

Date of Hearing: June 22, 2021

ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT

Ash Kalra, Chair

SB 523 (Leyva) – As Amended May 3, 2021

SENATE VOTE: 32-5

SUBJECT: Health care coverage: contraceptives

SUMMARY: Establishes the Contraceptive Equity Act of 2021 (Act), which expands coverage of contraceptives by a health care service plan contract or health insurance policy, as specified, requires a health care service plan or health insurer to provide point-of-sale coverage for over-the-counter (OTC) federal Food and Drug Administration (FDA)-approved contraceptive drugs, devices, and products at in-network pharmacies without cost-sharing or medical management, and provides specified limitations on employers with respect to an employee's reproductive decision making. Specifically, **this bill:**

- 1) Find and declares, among other things, that the Legislature intends to reduce sexual and reproductive health disparities and ensure greater health equity by providing a pathway for more Californians to get the contraceptive care they want, when they need it, and without inequitable delays or cost barriers.
- 2) Requires health care service plans and insurance policies offered by bona fide 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 the contraceptive coverage requirements, as specified in this Act.
- 3) Prohibits 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.
- 4) Prohibits, commencing January 1, 2022, the California Public Employees' Retirement System (CalPERS) board of public relations, University of California (UC), and the California State University (CSU) from approving or renewing a health benefit plan contract for employees that does not comply with the contraceptive coverage requirements of this Act, as specified.
- 5) Prohibits a health plan and insurer from requiring a prescription to trigger coverage of OTC FDA-approved contraceptive drugs, devices, and products.
- 6) Requires, if there is no therapeutically equivalent generic substitute available in the market, a health plan or insurer to provide coverage without cost sharing for the original, brand name contraceptive.
- 7) Requires coverage for clinical services related to the provision or use of contraception, including consultations, referrals, examinations, procedures, ultrasound, and anesthesia.

- 8) Prohibits a health plan 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.
- 9) 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.
- 10) Prohibits a religious employer that has requested a health care service plan contract without coverage for FDA-approved contraceptive methods, as specified, from applying this exclusion to a contraceptive drug, device, procedure, or other product that is used for purposes other than contraception.
- 11) Defines provider, for purposes of furnishing family planning services, to include a pharmacist, as specified.
- 12) Prohibits an employer from failing or refusing to hire or discharge any individual or otherwise discriminate or take any retaliatory personnel action against any employee with respect to compensation, terms, conditions, or privileges of employment because of the employee's or their dependent's reproductive health decision making, including a decision to use or access a particular drug, device, or medical service.
- 13) Makes an employer, or any person acting on behalf of an employer, who takes any adverse employment action against an employee, as specified, liable to the aggrieved employee, who shall recover a penalty, as specified, and obtain any other appropriate relief to remedy the violation, including reinstatement, reimbursement of lost wages and interest thereon, and other compensation or equitable relief appropriate to the circumstances.
- 14) Provides that any contract or agreement, express or implied, made by an employee to waive the benefits of this section is null and void.
- 15) Provides that an employer that requires compliance with an employee handbook shall include in the handbook notice of the employee's rights and remedies under this section.

EXISTING LAW:

- 1) Establishes the Department of Managed Health Care (DMHC) to regulate health plans under the Knox-Keene Health Care Service Plan Act of 1975 (Knox-Keene Act); California Department of Insurance (DOI) to regulate health and other insurance; and, the Department of Health Care Services (DHCS) to administer the Medi-Cal program.
- 2) Exempts from the Knox-Keene Act a plan directly operated by a bona fide public or private institution of higher learning, which directly provides health care services only to its students, faculty, staff, administration, and their respective dependents.
- 3) Establishes as California's essential health benefits (EHBs) benchmark the Kaiser Small Group Health Maintenance Organization, existing California mandates (including medically necessary basic health care services), and ten Affordable Care Act (ACA) mandated benefits.

Requires non-grandfathered individual and small group health plan contracts and insurance policies to cover these EHBs.

- 4) Requires health plans and insurers, at a minimum to provide coverage without cost-sharing requirements for several services including, but not limited to evidence-based items or services that have in effect a rating of “A” or “B in the recommendations of the US Preventive Services Task Force and immunizations that have in effect a recommendation from the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention (CDC).
- 5) Requires a group and individual health plan contract, except for specialized health plan contracts, and individual or group policies of disability insurance that provides coverage for outpatient prescription drug benefits, to include coverage for a variety of federal FDA-approved prescription contraceptive methods designated by the plan or policy. Requires benefits for an enrollee to be the same for an enrollee’s covered spouse and covered nonspouse dependents.
- 6) 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 OTC as prescribed by the enrollee’s provider, voluntary sterilization, patient education and counseling on contraception, and follow up services, as described.
- 7) Prohibits a health plan, except a grandfathered plan, and a group or individual policy of disability insurance, except for a specialized health insurance policy, from imposing cost sharing, as specified. Allows a plan or disability insurer to cover only one therapeutic equivalent of a contraceptive drug, device, or product unless it is determined medically inadvisable by the enrollee’s or insured’s provider.
- 8) 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.
- 7) Defines “religious employer” as a nonprofit organization as described in the Internal Revenue Code for which the inculcation of religious values is its purpose, and it primarily employs and serves persons who share its religious tenets.
- 8) Establishes the Public Employees’ Hospital and Medical Care Act, administered by the CalPERS board of directors with the purpose of providing health plan benefits similar to private industry and promoting and preserving public employee health.

FISCAL EFFECT: According to the Senate Appropriations Committee:

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

The 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.

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 DOI of \$57,000 in 2021-22 and \$64,000 in 2022-23 to review health insurance policies and adopt regulations (Insurance Fund).

The 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 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.

COMMENTS: Note: This bill has been double-referred to the Assembly Committee on Health upon passage out of this Committee.

Certain data modeling suggests that over-the-counter access to birth control could reduce unintended pregnancy in the U.S. by as much as 25 percent.¹ This important health advancement may have the greatest benefit for those who have the most barriers to accessing medical care — including people with low incomes, the uninsured, people of color and those who live in rural areas. This data modeling study concluded that "if out-of-pocket costs for such pills are low, OTC access could have a significant effect on use of effective contraceptives and unintended pregnancy."²

According to the author, "[This bill]—the Contraceptive Equity Act of 2021—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."

¹ Foster DG, Biggs MA, Phillips KA, Grindlay K, Grossman D. *Potential public sector cost-savings from over-the-counter access to oral contraceptives*. Contraception, May 2015.

² Ibid.

Arguments in Support

According to CaliforniaHealth+ Advocates, “The COVID-19 public health emergency has further illuminated the structural inequities that disproportionately affect youth, low-income people, and communities of color in accessing birth control services. A report by the Guttmacher Institute revealed that 38 percent of Black women and 45 percent of Latinas, compared to 29 percent of white women, now face difficulties accessing birth control because of the pandemic. Lower-income women were also more likely than higher-income women to report having experienced delays or being unable to get contraceptive care because of the pandemic (36% vs. 31%). For this reason, CaliforniaHealth+ Advocates is in support of SB 523 (Leyva), which would provide a comprehensive approach to ensure greater contraceptive equity in California while saving health care costs.”

Arguments in Opposition

The California Association of Health Plans, the Association of California Life and Health Insurance Companies, and America’s Health Insurance Plans, in opposition to several health insurance bills with mandates, state, “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 fundamentally altered nearly every facet of everyday life for all Californians. Our member health plans, their employees or our enrollees have not been spared from the fallout of the pandemic, whether it’s dealing with the monumental task of managing and mitigating the effects on the health care delivery system, to dealing with several emerging administrative and economic obstacles. This 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.”

Prior Legislation

AB 569 (Gonzalez) of 2017 would have prohibited an employer, or any person acting on behalf of an employer, from taking any adverse action against an employee or their dependent or family member for their reproductive health decisions, including, but not limited to, the timing thereof, or the use of any drug, device, or medical service. This bill was vetoed by the Governor Brown.

SB 999 (Pavley) Chapter 499, Statutes of 2016 required coverage for up to a 12-month supply of FDA-approved, self-administered hormonal contraceptives and permitted pharmacists to dispense these contraceptives consistent with existing protocols and upon a patient's request.

SB 1053 (Mitchell) Chapter 576, Statutes of 2014 required, effective January 1, 2016, 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.

SB 493 (Hernández) Chapter 469, Statutes of 2013 authorized pharmacists to furnish self-administered hormonal contraceptives.

REGISTERED SUPPORT / OPPOSITION:**Support**

Essential Access Health (Co-Sponsor)
 Naral Pro-choice California (Co-Sponsor)
 National Health Law Program (Co-Sponsor)
 Access Reproductive Justice
 ACLU California Action
 American Academy of Pediatrics, California
 American Association of University Women San Jose
 American Association of University Women - California
 American Civil Liberties Union/No California/So California/San Diego and Imperial Counties
 American College of Obstetricians and Gynecologists District IX
 Apla Health
 Bienestar Human Services
 Business & Professional Women of Nevada County
 California Academy of Family Physicians
 California Alliance for Retired Americans
 California Black Health Network
 California Faculty Association
 California Hepatitis Alliance
 California Latinas for Reproductive Justice
 California Nurse-midwives Association
 California Women's Law Center
 Californiahealth+ Advocates
 Children's Hospital Los Angeles
 Citizens for Choice
 Community Clinic Association of Los Angeles County
 Courage California
 End Hep C SF
 End the Epidemics: Californians Mobilizing to End HIV, Viral Hepatitis, STIS, and Overdose
 Los Angeles LGBT Center
 National Association of Social Workers, California Chapter
 National Center for Youth Law
 National Council of Jewish Women Los Angeles
 Plan C
 Planned Parenthood Affiliates of California
 Religious Coalition for Reproductive Choice California
 San Francisco Aids Foundation
 The Los Angeles Trust for Children's Health
 Training in Early Abortion for Comprehensive Healthcare
 Women Organized to Respond to Life-threatening Diseases
 Women's Foundation California
 Women's Health Specialists

Oppose

America's Health Insurance Plans

Association of California Life & Health Insurance Companies

California Association of Health Plans

California Catholic Conference

California Chamber of Commerce

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