
UNFINISHED BUSINESS

Bill No: SB 523
Author: Leyva (D), et al.
Amended: 8/25/22
Vote: 21

SENATE LABOR, PUB. EMP. & RET. COMMITTEE: 4-0, 4/5/21
AYES: Cortese, Durazo, Laird, Newman
NO VOTE RECORDED: Ochoa Bogh

SENATE HEALTH COMMITTEE: 8-2, 4/28/21
AYES: Pan, Eggman, Gonzalez, Leyva, Limón, Roth, Rubio, Wiener
NOES: Melendez, Grove
NO VOTE RECORDED: Hurtado

SENATE APPROPRIATIONS COMMITTEE: 5-2, 5/20/21
AYES: Portantino, Bradford, Kamlager, Laird, Wieckowski
NOES: Bates, Jones

SENATE JUDICIARY COMMITTEE: 8-2, 8/30/22 (Pursuant to Senate Rule 29.10)
AYES: Umberg, Caballero, Durazo, Gonzalez, Laird, Stern, Wieckowski, Wiener
NOES: Borgeas, Jones
NO VOTE RECORDED: Hertzberg

SENATE FLOOR: 32-5, 6/1/21
AYES: Allen, Archuleta, Atkins, Becker, Bradford, Caballero, Cortese, Dahle, Dodd, Durazo, Eggman, Glazer, Gonzalez, Hertzberg, Hueso, Hurtado, Kamlager, Laird, Leyva, Limón, McGuire, Min, Newman, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener
NOES: Borgeas, Jones, Nielsen, Ochoa Bogh, Wilk
NO VOTE RECORDED: Bates, Grove, Melendez

ASSEMBLY FLOOR: 62-11, 8/29/22 - See last page for vote

SUBJECT: Contraceptive Equity Act of 2022

SOURCE: Essential Health Access
NARAL Pro Choice California
National Health Law Program

DIGEST: This bill establishes the Contraceptive Equity Act of 2022 (Act), which ensures coverage for federal Food and Drug Administration-approved contraceptive drugs, devices, and products without cost-sharing and medical management applicable to all insureds and enrollees, as specified, and requires employee health benefit plan contracts provided by the California Public Employees Retirement System (CalPERS), the University of California (UC), the California State University (CSU), and plans directly operated by a bona fide public or private institution of higher learning to comply with the Act. Establishes specified limitations on employers with respect to an employee's reproductive decision making.

Assembly Amendments (1) add a requirement under the Public Employees' Health Benefits for coverage of vasectomies and related services, as specified, and require health plans and insurers to cover vasectomies without prior authorization, and hysterectomies and other similar sterilization procedures; (2) define therapeutic equivalents, as defined by the Food and Drug Administration (FDA); (3) require request for coverage to be in compliance with timely access requirements; (4) delete the definition of health care provider; (5) add reproductive health decision making to antidiscrimination provisions regulated by the Civil Rights Department; (6) define reproductive health decision making as including but not limited to, a decision to use or access a particular drug, device, product, or medical services for reproductive health, as specified; (7) make it unlawful for an employer to require, as a condition of employment, or a benefit of employment, the disclosure of information related to an applicant's or employee's reproductive health decision making; (8) delay the effective date of the contraceptive coverage mandates imposed by this bill to 2024; (9) apply the mandate to all subscribers and enrollees; (10) indicate that a prescription is not required to trigger coverage of over-the-counter FDA-approved contraceptive drug, devices, and products, and require 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; (11) include clinical services related to the provision or use of contraception, including consultations, examinations, procedures, device insertion, ultrasound, anesthesia, patient education, referrals, and counseling; (12) require if there is no therapeutic equivalent generic substitute available in the market, a health plan or insurer to provide coverage without cost-sharing for the original, brand name contraceptive; (13) refer to provider if a drug,

device, or product is medically inadvisable, including consideration of severe side effects, differences in permanence or reversibility; (14) permit the Department of Managed Health Care (DMHC) to promulgate regulations regarding alternative prescribed contraceptive; (15) prohibit a plan or insurer from infringing upon a patient's choice of contraceptive drug, device, or product, or impose restrictions or delays; (16) clarify Medi-Cal coverage for these drugs, devices, and products; (17) delete a disclosure requirement of religious employers; (18) address chaptering-out conflicts with AB 1766, and AB 2960; and, (19) make other clarifying changes.

ANALYSIS:

Existing law:

- 1) Establishes DMHC to regulate health plans under the Knox-Keene Health Care Service Plan Act of 1975 (Knox-Keene Act); California Department of Insurance to regulate health and other insurance; and, the Department of Health Care Services to administer the Medi-Cal program. [HSC §1340, et seq., INS §106, et seq., and WIC §14000, et seq.]
- 2) Requires a health plan contract, except for a specialized health plan contract, and a disability insurance policy, that provides outpatient prescription drug benefits to provide coverage for all FDA-approved contraceptive drugs, devices, and other products for women, including all FDA-approved contraceptive drugs, devices, and products available over the counter (OTC), as prescribed by the enrollee's provider, voluntary sterilization, patient education and counseling on contraception, and follow up services, as described. [HSC §1367.25 and §10123.196]
- 3) Permits a religious employer to request a health plan contract or disability insurance policy without coverage for contraceptive methods that are contrary to the religious employer's religious tenets, and requires a contract or policy to be provided without contraceptive methods. Requires an employer that invokes the exemption to provide written notice to any prospective employee once an offer of employment has been made, and prior to that person commencing that employment. [HSC §1367.25 and §10123.196]

This bill:

- 1) Prohibits, commencing January 1, 2024, the CalPERS board, UC, and the CSU from approving a health benefit plan contract for employees that does not comply with the contraceptive coverage requirements of existing law and this bill.

- 2) Makes services and contraceptive coverage requirements under existing law and this bill applicable to all subscribers, policyholders, insureds and enrollees, and a plan, approved on or after January 1, 2024, that is otherwise exempt from the Knox-Keene Act, that is directly operated by a bona fide public or private institution of higher learning which directly provides health care service only to its students, faculty, staff, administration, and their respective dependents.
- 3) Prohibits a health plan and insurer from requiring a prescription to trigger coverage of OTC FDA-approved contraceptive drugs, devices, and products.
- 4) Requires a health plan and insurer to provide point-of-sale coverage for OTC FDA-approved contraceptive drugs, devices, and products at in-network pharmacies without cost-sharing or medical management restrictions.
- 5) Requires, if a therapeutically equivalent is not available or medically inadvisable, the plan or insurer to defer to the determination and judgment of the attending provider and provide coverage for the alternative prescribed contraceptive drug, device, product, or service without imposing any cost-sharing requirements. States that medical inadvisability may include considerations such as severity of side effects, differences in permanence or reversibility of contraceptives, and ability to adhere to the appropriate use of the drug or item, as determined by the attending provider.
- 6) Prohibits a health plan or insurer from infringing upon an enrollee's/insured's choice of contraceptive drug, device, or product, including prior authorization, step therapy, or other utilization control techniques, except as authorized in the law.
- 7) Defines provider, for purposes of furnishing family planning services, to include a pharmacist, as specified.
- 8) Prohibits a health plan or insurer that is required to cover a 12-month supply of FDA-approved, self-administered hormonal contraceptives dispensed or furnished by a provider or pharmacist, from requiring an enrollee or insured to make any formal request for such coverage other than a pharmacy claim.
- 9) Prohibits the exclusion from coverage for a religious employer from applying to a contraceptive drug, device, procedure, or other product that is used for purposes other than contraception.

Comments

According to the author, this bill is the Contraceptive Equity Act of 2021 and 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.

California Health Benefits Review Program (CHBRP) analysis key findings include:

Medical effectiveness. Over the course of a year, sexually active women of child bearing age not using contraceptives have an 85% chance of becoming pregnant, with a 46% unintended pregnancy rate among women discontinuing previous contraceptive use. CHBRP found clear and convincing evidence that using any of the contraceptives impacted by this bill is more effective than not using any contraception in preventing unintended pregnancies. CHBRP also found there is clear and convincing evidence that condoms are effective at preventing transmission of STIs/HIV based on a systematic review of 14 studies. There is also clear and convincing evidence based on a systematic review of five randomized controlled trials (RCTs) that spermicide is not effective in stopping transmission of STIs/HIV. There is insufficient evidence to determine how insurance coverage for contraceptives affected by this bill (i.e., nonprescription OTC contraceptives and vasectomy) impacts contraceptive utilization. There is insufficient evidence on the impact of utilization management policies on contraceptive utilization.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Assembly Appropriations: Committee:

- 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).
- Costs of approximately \$895,000 annually to UC to make changes across the three insurance plans it operates (General Fund).
- 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.

- 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).
- Costs of approximately \$100,000 in FY 2021-22, \$407,000 in FY 2022-23 and \$300,000 ongoing to DMHC to review health plan policies, adopt regulations and provide enforcement (Special Fund).
- 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.
- According to an analysis of this bill by 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.

SUPPORT: (Verified 8/29/22)

Essential Access Health (co-source)

NARAL Pro-Choice California (co-source)

National Health Law Program (co-source)

Access Reproductive Justice

ACLU California

American Academy of Pediatrics, California

American Association of University Women, California

American Civil Liberties Union

American College of Obstetricians and Gynecologists District IX

APLA Health

Bienestar Human Services

Black Women for Wellness Action Project

Business & Professional Women of Nevada County

California Academy of Family Physicians

California Alliance for Retired Americans

California Black Health Network

California Faculty Association

California Health+ Advocates

California Hepatitis Alliance
California Latinas for Reproductive Justice
California Nurse-Midwives Association
California Society of Health System Pharmacists
California State Parent Teacher Association
California Women's Law Center
CAPSLO Center for Health & Prevention
Children's Hospital Los Angeles
Citizens for Choice
Community Clinic Association of Los Angeles County
Courage California
End Hep C SF
End the Epidemics
Essential Access Health
Khmer Girls in Action
Los Angeles LGBT Center
MPact Fijate Bien Program
National Association of Social Workers, California Chapter
National Center for Youth Law
National Council of Jewish Women California
National Council of Jewish Women Los Angeles
Plan C
Planned Parenthood Affiliates of California
Religious Coalition for Reproductive Choice California
SF AIDS Foundation
The Center for Health and Prevention
The Los Angeles Trust for Children's Health
The Women's Building
Training in Early Abortion for Comprehensive Healthcare
Woman Organized to Respond to Life-threatening Diseases
Women's Foundation California
Women's Health Specialists

OPPOSITION: (Verified 8/29/22)

America's Health Insurance Plans
Association of California Life and Health Insurance Companies
California Association of Health Plans
California Catholic Conference
Right to Life League

ARGUMENTS IN SUPPORT: NARAL Pro-Choice California writes despite the progress made to expand access to family planning coverage and care, millions of Californians are not afforded the same benefits because the state contraceptive mandate is not currently applicable to their health plans. State workers, university employees, and college students may be denied their birth control option of choice without cost-sharing or restrictions. They also lack coverage for a full year's supply of self-administered contraceptives dispensed at once, like Californians enrolled in Knox-Keene regulated plans. It's time for California to modernize and expand our contraceptive equity laws to reduce barriers to contraceptive care, improve sexual and reproductive health outcomes, and create greater health equity. Access Reproductive Justice writes this bill removes barriers to sexual and reproductive health care and builds the power of Californians to demand health, justice, and dignity, and birth control is essential health care and California can and must advance proactive solutions to ensure that Californians get the birth control they want, when they need it, without delay. The American Civil Liberties Union writes that this bill makes California's contraceptive equity laws gender neutral. California Academy of Family Physicians writes that they fully support their patients' ability to access affordable contraception and birth control.

ARGUMENTS IN OPPOSITION: America's Health Insurance Plans, the Association of California Life and Health Insurance Companies, and the California Association of Health Plans, writing in opposition to a number of mandate bills, state that California has been a national leader in maintaining a stable market despite rising costs and uncertainty at the federal level over the individual and employer market. The COVID-19 pandemic has forced us all to re-evaluate our priorities this year, focusing on the critical issues necessary to address this pandemic. Now is not the time to inhibit competition with proscriptive mandates that reduce choice and increase costs. In the face of this continued uncertainty and efforts to fragment the market and promote less comprehensive coverage, California needs to protect the coverage gains we've made and stay focused on the stability and long-term affordability of our health care system. Benefit mandates impose a one-size-fits-all approach to medical care and benefit design driven by the legislature, rather than consumer choice. State mandates increase costs of coverage – especially for families who buy coverage without subsidies, small business owners who cannot or do not wish to self-insure, and California taxpayers who foot the bill for the state's share of those mandates. The California Catholic Conference requests amendments to existing law to expand the existing definition of religious employer. The Right to Life League writes that this bill expands the scope of the California Fair Employment and Housing Act ("FEHA"), adding new category of "reproductive health care decisionmaking" to the already long list of protected classes for purposes of housing and employment discrimination. These

recent modifications to the bill attempt to weaponize the FEHA to target pro-life entities for employment discrimination. The Right to Life League believes this bill violates the First Amendment right to freedom of religion, including employers' rights to require employees adhere to specific religious beliefs

ASSEMBLY FLOOR: 62-11, 8/29/22

AYES: Aguiar-Curry, Alvarez, Arambula, Bauer-Kahan, Bennett, Berman, Bloom, Boerner Horvath, Mia Bonta, Bryan, Calderon, Carrillo, Cervantes, Cooley, Cooper, Cunningham, Daly, Davies, Mike Fong, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Gray, Grayson, Haney, Holden, Jones-Sawyer, Kalra, Lee, Levine, Low, Maienschein, McCarty, McKinnor, Medina, Mullin, Muratsuchi, Nazarian, O'Donnell, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Stone, Ting, Valladares, Villapudua, Ward, Akilah Weber, Wicks, Wilson, Wood, Rendon

NOES: Bigelow, Chen, Megan Dahle, Flora, Fong, Gallagher, Lackey, Mathis, Patterson, Seyarto, Smith

NO VOTE RECORDED: Choi, Irwin, Kiley, Mayes, Nguyen, Voepel, Waldron

Prepared by: Teri Boughton / HEALTH / (916) 651-4111
8/30/22 23:16:30

**** END ****