



CAHP IMPLEMENTATION GUIDELINE

SB 923 (Wiener) Chapter 822, 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.

GENDER-AFFIRMING CARE

BACKGROUND

SB 923 was introduced by Senator Scott Weiner (D-San Francisco) relating to gender affirming care. As introduced, the bill would have required health plans to ensure that health plan staff and a health plan's contracted providers completed cultural competency training for the purposes of providing trans-inclusive health care. The bill was sponsored by a wide coalition of advocates including the Western Center on Law and Poverty, Equality California and the National Health Law Program, among others.

CAHP was initially opposed to the bill unless it was amended, primarily due to the myriad of logistical and administrative challenges of having health plans enforcing the training requirements on their contracted providers. The introduced version of this bill was silent on how health plans would be expected to enforce these training requirements on their contracted providers and did not consider the various challenges it would create by forcing health plans into the role of a de-facto regulator of our contracted providers.

CAHP worked with the author's office and sponsors closely to secure amendments to remove the requirement that health plans be responsible for enforcing the training requirements on their contracted providers, as well securing additional amendments to ensure that providers are responsible for attesting to and providing the appropriate information that they provide gender-affirming services. While the bill was not perfect from our perspective, the amendments taken in the Assembly Health Committee allowed CAHP to formally remove our opposition to the bill.

The bill passed out of the Legislature on a mostly party-line vote. The Governor signed SB 923 on September 29, 2022.

REQUIREMENTS

SB 923 adds Sections 1367.043 and 1367.28 to, and adds Division 119.5 (commencing with Section 150950) to the Health and Safety Code, and adds Sections 10133.13 and 10133.14 to the Insurance Code, relating to gender-affirming care.

Specifically, SB 923 does the following:

- 1) Adds requirements to continuing medical education requirements related to cultural and linguistic competency for physician and surgeons processes specific to gender-affirming care services, as specified.
- 2) Requires, within six months after DMHC, CDI, and DHCS issue guidance, and not later than March 1, 2025, a full service health plan to include information within or accessible from the plan's provider directory and call center that identifies which of the plan's in-network providers have affirmed that they offer and have provided gender-affirming services, including, but not limited to, feminizing mammoplasty, male chest reconstruction, mastectomy, gender confirming facial surgery, hysterectomy, oophorectomy, penectomy, orchiectomy, feminizing genitoplasty, metoidioplasty, phalloplasty, scrotoplasty, voice masculinization or feminization, hormone therapy related to gender dysphoria or intersex conditions, gender-affirming gynecological care, or voice therapy related to gender dysphoria or intersex conditions. Requires this information to be updated when an in-network provider requests its inclusion or exclusion as a provider that offers and provides gender affirming services.
- 3) States that nothing in this act alters any business establishment's obligation to provide full and equal services to customers or patients regardless of their sex and other protected characteristics, pursuant to the Unruh Civil Rights Act and other applicable law.
- 4) Requires, within six months after DMHC, CDI and DHCS issues guidance, and not later than March 1, 2025, a health plan, including a Medi-Cal managed care plan, and a health insurer, that issues, sells, renews, or offers contracts for health care coverage in this state, including a grandfathered health plan, but not including specialized health plan contracts or health insurance policies that provide only dental or vision services, to require all of its support staff who are in direct contact with enrollees in the delivery of care or services to complete evidence-based cultural competency training for the purpose of providing trans-inclusive health care for individuals who identify as TGI.
- 5) Requires DMHC, CDI or DHCS, to review individual case complains received as grievances, alleging discrimination, and refer to the Civil Rights Department. Requires discrimination complaints to be referred to the Department of Fair Employment and Housing.
- 6) Requires DMHC, CDI or DHCS track and monitor complaints and publicly report this data with other complaint data in its annual report, website or other public reports containing complaint data.
- 7) Requires DMHC, CDI or DHCS without taking any further regulatory action, to implement, interpret, or make specific this bill by means of plan letters or similar instructions, until regulations are adopted.
- 8) Requires DMHC, CDI or DHCS to adopt regulations for purposes of this section by July 1, 2027, and requires them to provide a status report to the Legislature on a semiannual basis until regulations are adopted.

- 9) Requires no later than March 1, 2023, the California Health and Human Services Agency (CHHS) to convene a working group to be charged with developing a quality standard for patient experience to measure cultural competency related to the TGI community and recommend training curriculum to provide trans-inclusive care. Requires the quality standard and recommendations for curriculum to be developed no later than March 1, 2024.
- 10) Permits the agency to contract with consultants to assist the working group. Exempts the contracts from requirements of the Public Contract Code.

COMPLIANCE DATES

Plans will be required to implement the provisions of this legislation within six months after applicable departmental guidance is issued and no later than March 1, 2025.

IMPLEMENTATION ISSUES

Applicability:

This law applies to all health care service plans and health insurers, including Medi-Cal managed care plans, that issues, sells, renews, or offers contracts for health care coverage the state of California. If a plan delegates duties to a contracted entity including but not limited to, a medical group or independent practice association, that delegated entity shall comply to these requirements.

Implementation Issues:

This law requires all plan staff who directly contact enrollees in the delivery of care or enrollee services to complete evidence-based cultural competency training for the purpose of providing trans-inclusive care for those who identify as transgender, gender diverse, or intersex (TGI). This training shall include:

- 1) Information regarding the effects of historical and contemporary exclusion and oppression of TGI communities.
- 2) Information about communicating more effectively across gender identities.
- 3) Discussion on health inequities within the TGI community.
- 4) Perspectives of TGI-serving organizations and diverse local constituency groups.
- 5) Differences between personal values and professional responsibilities regarding serving TGI communities.
- 6) Facilitation by TGI-serving organizations.

Plans will need to ensure all applicable employees, including delegated entities, complete the required training. There is no requirement for state regulatory agencies to provide common recommendations or guidance on training curriculum which allows for divergent requirements, in which case, carriers may have to reconcile competing requirements.

Plans will need to coordinate with providers on potential issues such as training platforms, completion tracking, and possible duplication for providers who contract with multiple plans if there is no state-wide solution.

This law requires plans to include information, within or accessible from the plan's or insurer's provider directory, that identifies which in-network providers have affirmed that they offer and have provided gender-affirming services. Plans will need to ensure their provider directories and publicly

available websites are updated to include this information, including the development of data fields to allow for the display.

This law directs DHCS to issue guidance to implement, interpret, or make specific this bill by means of plan letters or similar instruction without further regulatory action. Plans will need to be prepared to review and potentially implement such guidance.