

Date of Hearing: August 19, 2021

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Lorena Gonzalez, Chair

SB 523 (Leyva) – As Amended July 8, 2021

Policy Committee:	Labor and Employment	Vote:	5 - 1
	Health		11 - 2

Urgency: No      State Mandated Local Program: Yes      Reimbursable: No

**SUMMARY:**

This bill enacts the Contraceptive Equity Act of 2021, expanding coverage of contraceptives by a health care service plan contract or health insurance policy issued, amended, renewed or delivered on and after January 1, 2022. Specifically, this bill:

- 1) Requires a health care service plan contract or disability insurance policy to provide point-of-sale coverage for over-the-counter (OTC) Food and Drug Administration (FDA)-approved contraceptive items at in-network pharmacies without cost sharing or medical management restrictions.
- 2) Prohibits a health care service plan contract or disability insurance policy from imposing a deductible, coinsurance, copayment or any other cost-sharing requirement on vasectomy services.
- 3) Applies, beginning January 1, 2023, the above-described contraceptive and vasectomy requirements to a plan directly operated by a public or private institution of higher learning.
- 4) Requires a health benefit plan or contract with the California Public Employees' Retirement System (CalPERS) to provide the above-described contraceptive and vasectomy requirements and prohibits the California State University (CSU) and University of California (UC) from approving a health benefit plan contract that does not provide the above-described contraceptive and vasectomy requirements.
- 5) Specifies that a religious employer's right to request a contract without coverage of contraceptive methods does not extend to contraceptive drugs or devices or vasectomy services used for purposes other than contraception.
- 6) Prohibits an employer from refusing to hire, discharging, discriminating or retaliating against an employee because of the employee's reproductive health decision making. Any adverse employment action would make the employer liable for penalties and other appropriate relief to the aggrieved employee. Notice of these rights and remedies must be included in an employee handbook, if the employer requires compliance with an employee handbook.

**FISCAL EFFECT:**

- 1) Costs between approximately \$250,000 and \$470,000 annually to the Division of Labor Standards Enforcement (DLSE) to investigate discrimination or retaliation complaints and enforce cases. DLSE notes it has no direct frame of reference to assume how many people

may experience discrimination or retaliation and also file a complaint, but estimates between 50 to 100 new claims as a result of this bill (Special Fund).

- 2) Costs of approximately \$895,000 annually to UC to make changes across the three insurance plans it operates (General Fund).
- 3) Costs of an unknown amount to CSU, if employer contributions increase as a result of this bill. CSU notes this bill does not affect its student health centers, which already provide no-cost birth control options for students.
- 4) Costs of approximately \$7,000 in fiscal year (FY) 2021-22 and \$17,000 in FY 2022-23 to the Department of Insurance to review health insurance policies and adopt regulations (Special Fund).
- 5) Costs of approximately \$100,000 in FY 2021-22, \$407,000 in FY 2022-23 and \$300,000 ongoing to the Department of Managed Health Care to review health plan policies, adopt regulations and provide enforcement (Special Fund).
- 6) Costs of an unknown amount to CalPERS. CalPERS indicates all of its plans would incur some cost for the elimination of member cost sharing for OTC contraception and sterilization procedures. As an example, CalPERS members in PPO plans paid about \$137,000 in cost sharing for tubal ligation and vasectomy procedures in 2019. This member-paid amount would be absorbed by the health plans under this bill. However, upfront costs to plans could be offset in the long-term, assuming utilization of these benefits increases, thus decreasing the number of unintended pregnancies and related services.
- 7) According to an analysis of this bill by the California Health Benefits Review Program (CHBRP), this bill would not impact the coverage provided to Medi-Cal managed care plan beneficiaries or related premiums. CHBRP assume all OTC contraceptives would be available under the pharmacy benefit and vasectomies are already covered without cost sharing under Medi-Cal.

#### COMMENTS:

- 1) **Purpose.** According to the author, this bill seeks “seeks to expand and modernize birth control access in California, and ensure greater contraceptive equity statewide, regardless of an individual’s gender or insurance coverage status.” This bill is co-sponsored by Essential Access Health, NARAL Pro Choice California and National Health Law Program and opposed by health plans and a religious organization.
- 2) **Improving Access to Contraception.** SB 1053 (Mitchell), Chapter 576, Statutes of 2014, codified federal Affordable Care Act mandates requiring commercial health plans and policies and Medi-Cal managed care plans to provide coverage for all prescribed FDA-approved contraceptive drugs and devices and provide at least one form contraception without cost sharing. This bill requires plans and policies to provide point-of-sale coverage for all OTC FDA-approved contraceptive drugs and devices obtained at in-network pharmacies, without cost sharing or medical management restrictions. This bill also prohibits an employer from discriminating or retaliating against an employee for reproductive health decisions and holds an employer liable for penalties and other relief in such instances.

- 3) **Prior Legislation.** AB 569 (Gonzalez), of the 2017-18 Legislative Session, would have imposed a similar prohibition against an employer's adverse action due to an employee's reproductive health decision. AB 569 was vetoed by Governor Brown, who stated existing law "has long banned such adverse actions, except for religious institutions. I believe these types of claims should remain within the jurisdiction of the Department of Fair Employment and Housing."

SB 999 (Pavley), Chapter 499, Statutes of 2016, required coverage of up to a 12-month supply of FDA-approved, self-administered hormonal contraceptives and permitted pharmacists to dispense these contraceptives under specified rules.

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