SENATE COMMITTEE ON APPROPRIATIONS
Senator Anthony Portantino, Chair
2021 - 2022 Regular Session

SB 523 (Leyva) - Health care coverage: contraceptives

Version: May 3, 2021
Policy Vote: L., P.E. & R. 4 - 0, HEALTH 8 - 2
Urgency: No
Mandate: Yes
Hearing Date: May 17, 2021
Consultant: Robert Ingenito

Bill Summary: SB 523 would establish the Contraceptive Equity Act of 2021, as specified.

Fiscal Impact:

- Costs to the University of California (UC) would total $895,000 annually across its three insurance plans (General Fund).

- The California State University (CSU) system indicates that the bill would result in unknown cost increases (General Fund) by potentially increasing employer contribution and/or employee premiums. This bill would not affect the CSU's student health centers, which already provide no-cost birth control options for students.

- The California Public Employees Retirement System (CalPERS) indicates that all of its plans (HMOs and PPOs) would incur some cost for the elimination of member cost sharing (typically co-pays or deductibles) for contraception. As an example, in 2019, its members in PPO plans paid about $137,000 in member cost sharing for tubal ligation and vasectomy procedures. This member paid amount would be absorbed by the health plans under this bill. Its total cost increase to CalPERS has yet to be determined.

- The bill would result in one-time costs to the Department of Insurance (DOI) of $57,000 in 2021-22 and $64,000 in 2022-23 to review health insurance policies and adopt regulations (Insurance Fund).

- The Department of Managed Health Care (DMHC) estimates the total cost of this bill to be $96,000 in 2021-22, $392,000 in 2022-23, and about $300,000 annually thereafter (Managed Care Fund).

- The Department of Industrial Relations (DIR) would incur costs related to investigations and enforcement of Labor Code violations. Ongoing annual costs would total up to $447,000 (Labor Enforcement and Compliance Fund).

- According to an analysis of the bill by the California Health Benefits Review Program (CHBRP), the bill would result in no impact to the coverage provided to Medi-Cal managed care plan beneficiaries or related premiums. CHBRP assumes that all over-the-counter (OTC) contraceptives would be available under

the pharmacy benefit. As of a to-be-determined date, all items covered under the pharmacy benefit for Medi-Cal managed care plans are paid for on a fee-for-service basis and are "carved out" of care provided by Medi-Cal managed care plans. Vasectomies are already covered without cost sharing under Medi-Cal.

Background: Current law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by DMHC and makes a willful violation of the act a crime. Existing law provides for the regulation of health insurers by DOI. Existing law establishes health care coverage requirements for contraceptives, including, but not limited to, requiring a health care service plan, including a Medi-Cal managed care plan, or a health insurance policy issued, amended, renewed, or delivered on or after January 1, 2017, to cover up to a 12-month supply of federal Food and Drug Administration (FDA) approved, self-administered hormonal contraceptives when dispensed at one time for an enrollee or insured by a provider or pharmacist, or at a location licensed or authorized to dispense drugs or supplies.

Additionally, current law governs employment relations, defines the contract of employment, and establishes the obligations of employers to their employees. Existing law prohibits a person from discharging an employee or in any manner discriminating, retaliating, or taking any adverse action against an employee or applicant for employment because the employee or applicant has engaged in protected conduct, as defined. Existing law imposes (1) civil penalties for a violation of these provisions, (2) criminal penalties for certain violations. Existing law charges the Labor Commissioner with enforcement of these provisions.

AB 1996 (Thomson, Chapter 795, Statutes of 2002) requests UC to assess legislation proposing a mandated benefit or service and prepare a written analysis with relevant data on the medical, economic, and public health impacts of proposed health plan and health insurance benefit mandate legislation. CHBRP was created in response to AB 1996.

Proposed Law: This bill would, among other things, do the following:

- Make various changes to expand 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, including requiring a health care service plan or health insurer 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.

- Require health care service plans and insurance policies offered by public or private institutions of higher learning that directly provide health care services only to its students, faculty, staff, administration, and their respective dependents, approved on or after January 1, 2023, to comply with these contraceptive coverage requirements. The bill would also require coverage for clinical services related to the provision or use of contraception, as specified. The bill would revise provisions applicable when a covered, therapeutic equivalent of a drug, device, or product is deemed medically inadvisable by deferring to the attending provider, as specified.

- Prohibit a health care service plan contract or disability insurance policy issued, amended, renewed, or delivered on or after January 1, 2022, with certain exceptions, from imposing a deductible, coinsurance, copayment, or any other cost-sharing requirement on vasectomy coverage, as specified, under conditions similar to those applicable to other contraceptive coverage.

- Prohibit CalPERS, CSU and UC from approving or renewing a health benefit plan that does not comply with the contraceptive coverage requirements of the bill and existing law described above, on and after January 1, 2022.

- Prohibit an employer from failing or refusing to hire, discharging, or otherwise discriminating or taking retaliatory personnel action against an individual with respect to compensation, terms, conditions, or privileges of employment because of the employee's or their dependent's reproductive health decision-making. The bill would make an employer, or any person acting on behalf of an employer, who takes an adverse employment action against an employee in violation of this provision liable to the aggrieved employee for a penalty and other appropriate relief to remedy the violation, pursuant to the above-described penalty provisions. The bill would require an employer, if that employer requires compliance with an employee handbook, to include in the handbook notice of the employee rights and remedies under this provision.

Related Legislation:

- SB 245 (Gonzalez) would prohibit cost-sharing, prior authorization and annual or lifetime limits on all abortion services, including follow-up services, to an enrollee or insured. The bill is currently pending in this Committee.

- SB 999 (Pavley, Chapter 499, Statutes of 2016) authorizes a pharmacist to dispense a 12-month supply of FDA-approved, self-administered hormonal contraceptives, requires insurance to cover the cost, and prohibits a health plan or health insurer from imposing utilization controls or other forms of medical management.

- SB 1053 (Mitchell, Chapter 576, Statutes of 2014) requires most health plans and insurers to cover a variety of FDA-approved contraceptive drugs, devices, and products for women, as well as related counseling and follow-up services and voluntary sterilization procedures. Prohibits cost-sharing, restrictions, or delays in the provision of covered services, but allows cost-sharing and utilization management procedures if a therapeutic equivalent drug or device is offered by the plan with no cost sharing.

Staff Comments: DMHC expects that the bill would result in increased workload across five sub entities: its Office of Legal Services, its Office of Plan Licensing, its Office of Plan Monitoring, its Office of Enforcement, and its Office of Technology and Innovation. Overall, DMHC would require about 1.5 positions and $300,000 annually ongoing to administer the bill.

DIR notes that enforcement costs for the bill could be high. Its Division of Labor Standards and Enforcement (DLSE) does not have the experience to make firm

assumptions about how many people would (1) find themselves the subject of retaliation under the bill, and (2) bring forward a complaint. However, DIR anticipates that the bill's workload would be sufficient to require additional staff. Specifically, the department assumes up to 100 claims, and estimates that total cost of implementing the requirements of this bill would be as high as $471,000 in the first year and $447,000 in subsequent years.

Any local government costs resulting from the mandate in this measure are not state-reimbursable because the mandate only involves the definition of a crime or the penalty for conviction of a crime.

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