

# Policy At A Glance:

## New 2021 California Healthcare Legislation

*In the fall of 2020, Governor Newsom signed a significant number of the nearly 430 bills passed by the California Legislature during its curtailed legislative session. In this issue of 'Policy At A Glance,' we will provide a roundup of ten notable healthcare laws going into effect in 2021.*

### Introduction

The 2020 Legislative Session for the California Legislature was curtailed by an unprecedented two-month hiatus in the spring after Governor Gavin Newsom issued a statewide stay-at-home order to prevent the spread of the novel coronavirus causing the COVID-19 pandemic.<sup>1</sup> Furthermore, the pandemic-induced recession added budget pressures to the time constraints, resulting in the lawmakers reducing the total number of bills set for hearing and consideration by 75 percent from 2,223 to 561.<sup>2</sup>

Despite a chaotic and curtailed legislative year riddled by the challenges brought on by the pandemic, the California Legislature managed to send nearly 430 bills to the Governor's desk for his approval by September 30.<sup>3</sup> Governor Newsom signed several hundred of these bills ranging in topic from wildfire preparedness to chemicals in cosmetics to racial equity.

The Governor also signed a number of bills related to health care. This policy brief is a summary of some of these new laws, listed in numerical order by Assembly Bill (AB) or Senate Bill (SB). The effective date is January 1, 2021, unless otherwise noted.

### *New California Healthcare Laws*

- AB 685** COVID-19: Imminent Hazard to Employees
- AB 890** Nurse Practitioners: Scope of Practice
- AB 1710** Pharmacy Practice: Vaccines
- AB 2537** Personal Protective Equipment: Health Care Employees
- SB 406** Health Care: Omnibus Bill
- SB 793** Flavored Tobacco Products
- SB 803** Mental Health Services: Peer Support Specialist Certification
- SB 852** Health Care: Prescription Drugs
- SB 855** Health Coverage: Mental Health or Substance Use Disorders
- SB 1383** Unlawful Employment Practice: California Family Rights Act

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## AB 685. COVID-19: Imminent Hazard to Employees: Exposure: Notification: Serious Violations

One of several COVID-19 related laws passed in 2020, AB 685 requires employers to provide a written notice to employees and the employer of any subcontracted workers of any worksite exposure to COVID-19 within one business day of becoming aware of the exposure and to report any workplace outbreaks to the local health department.<sup>4</sup> The notice needs to be in both English and any other language understood by the majority of the employees.<sup>5</sup>

For non-healthcare workplaces, AB 685 defines an outbreak as “3 or more COVID-19 cases among workers at the same worksite within a 14-day period.”<sup>5</sup> Employers must notify the local health department within 48 hours of meeting this threshold and must continue to notify the health department of additional COVID-19 cases identified among workers at the worksite.

The California Department of Public Health (CDPH) must then publicly report the obtained information on workplace outbreaks. AB 685 also authorizes California Occupational Safety and Health Administration (Cal/OSHA) to “shut down an entire worksite or a specific worksite area that exposes employees to an imminent hazard related to COVID-19.”<sup>5</sup>



## AB 890. Nurse Practitioners: Scope of Practice: Practice Without Standardized Procedures

Nurse practitioners (NPs) are nurses with advance training and master’s or doctorate degrees in nursing. NPs are considered mid-level providers and are typically required to work under physicians’ supervision.

Signed by the Governor on September 29, 2020, AB 890 expands the scope of practice for NPs by allowing them to practice independently in 2023 after operating under a physician supervision for a minimum three-year transition period before embarking on their own practices.<sup>6,7</sup> AB 890 also directs the Board of Registered Nursing to establish a special commission to oversee the implementation and requirements under the new law.<sup>6,7</sup>

Assemblyman Jim Wood authored AB 890 with the hopes that the new law would help meet provider shortages, but physician groups expressed concerns. With its passage, California joins 28 other states that already let nurse practitioners practice independently.<sup>7</sup>

## AB 1710. Pharmacy Practice: Vaccines

On December 11, 2020, the United States Food and Drug Administration (FDA) issued the first emergency use authorization (EUA) for a COVID-19 vaccine manufactured by Pfizer-BioNTech, raising hopes about starting to put an end to the pandemic that has greatly ravaged the world.<sup>8</sup> One week later, on December 18, the FDA issued a second EUA for a COVID-19 vaccine manufactured by Moderna.<sup>9</sup>

Long before the FDA approved these vaccines, California lawmakers considered ways to speed up the distribution of COVID-19 vaccines once they become available. AB 1710 is one such measure, allowing licensed pharmacists to independently initiate and administer any COVID-19 vaccines approved or authorized by the FDA for anyone 3 years of age and older.<sup>10</sup> AB 1710, however, goes beyond just the COVID-19 vaccines and authorizes licensed pharmacists to administer other vaccines listed on the routine immunization schedules recommended by the federal Advisory Committee on Immunization Practices (ACIP) for anyone 3 years and older. Pharmacists must meet certain requirements such as completing an authorized immunization training program.<sup>10</sup>

Of note, the United States Secretary of Health and Human Services issued a federal directive on August 19, 2020, allowing state-licensed pharmacies to administer immunizations to children 3 years or older without a doctor's prescription.<sup>11</sup>

## AB 2537. Personal Protective Equipment: Health Care Employees

The COVID-19 pandemic exposed vulnerabilities within our healthcare system, and one such vulnerability was the lack of adequate supply of personal protective equipment (PPE) for essential, frontline healthcare workers. To better address this issue in the future, AB 2537 requires hospitals to maintain a stockpile of seven specific PPEs in new and unexpired condition in the amount equal to three months of normal consumption beginning April 1, 2021.<sup>12</sup> The seven types of PPEs include N95 respirators, powered air-purifying respirators with high efficiency particulate air filters, elastomeric air-purifying respirators with appropriate particulate filters or cartridges, surgical masks, isolation gowns, eye protection and shoe coverings. AB 2537 applies to "any person or organization that employs workers providing direct patient care in a general acute care hospital."<sup>13</sup>

AB 2537 also requires hospitals to be ready to report by January 15, 2021, their highest 7-day consecutive daily average consumption of PPEs during the 2019 calendar year.<sup>12</sup> Hospitals must have a written procedure for monitoring and tracking their PPEs and must provide records of their inventory to Cal/OSHA upon request. Failure to comply with the requirements of AB 2537 may result in citations and monetary penalties of up to \$25,000.<sup>13</sup>

## SB 406. Health Care: Omnibus Bill

The Patient Protection and Affordable Care Act (better known as the ACA) signed into law in 2010 contained an array of provisions, including the requirement for insurance companies to cover evidence-based preventive services without charging any copay or deductible to the patient. It also prohibited annual or lifetime limits on coverage. Given numerous attempts to dismantle the ACA, California lawmakers decided to secure these protections at the state level through SB 406.<sup>14</sup>

Authored by Senator Richard Pan, who is a physician, SB 406 removes references to the federal law in previous CA legislation dealing with these provisions and makes them California law without any dependence on the status of the federal law.<sup>14,15</sup>

## SB 793. Flavored Tobacco Products

It is no secret that tobacco companies target youth in order to create lifelong customers for their addictive products. Flavored tobacco products attract the youth and can result in devastating health consequences.<sup>16</sup> (See our [August 2019 Issue At A Glance](#) on e-cigarette use among youth for more info.)



Given the dangers of flavored tobacco products, SB 793 bans the sale of most flavored tobacco products in California. The prohibition includes tank-based systems, pods for vape pens, chewing tobacco and menthol cigarettes. It initially included cigars and hookah tobacco as well, but these were later exempted from the law. Retailers who continue to sell the banned products will be fined.<sup>1,17</sup> Despite a strong, well-funded pushback by the tobacco industry, SB 793 was signed into law on August 28, 2020, by Governor Newsom, marking an important victory for public health advocates.<sup>1</sup>

## SB 803. Mental Health Services: Peer Support Specialist Certification

The status of mental health in the United States has been worsening over the years, and the COVID-19 pandemic further exacerbated this crisis.<sup>18</sup> (See our [May 2020 Issue At A Glance](#) on this topic.) According to the *2021 State of Mental Health in America* report by Mental Health America, 60% of youth with major depression in 2017-2018 did not receive any mental health treatment and over 8 in 10 people who took a depression screen scored with symptoms consistent with moderate to severe depression since the beginning of the pandemic in March 2020.<sup>18</sup>

In order to better address the mental health needs given the lack of adequate mental health providers, SB 803 allows for certification of peer support specialists for mental health services.<sup>19</sup>

In this case, peer support specialists would be people who have personal experience with the mental health system and are trained to support and assist others who are going through similar mental health challenges. SB 803 directs California's Department of Health Care Services (DHCS) to create a process for certifying peer support specialists and establish a set of core aptitudes and ethics guidelines for the job.

Once certified, they can bill Medi-Cal for their services and be reimbursed by federal funds because the federal Centers for Medicare and Medicaid Services (CMS) issued a guidance in 2007 for peer services, stating that these services are eligible for federal reimbursement upon the adoption of statewide training and certification standards. With SB 803 directing DHCS to establish statewide training and certification for peer support specialists in mental health, California can now tap into federal funding for these services.<sup>19</sup>



## SB 852. Health Care: Prescription Drugs

For the first time in our nation, a state government will be in direct competition with

private drug manufacturers, thanks to SB 852. Given that nearly 1 in 4 Americans polled in 2019 by the Kaiser Family Foundation noted that they had a hard time affording their prescription medication, Senator Richard Pan authored SB 852 to require California Health and Human Services Agency to contract with drug manufacturers to make or distribute low-cost generic drugs for Californians.<sup>20</sup> SB 852 specifically calls for the production of the diabetes medicine insulin since its makers have sharply hiked its prices in recent years. In addition, the state is to prioritize medications for other chronic and high-cost conditions with the goal of increasing competition in the generics market to reduce drug prices.<sup>1</sup> The bill had no formal opposition and was signed into law on September 28, 2020.<sup>1</sup>

## SB 855. Health Coverage: Mental Health or Substance Use Disorders

SB 855 revises the California Mental Health Parity provisions to require a state-regulated health plan issued, amended or renewed on or after January 1, 2021, to cover all treatment deemed medically necessary for mental health and substance use disorders.<sup>21</sup> SB 855 significantly expands the current list of mental health conditions considered medically necessary under the state parity law, which seeks to ensure equal levels of care for physical and mental health. Prior to SB 855, the law covered only 9 mental health conditions and did not include substance use disorder.

Authored by Senator Scott Wiener of San Francisco, SB 855 requires health plans to make decisions about what gets covered based on criteria developed by nonprofit clinical specialty associations instead of the health plans making those determinations themselves.<sup>1</sup> After many failed attempts at changing the state's 20-year-old parity law, California lawmakers succeeded in expanding it via SB 855, which was signed into law on September 25, 2020.<sup>1,22</sup> Mental health advocates applauded this crucial step forward in improving access to mental health treatments.

## SB 1383. Unlawful Employment Practice: California Family Rights Act

Hailed as the largest expansion of the state's family leave program since it was enacted in 2014, SB 1383 requires companies with at least five employees to guarantee workers their jobs back after they take leave to care for a new baby or a sick loved one.<sup>23</sup> Previously, the protection under the California Family Rights Act (CFRA) only existed for companies with 50 or more employees within a 75-mile radius, mirroring the standards defined in the federal Family and Medical Leave Act (FMLA).<sup>24</sup> SB 1383 expands the protections and benefits of CFRA to employees of smaller companies with the threshold lowered from 50 to 5 employees.

Currently, almost all California workers pay into the state's paid family leave program through a 1% deduction on their paychecks. In essence, the state's paid family leave program

is an insurance program run by California's State Disability Insurance division and funded by the employees themselves through the payroll deduction, no matter the size of the employer. However, many workers do not take the leave because they risk losing their jobs if they do. SB 1383 aims to make it easier for workers to take the needed time off that they have already paid for through the program.<sup>1</sup>

SB 1383 also expands the list of qualified family member for whom an employee may take CFRA leave. Covered family members now include grandparent, grandchild, and sibling in addition to the existing parent, child, spouse, or registered domestic partner.<sup>23,24</sup> Furthermore, the new law eliminates the previous restriction under CFRA that limited taking leave to care for an adult child over 18 years of age with a serious health condition unless that child was incapable of self-care because of a physical or mental disability.<sup>24</sup> SB 1383 also eliminates the existing restriction in CFRA that allows an employer who employs both parents to limit the total amount of CFRA leave for both individuals to a combined total of 12 weeks for bonding with a newborn child, adopted child or foster care placement.<sup>24</sup> With these key changes, SB 1383 is expected to extend family leave job protections to about 6 million additional Californians.<sup>1</sup>



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## Did you know?

According to the *2021 State of Mental Health in America*, California ranked 25<sup>th</sup> among the 50 states in terms of overall prevalence of mental illnesses and rate of access to care, worsening from its 22<sup>nd</sup> place ranking the previous year.<sup>18</sup>



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