
SENATE COMMITTEE ON HEALTH

Senator Dr. Richard Pan, Chair

BILL NO: AB 2530
AUTHOR: Wood
VERSION: June 20, 2022
HEARING DATE: June 29, 2022
CONSULTANT: Teri Boughton

SUBJECT: California Health Benefit Exchange: financial assistance.

SUMMARY: Requires Covered California to provide financial assistance, upon appropriation by the Legislature, to ensure an individual who has lost coverage from an employer or joint labor management trust fund as a result of a strike, lockout, or other labor dispute such that any household income in excess of 133% of federal poverty is not taken into account, coverage is equivalent to 94% actuarial value with zero deductibles, and any strike benefits, lockout benefits, or unemployment compensation is also excluded from income.

Existing law:

- 1) Establishes Covered California as an independent entity in state government not affiliated with any state agency or department, governed by a five-member board. Requires the Covered California Executive Board to establish and use a competitive process to select participating carriers and other contractors, and to make health insurance available to individuals and small businesses as authorized under the federal Affordable Care Act (ACA). [GOV §100500 -100522]
- 2) Creates the Health Care Affordability Reserve Fund (Fund), and, requires the Fund to be utilized, in addition to any other appropriations made by the Legislature for the same purpose, for the purpose of health care affordability programs operated by Covered California. [GOV §100520.5]
- 3) Requires Covered California to develop options for providing cost sharing reduction subsidies to reduce cost sharing for low- and middle-income Californians. Requires the options to be reported to the Legislature, Governor, and the Healthy California for All Commission on or before January 1, 2022, for consideration in the 2022–23 budget process. [GOV §100520.5]

This bill:

- 1) Requires, beginning July 1, 2023, Covered California to administer a program of financial assistance to help Californians obtain and maintain health benefits through Covered California if they lose employer-provided health care coverage as a result of a labor dispute.
- 2) Makes an individual who has lost minimum essential coverage (insurance that meets ACA requirements) from an employer or joint labor management trust fund as a result of a strike, lockout, or other labor dispute a prospective Covered California enrollee for purposes of financial assistance, including premium assistance and cost-sharing reduction subsidies. Prohibits any household income of the prospective enrollee in excess of 133% of the federal poverty level (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 above to receive subsidies for health insurance premiums and cost-sharing reductions that provide the same assistance that is provided to other individuals with incomes of 133% FPL who qualify for financial assistance through Covered California. Requires the cost-sharing reductions to use a standard benefit design that has an actuarial value (AV) of 94% or greater, and effective January 1, 2024, the program design to have zero deductibles for any covered benefit if the standard benefit design for this income has zero deductibles.
- 4) Requires the modified adjusted gross income or household income of an individual described above to not be calculated to include strike benefits, lockout benefits, or unemployment compensation.
- 5) Requires the state-funded advance premium tax credit of an individual described above to be reconciled based on this bill.
- 6) Requires, to receive financial assistance, an individual to provide a self-attestation regarding the loss of minimum essential coverage as a result of a dispute, and permits Covered California to contact the affected collective bargaining agent and the employer.
- 7) Permits the effective date of coverage to be the date of the completed application or a later date, at the discretion of the enrollee.
- 8) Requires Covered California on a monthly basis, to notify an enrollee receiving financial assistance pursuant to this bill that the enrollee is required to notify Covered California if their household income changes or minimum essential coverage provided by the enrollee's employer is reinstated.
- 9) Requires Covered California to maximize federal affordability assistance for an individual enrolled pursuant to this bill, and to use state affordability assistance funds for financial assistance not otherwise available under federal law. Requires financial assistance to be funded upon appropriation by the Legislature.
- 10) Indicates "members of the tax household" includes individuals offered minimum essential coverage by an employer, whether or not the coverage is affordable coverage of minimum value, as specified under federal law.

FISCAL EFFECT: According to the Assembly Appropriations Committee, Covered California reports a cost of \$2.6 million to implement the system changes required to implement this bill. Covered California indicates it cannot estimate the total cost of this bill due to lack of knowledge or ability to estimate how many individuals would be eligible, and information that would affect the premium cost and federal assistance available to an individual, such as ZIP code, age, and number of dependents. Nevertheless, Covered California states that, for December 2021, the average premium assistance for those at 138% FPL was \$548 (federal funds) per member per month (138% FPL allows for a 5% income disregard for Medi-Cal eligibility). The federal share of premium assistance is expected to decrease after the 2022 calendar year.

COMMENTS:

- 1) *Author's statement.* According to the author, this bill will 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 federal 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) *ACA financial assistance.* Under the ACA, there are metal tiers of coverage that vary by AV, or the average amount of a member's health care cost that is paid by the health plan. The remaining cost is paid by the member in the form of deductibles, copays, and coinsurance, which is referred to as member cost-sharing. Plans with a lower AV generally have lower monthly premiums but higher cost-sharing. To purchase coverage through Covered California, individuals must meet federal eligibility requirements for citizenship or immigration status and state residency. Eligible individuals who do not have affordable coverage through an employer, Medicaid, Medicare, or another qualifying program receive income-based financial help to lower their monthly premiums and cost-sharing. Federal premium assistance is available to individuals with incomes above Medicaid eligibility levels, and it takes the form of an income-based tax credit that can be taken in advance of tax filing to lower monthly premiums. Enrollees make a monthly required contribution toward their premium costs that ranges from zero to 8.5% of their income. The premium tax credits cover the remaining cost of the premium for a benchmark "silver" plan. Recent federal policies adopted during the COVID-19 public health emergency (see #5 below) have significantly increased premium assistance by expanding eligibility for assistance and reducing enrollee premium contributions so that even individuals with income over 400% FPL can have access to federal premium tax credits for premiums that exceed 8.5% of income.

The ACA also requires insurance carriers with certain products available through marketplaces, like Covered California, to reduce out-of-pocket maximums and cost-sharing amounts for consumers with incomes at or below 250% FPL, which is \$32,200 for an individual and \$66,250 for a family of four. Enrollees' access these benefits by enrolling in what are known as cost-sharing reduction plans built on silver-level coverage. For the lowest-income enrollees, cost sharing reduction plans provide coverage near or above the platinum level for highly subsidized silver premium prices. For example, there is a cost sharing reduction 94% AV silver plan available to individuals with income between 100% and 150% FPL.

- 3) *Metal tiers and FPL.* ACA plan categories are described in the form of "metal tiers," where there is a bronze (60% of cost of services paid by the plan), silver (70% of costs paid by the plan), gold (80% of costs paid by the plan) and platinum (90% of costs paid by the plan). In 2022, individual annual income compared with FPL is as follows; 133% FPL is \$18,075, 138% FPL is \$18,755, 200% FPL is \$25,760, 300% FPL is \$38,640, and 400% FPL is \$51,520. Under the ACA, a health plan meets the minimum value standard if it is designed to pay at least 60% AV, or 60% of the total cost of medical services for a standard population, and, its benefits include substantial coverage of physician and inpatient hospital services.
- 4) *Federal funding.* ARP, enacted on March 11, 2021, expanded federal premium assistance for 2021 and 2022 to cap premiums at no more than 8.5% of premium for all marketplace enrollees including those with income over 400% FPL. In California, this increased average household subsidies by over \$100 per month, bringing the average monthly premium subsidy to \$704 and the average household net premium to \$109, according to Covered California. The Build Back Better Act, still pending in Congress, would have extended ARP premium

subsidies through 2025 and provide \$10 billion per year between 2023 and 2025 to states to further lower costs for enrollees. Covered California has indicated that enrollment in 2022 is at its peak of 1.8 million and the vast majority have received federal tax credits to offset premiums, and reduced premiums by 20% compared to 2021. Covered California reports that without continuation of the ARP subsidies, more than 150,000 Californians who signed up during 2021 and 2022 could drop or reduce coverage.

- 5) *ARP unemployment assistance.* According to a U.S. Assistant Secretary for Planning and Evaluation July 2021 issue brief, ARP includes a number of provisions to make private health coverage more affordable, including for people receiving unemployment compensation. Under ARP, individuals approved for unemployment compensation for at least one week beginning in 2021 are eligible for enhanced marketplace subsidies for themselves and their household throughout 2021, if they are otherwise eligible for such subsidies. Temporary special rules regarding treatment of household income allow recipients to be treated as if their income was 133% FPL, which under ARP, generally qualifies them for a zero-premium benchmark silver plan and cost sharing subsidies in 2021. These rules also allow recipients with household incomes below 100% FPL who are not eligible for Medicaid to be eligible for marketplace subsidies. These provisions are temporary and only applied to unemployment compensation recipients for 2021.
- 6) *State funding.* In 2020, California funded state premium subsidies for a three-year period to enhance and create new subsidies through Covered California for Californians with income up to 600% FPL. The program ended in 2021 because of ARP. The 2021-22 Budget Act also funded state subsidies to offset the one dollar per month premium required for abortion services, thereby allowing zero dollar premiums to be offered for those who qualify. The 2022-2023 budget has \$304 million targeted for state cost-sharing reductions or to reinstate state subsidies in the event ARP subsidies expire. This bill proposes to use some of those funds to cover the cost of this program.
- 7) *Related legislation.* SB 944 (Pan) and AB 1878 (Wood) requires Covered California to provide affordability assistance to reduce cost-sharing including copays, coinsurance, and maximum out-of-pocket costs, and to eliminate deductibles for all benefits. *SB 944 is set to be heard in the Assembly Health Committee on June 28, 2022. AB 1878 is set to be heard in the Senate Health Committee on June 29, 2022.*
- 8) *Prior legislation.* AB 237 (Gray, Chapter 740, Statutes of 2021) prohibits California public employers, as specified, from discontinuing employer contributions for health care coverage for employees who, during the duration of a strike, fall below the minimum hours worked to qualify for employee health care coverage.
- 9) AB 133 (Budget Committee, Chapter 143, Statutes of 2021) is the omnibus health budget trailer bill, which among other provisions establishes the Health Care Affordability Reserve Fund and transfers \$333.4 million from the General Fund to this fund, to support health care affordability programs operated by the Covered California, and requires Covered California to report on options for providing cost-sharing reduction subsidies for low- and middle-income Californians. AB 133 also establishes a \$1 premium subsidy program in Covered California to subsidize the \$1 per month premium required for the cost of providing abortion services, for which federal funding is prohibited.

- 10) *Support.* According to this bill's cosponsors, the California Labor Federation and the United Food and Commercial Workers, Western States Council, the temporary loss of coverage during a strike harms not only the striking worker, but also dependent family members. 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, coverage does not kick in until the first of the next month (or even the first of the month after that depending on when a worker signs up), and, premiums and subsidies are much less affordable for many than the benefits these workers currently enjoy. This bill takes the same approach to affordability of premiums and cost sharing as Congress did for those on unemployment insurance by treating striking workers and the unemployed as being just over the Medi-Cal income level, so they receive the most affordable premiums and cost sharing.
- 11) *Oppose unless amended.* The California Association of Health Plans writes benefit design changes at Covered California can be very complex to administer. Timing is particularly crucial and problematic. This bill would afford 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. Additionally, other actions are being considered by policymakers, with input from health plans, to address affordability issues. Specifically, AB 133 required Covered California to develop options for reducing out-of-pocket costs for enrollees and to provide these options to the Legislature and Governor for consideration in the 2022-23 budget process. While operational issues need to be ironed out, health plans are supportive of efforts to use state and federal funds to reduce share of cost for consumers at Covered California.
- 12) *Policy comments and amendments.*
- a) This bill needs an amendment to ensure that Covered California screens program applicants for health insurance eligibility programs such as Medi-Cal, as an individual eligible for Medi-Cal under federal rules cannot be enrolled in Covered California.
 - b) This bill needs an amendment to delete the definition of members of the tax household per technical assistance from Covered California.
 - c) This bill also should be amended to ensure that Covered California notifies enrollees under this program of potential state and federal tax consequences of maintaining Covered California coverage once employer coverage is reinstated.

SUPPORT AND OPPOSITION:

Support: United Food and Commercial Workers Western States Council (co-sponsor)
 Los Angeles County Federation of Labor (co-sponsor)
 California Labor Federation (co-sponsor)
 ACCESS Reproductive Justice
 AFSCME
 American Federation of State, County and Municipal Employees
 California Federation of Teachers
 California IASTE Council
 California Nurses Association
 California Pan-Ethnic Health Network

California Professional Firefighters
California School Employees Association
California State Legislative Board
California State Legislative Board, Sheet Metal Air Rail and Transportation
Workers
California Teachers Association
California Teamsters Public Affairs Council
California-Nevada Conference of Operating Engineers
Courage California
Health Access California
Indivisible CA: StateStrong
National Association of Social Workers, California Chapter
The California IATSE Council
Unite Here!

Oppose: California Association of Health Plans (unless amended)

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