

BenAlert

Benefit Trends and Legislative Updates



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Howitt Insurance Services is pleased to provide you with periodic updates on benefit trends and legislative updates. As part of our valuable services, we want to ensure that you are in compliance and well-informed of the ongoing changes in our industry.

California Benefits: 2006 Legislation

July 19, 2007

As you may know, each year, we summarize the new laws enacted in California effecting health and welfare plans. The purpose of this memorandum is to provide you with an overview of the more significant legislation for 2007. We have also included health care legislation not directly effecting health and welfare plans to give you an idea of the direction of California's legislative intent. For your reference, we have provided links to the full text of these new statutes on our ERISA Attorneys' website at www.abferisa.com.

State Insurance Laws

1. AB 2012 (Chapter 756, Emmerson, 2006 Statutes): Orthotic and Prosthetic Devices. Effective on or after July 1, 2007. This new law prohibits annual and lifetime benefit maximums for orthotic and prosthetic devices and services that are less than the annual and lifetime benefit maximums for basic health care services. Therefore, a doctor may prescribe the orthotic or prosthetic devices covered by the plan or insurer at the same co-pay as other similar services with no annual or lifetime limit.

Since 1986, every insurer issuing health insurance has had to offer coverage for orthotic and prosthetic devices and services subject to the terms and conditions of the policy. The insurer must communicate the availability of that coverage to the insureds. Under the new law, this requirement does not change except for the fact that the amount of the benefit shall be no less than the annual and lifetime benefit maximums applicable to all benefits in the policy and any co-payments, deductibles, coinsurance, and out-of-pocket maximums for such devices and services to be no more than the most common amounts applied to basic health care services.

2. AB 2884 (Chapter 622, Baca, 2006 Statutes): Military Service Benefits. This law establishes the California Veterans Mental Health Services Act of 2006 and makes changes relating to the provision of mental health services to California veterans. The legislation requires counties to provide mental health services to California veterans who meet the eligibility requirements. It also requires counties to consider contracting with

community-based veterans' service agencies, where possible, to provide high quality, veteran specific -mental health services.

AB 2884 also provides for administrative penalties for health care entities which do not reinstate coverage for a United States National Guard Military Reserve member without exclusions or waiting periods. Existing law provided for penalties to be levied against insurers; this law extends that jurisdiction to health care service plans and specialized healthcare service plans. In addition, the law states that any person or entity subject to regulation under HMO laws will be disciplined by the Department of Managed Health Care.

The law makes the California Military & Veterans Code consistent with federal law with respect to health care coverage for members of the United States Military Reserve and National Guard who are called to active duty. Under current federal law, the Uniformed Services Employment and Reemployment Rights Act requires employers to reinstate health plan coverage for employees or a dependent that was terminated by reason of service in the uniformed service without any exclusions or waiting periods.

3. AB 2877 (Chapter 720, Frommer, 2006 Statutes): California Rx Prescription Drug Web Site Program.

AB 2877 establishes the creation and maintenance of a website to help consumers find the U.S.-based pharmacy selling his or her needed prescription drug at the lowest retail price. New York and Florida have developed similar websites for consumers to use as a price comparison tool. The Governor sent a letter in January 2006 to Congress calling for a change in federal law to allow consumers to safely import prescription drugs from other countries. During the transition to new federal prescription drug benefits, the Governor created an emergency relief program to ensure one million low-income seniors and persons with disabilities were able to access their life-saving prescription drugs. As a temporary and creative solution, the Governor signed SB 798, by Senator Joe Simitian, (D-Palo Alto) creating a voluntary program for counties to distribute surplus medications at no cost to the poor and uninsured.

4. AB 2911 (Chapter 619, Nunez, 2006 Statutes): Access to Affordable Prescription Drug.

Effective date August 1, 2010. Specifically, the program works with pharmaceutical companies to offer discounts of up to 40 percent on brand name drugs and up to 60 percent on generic drugs. The law requires pharmaceutical companies to begin offering the discounts within three years or face restrictions on selling their products to Medi-Cal and California's Medicaid program. This California Discount Prescription Drug Initiative is available to:

- Uninsured Californians with incomes below 300 percent of the federal poverty level (\$60,000 for a family of four);
- Californians with significant un-reimbursed medical expenses and incomes below the state median family income (\$68,310 for a family of four);
- Eligible seniors whose drugs are not covered by Medicare, upon federal approval and to protect continuity of care for Medi-Cal beneficiaries;
- Leverage the purchasing power of uninsured low-income Californians to negotiate discounts that will be passed on to consumers. Negotiate discounts on brand name drugs from manufacturers, and discounts on brand name and generic prescription drugs from pharmacies.

- Enrollment into the program will entail filling out a simplified application form either over the phone, on a web site, or at a doctor's office, pharmacy or clinic. Enrollees will pay only \$10 annually to participate.
- Include necessary safeguards to assure accurate pricing; and,
- Consider three different benchmarks in negotiations with drug manufacturers: the Medicaid Best Price, the lowest price offered to private payers, and the average manufacturers' price minus 15 percent.

Companies have three years to negotiate their discounts but those that do not adequately negotiate may be limited from participating in the Medi-Cal program, as long as the limitation does not disrupt the care of Medi-Cal enrollees. For example, Medi-Cal recipients needing drugs from companies with limited Medi-Cal participation could still receive those drugs after filling out some additional paperwork and gaining approval.

5. SB 1245 (Chapter 482, Figueroa, 2006 Statutes): Cervical Cancer Screening. Under existing law, a plan and a health insurer that include coverage for the treatment or surgery of cervical cancer are deemed to provide coverage for an annual cervical cancer screening test that includes the conventional Pap test and the option of a cervical cancer screening test. This law expands the coverage for an annual cervical cancer screening test to specifically include the papillomavirus (HPV) screening test upon referral by the patient's doctor. Coverage is required in all health service plan contracts that include coverage for treatment of cervical cancer.

6. SB 1810 (Chapter 312, Dunn, 2006 Statutes) Long-Term Care Insurance. Effective for 2007, this law adds a "Contingent Benefit on Lapse" (CBL) that allows consumers to keep some of the benefits of a long term care policy they purchased following a large rate increase that cause them to lapse in their policy payments. The provision is a part of the National Association of Insurance Commissioners (NAIC) Model Long Term Care Act and Regulation. Some of the benefits include:

- 100 percent of premium paid;
- a fixed number of days of long-term care insurance, albeit fewer than under the original policy benefit;
- the insurer may offer additional days of coverage beyond these mentioned in (b), for an additional premium, but not less than 30 days; and
- consumer may use all care benefits covered by the policy.

SB 1810 also includes the following changes:

- Adopts the methodology of the NAIC model regulation to determine when a proposed rate increase would be considered a "substantial premium increase" which could trigger the contingent benefit upon lapse (for example, it would be triggered when a policyholder age 65 receives a rate increase of 50 percent or more over the initial premium);
- Requires the insurer to notify policy and certificate holders of the contingent benefit mentioned above upon implementation of a rate increase, if required by the Insurance Commissioner (IC);
- Authorizes the IC to require an insurer who files for a rate increase to provide the affected long-term care insurance policy or certificate holders the option to reduce coverage to avoid a premium increase; and
- Eliminates the January 1, 2008 sunset of the requirement that for any premium rate increase request exceeding 15 percent, the IC shall pool all of the insurer's individual long-term care policies to project

future claims experience to determine whether the rate increase request satisfies statutory requirements, as specified.

7. Children's Health Care Measures. In September 2006, Governor Schwarzenegger signed numerous legislative measures addressing children's health care and health benefits including:

- **AB 576 (Wolk).** This law makes it easier to share immunization information and requires the Department of Health Services to plan an expansion of existing state immunization registries to improve public health and better serve children;
- **AB 1745 (Chan).** This legislation requires the Department of Health Services to develop, implement, and analyze a pilot program that provides a pediatric palliative care benefit allowing children receiving hospice services to also receive curative treatments;
- **AB 1851 (Coto).** This bill permits health, dental and vision plans to continue providing help with Healthy Families applications to people referred by a government agency, school or school district;
- **AB 1948 (Montanez).** This law allows families to pre-enroll children in temporary Medi-Cal or Healthy Families while simultaneously applying for standard ongoing Medi-Cal or Healthy Families coverage;
- **AB 2226 (Garcia).** This legislation requires the creation a Type 2 diabetes fact sheet to be printed and distributed to all parents or guardians of incoming 7th grade students beginning on or after July 1, 2010.
- **AB 2379 (Chan).** For the next six years, this legislation will ensure that children with complicated medical cases who are enrolled in Medi-Cal managed care plans receive treatment through the California Children's Services (CCS) network of specialty providers and treatment facilities;
- **AB 2560 (Ridley-Thomas).** This measure establishes the Public School Health Center Support Program to support the development of 500 school-based health clinics and increase cross-agency collaboration;
- **AB 2651 (Jones).** Requires acute care hospitals to participate in the California Newborn Hearing Screening Program (NHSP) and to administer a hearing screening test to all newborns upon birth admission; and,
- **SB 437 (Escutia).** This measure would streamline enrollment in Medi-Cal and Healthy Families and reduce the number of children losing coverage due to administrative barriers.

As you will note, lawmakers want to expand health insurance because it would reduce overall costs with more people paying for coverage. As you also know, the Governor has offered his own proposal, has agreed to cooperate with Democrats, but he will not support calls for a state-run, single-payer health system or a mandate on businesses. Schwarzenegger will likely propose expanding coverage for all children in the state, potentially by expanding eligibility for Health Families, California's public insurance program for children from low and moderate-income households.

8. Women's Health Legislation. In September 2006, Governor Schwarzenegger also signed numerous legislative measures related to women's health. These measures include:

- **AB 2251 (Evans).** Under special circumstances, this bill protects the personal safety of reproductive health care providers, employees, volunteers and patients by prohibiting the posting their personal information on the Internet;

- **AB 2583 (Nation).** This measure requires pharmacies to post a sign developed by the Board of Pharmacy that informs patients of their rights to receive prescribed treatments or devices if a pharmacist declines to fulfill the prescription for ethical, moral or religious reasons;
- **SB 246 (Figueroa).** This law requires hospitals that collect, store or process human milk to comply with standards established by the Human Milk Banking Association of North America. The law also exempts such facilities from seeking a tissue bank license;
- **SB 603 (Ortiz).** This legislation requires the Commission on the Status of Women to report on how the state Reproductive Rights Law Enforcement Act is being implemented;
- **SB 1245 (Figueroa).** As discussed above, this law requires health plans to cover the cost of tests to detect human papilloma virus if a physician recommends the screening. HPV testing can help detect cervical cancer;
- **SB 1260 (Ortiz).** This bill establishes limits on compensation for women who agree to donate eggs for stem cell research. It also requires oral and written consent before women begin drug therapy to induce their ovaries to produce eggs;
- **SB 1555 (Speier).** This legislation requires the Department of Health Services to expand prenatal screening to include all tests recommended by medical or genetic organizations. The law also requires facilities that store umbilical cord blood to be licensed; and
- **SB 1851 (Senate Committee on Health).** This law amends an existing provision to require that breast cancer patients be provided with a list of alternative treatments after their diagnosis, rather than before.

9. Miscellaneous New Laws:

- **AB 774 (Chan): Hospitals Fair Pricing Policies.** AB 774 addresses the rates that hospitals charge uninsured and underinsured patients who must pay their own medical bills. It restricts some hospital billing practices and limits charges for hospital procedures involving patients whose incomes do not exceed 350% of the federal poverty level. These self-pay rates are often higher than the rates paid on behalf of insured patients and the bill enacts laws intended to "...provide relief to families and individuals by ensuring patients receive information about public health insurance, charity care and discount programs, have access to significant discounts, and are given a reasonable time to begin paying their hospital bill."
- **AB 2283 (Oropeza): Health Care Providers.** AB 2283 addresses the increasingly diverse population of California by requiring the Medical Board of California to publish information on its website about physicians' foreign language skills. The information is intended to help the state assess whether some areas of the state are underserved by physicians with needed foreign language-skills and cultural competencies.
- **SB 739 (Speier): Hospital Infection Control.** Establishes the Hospital Infectious Disease Control Program requiring the Department of Health Services and general acute care hospitals to take measures to prevent the spread of influenza in hospitals as well as secondary surgical site infections.

Conclusion

Although there does not appear to be significant burdens placed on plan sponsors as a result of this new California legislation, 2007 will see a significant legislative debate over universal health care for all Californians. The two main contenders are the Governor and Ms. Kuel, Chair of the Senate Health Committee, an advocate of the single payer approach. We will keep you informed of developments.

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