



CAHP IMPLEMENTATION GUIDELINE

SB 523 (Leyva) Chapter 630, Statutes of 2022

As a service to our members, the California Association of Health Plans produces guidelines designed to assist in the interpretation and implementation of new laws, and to promote full compliance with those laws. This document, however, is not intended to be authoritative. Any questions about official interpretations of the law should be directed to the appropriate state regulatory agency such as the Department of Managed Health Care or the Department of Health Care Services, as well as your legal counsel.

CONTRACEPTIVE EQUITY ACT OF 2022

BACKGROUND

SB 523 was introduced by Senator Connie Leyva (D-Chino) in early 2021. The bill failed to pass the Legislature in 2021 yet was revived in July 2022 with the support of Governor Gavin Newsom's Administration. This bill, among other things, requires health plans to provide point-of-sale coverage for over-the-counter (OTC) U.S. Food and Drug Administration (FDA)-approved contraceptive drugs, devices, and products at in-network pharmacies without cost-sharing or medical management restrictions by January 1, 2024. Additionally, this bill requires health plans to provide coverage for tubal ligation and vasectomies without cost-sharing or medical management restrictions. The bill was co-sponsored by Essential Access Health, NARAL Pro-Choice California and the National Health Law Program.

CAHP was opposed to this bill since it creates a new mandate on health plans. CAHP worked the author's office and the sponsors to amend the bill to limit the bill's scope, as the introduced version of the bill was far more expansive in terms of the coverage requirements and also applied to out-of-network providers. Additionally, CAHP secured amendments to the bill to delay the effective date until January 1, 2024, giving health plans a full year to prepare for the implementation date.

The bill passed out of the Legislature on a mostly party-line vote. The Governor signed SB 523 on September 27, 2022.

REQUIREMENTS

SB 523 amends Sections 1343 and 1367.25 of, and adds Sections 1367.255 and 1367.33 to, the Health and Safety Code, and amends Section 10123.196 of, and adds Sections 10123.1945 and 10127.09 to, the Insurance Code, relating to reproductive health.

Specifically, SB 523 does the following:

- 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.

COMPLIANCE DATES

Plans will be required to implement the provisions of this bill for any contracts/policies issued, amended, renewed, or delivered on and after January 1, 2024.

IMPLEMENTATION ISSUES

Applicability:

This law applies to all health care service plans and health insurers, except a grandfathered health plan or a qualifying health plan for a health savings account. This law also applies to Medi-Cal managed care plans.

Implementation Issues:

Plans should review all service contracts issued on or after January 1, 2024 to ensure that they do not impose cost sharing or medical management restrictions on contraceptive services as specified. Importantly, specified services include tubal ligation and vasectomies, with certain exceptions.

Plans may also need to review their existing Policies and Procedures (P&P), especially those related to utilization management (UM) practices, as well as member handbooks/Evidence of Coverage (EOC) to ensure compliance with this section.