apparently violate ACA provisions that limit federal subsidies to individuals who do not qualify for affordable employer coverage. If a state provides subsidies to an entire family where one of the spouses has access to affordable employer coverage, the state will have to fund the subsidies. CAHP also notes that there is currently a proposed federal regulation under review at the federal Office of Management and Budget that would address the family glitch so that the offer of affordable employer coverage by a family member's employer would not preclude other family members from qualifying for ACA subsidies. According to CAHP, benefit design changes at Covered California can be very complex to administer and timing is particularly crucial and problematic. CAHP member health plans need adequate lead time to create benefit plans. Covered California must then be prepared to offer these new plans in time for 2023. Health plans offering coverage through Covered California will be filing their 2023 benefit plan designs with the Department of Managed Health Care no later than April 1st. Lastly, CAHP notes that this bill affords a far more generous coverage option to individuals losing employer coverage due to a labor dispute than those losing employer or other coverage for different reasons. Plans would have to design a unique product and it is not clear how often this new product would be used or for how many individuals. Perhaps a better solution is to explore existing benefit options at the Covered California to be used for the purposes of this bill.

5) **RELATED LEGISLATION.**

- a) AB 1878 (Wood) requires Covered California to implement options for providing health care affordability assistance to reduce cost sharing, including copays, coinsurance, and maximum OOP costs, and to eliminate deductibles for all benefits. Specifies the AV of cost-sharing assistance based on the income level of an enrollee, and requires the Exchange to adopt standard benefit designs consistent with these specifications. AB 1878 is pending in Assembly Health Committee.
- b) SB 1473 (Pan) establishes an annual enrollment period for individual plans from November 1 of the preceding calendar year to January 31 of the benefit year. Specifies that the effective date of coverage for individual health benefit plans offered outside and through the Exchange would be no later than January 1 of the benefit year for plan selection made from November 1 to December 31 of the preceding calendar year, inclusive, and would be no later than February 1 of the benefit year for plan selection made from January 1 to January 31 of the benefit year. SB 1473 is pending in Senate Health Committee.

## **6) PREVIOUS LEGISLATION.**

- a) AB 174 (Wood), Chapter 795, Statutes of 2019, requires the Covered California Board, until January 1, 2023, to develop and prepare biannual public reports for the purpose of informing the California Health and Human Services Agency, the Legislature, and the public about the enrollment process for the individual market assistance program. Requires the reports to contain specified information, including, among other things, the number of applications received for the program during the reporting period and the disposition of those applications.
- b) SB 1255 (Hernandez) of 2018 would have required Covered California to administer financial assistance to help low- and middle-income Californians access affordable health care coverage with respect to individual coverage made available in Covered California, with priority given to any individual whose premium payment is equal to or greater than 8% of his or her annual household income. SB 1255 would have applied to people with income above and below 400% FPL and would have included as financial assistance, CSRs as well as premium subsidies. SB 1255 was held in the Assembly Appropriations Committee.
- c) ABX1 2 (Pan), Chapter 1, Statutes of 2013-14 First Extraordinary Session and SBX1 2 (Hernandez), Chapter 2, Statutes of 2013-14 First Extraordinary Session, establish health insurance market reforms contained in the ACA specific to individual purchasers, such as prohibiting insurers from denying coverage based on preexisting conditions; and, make conforming changes to small employer health insurance laws resulting from final federal regulations.
- d) AB 1602 (John A Pérez), Chapter 655, Statutes of 2010, and SB 900 (Alquist), Chapter 659, Statutes of 2010, establish the Exchange in California and delineate its powers and duties.

- 7) POLICY COMMENT.** As this bill moves forward, the author is committed to working with stakeholders to address implementation issues.

## **REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Labor Federation, AFL-CIO (sponsor)  
California Teamsters Public Affairs Council (sponsor)  
Los Angeles County Federation of Labor (sponsor)  
Access Reproductive Justice  
American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO  
California Federation of Teachers AFL-CIO  
California Iatse Council  
California Pan - Ethnic Health Network  
California State Legislative Board, Smart - Transportation Division  
California Teachers Association  
Health Access California  
International Union of Operating Engineers, Cal-Nevada Conference  
National Association of Social Workers, California Chapter  
United Food and Commercial Workers, Western States Council

**Opposition**

None on file.

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