# What's Ahead for 2022: Promising Healthcare Bills Pending in the California Legislature

The California legislature has passed nearly 800 bills in the 2021 session. As part of the two-year term, the legislature still has the opportunity to enact more meaningful healthcare legislation in the second year of the 2021-2022 legislative term. In the last issue of the California Legislative Beat, we recapped the 2021 legislative session and detailed the enacted and vetoed bills that enhance healthcare delivery, ensure healthcare access and coverage, promote price transparency, and reinforce competition and enforcement. In this post, we summarize some of the key pending legislation in healthcare that have been passed in one house and will carry over to the new year, with potential to become law.

## HEALTHCARE DELIVERY EXPANSION WITH TELEHEALTH

The legislature has recognized the need to support new healthcare delivery systems in several laws enacted this year. For example, Governor Newsom signed the Protection of Patient Choice in Telehealth Provider Act (AB 457), as well as AB 14 and SB 4, which help close the digital divide to make telehealth more accessible for all Californians. In the 2022 session, the legislature has the opportunity to make further strides in supporting telehealth access and use with two additional telehealth measures, AB 32 and AB 1102.

### AB 32: Extending COVID-19 Telehealth Flexibilities

The COVID-19 pandemic has clearly shown, and many other bills this session have sought to address, the need to make healthcare accessible for vulnerable and disenfranchised communities. AB 32 attempts to address this need by extending the telehealth flexibilities that were issued during the pandemic. Additionally, AB 32 expands and clarifies the definition of telehealth to include not only video

appointments but telephonic and audio visits as well.

Though telehealth appointments would likely decrease the costs of those otherwise-in-person visits, according to the Assembly Appropriations Committee, this measure has the potential to increase overall state and non-state costs due to an increase in supplemental health visits, which would not have taken place without telehealth.[1] For example, the bill analysis estimates $39.6 million in commercial health care premium increases paid by non-CalPERS employers.[2] Despite the cost estimates, the legislature acknowledges that significant uncertainty related to actual cost remains.[3]

**AB 1102: Telephone Medical Advice Services**

As telehealth services continue to expand, the legislature may pass legislation that would ensure the *quality* of telehealth services. AB 1102, which passed the Assembly, would require telephone medical advice services, both in-state and out-of-state, operate consistent with the laws governing the respective healthcare professionals' licenses. The measure requires that all medical professionals providing telehealth services to patients in California comply with their state's specific licensing requirements, and telephone medical advice services are also responsible in ensuring that their medical professionals are operating consistent with the laws governing their respective licenses. Furthermore, AB 1102 clarifies that the various licensing boards have the authority to enforce these standards, and the telephone medical advice services must comply with any directions or requests by the licensing boards.

In summary, AB 1102 not only improves telehealth access, but ensures the services provided are competent and quality health care with accountability measures at multiple levels, benefiting patients and further encouraging telehealth use in the state.[4]

The legislature has made great strides this year by enacting measures furthering accessible telehealth services, but it may be able to create even more robust telehealth protections by passing AB 1102 and AB 32 in the Senate come 2022.

## SYSTEM REFORM FURTHERING COST CONTAINMENT

In addition to the telehealth focused legislation, the legislature is considering a few measures at a systemwide level that would impact both cost and quality.

### AB 1130: Establishing the Office of Health Care Affordability

Earlier this year, the Assembly passed AB 1130, which would establish the Office of Health Care Affordability (OHCA). Assembly Member Wood, author of AB 1130 and a few other healthcare reform bills this session, indicated, "Creating the Office of Health Care Affordability, establishing a statewide health information exchange and creating a process for the state to assess the impact of health care consolidation and other marketplace practices are essential and fundamental to creating a sustainable and equitable universal health care model."[5] The OHCA would set a state strategy for controlling health care costs and ensuring affordability by analyzing market trends and developing data-based polices for lowering consumer costs.

Notably, a healthcare cost commission is not a novel invention, as a handful of states–Massachusetts, Maryland, Oregon, and Rhode Island–have already adopted similar initiatives.[6] AB 1130's OHCA is arguably better since the broad legislation takes into account cost, value-based care, quality, and equity.[7] Assembly Member Wood emphasized the unprecedented nature of the measure: "This legislation would make this the most comprehensive health care cost containment initiative in the nation. The breadth of this office's ability to analyze costs is unprecedented. And that's exactly why getting it to this point has been the most significant challenge of my legislative career."[8]

Though AB 1130 passed the Assembly, it passed according to party lines. The Republican opposition fears AB 1130 will make costs worse and that setting price controls for health care services will interfere with the necessary, naturally occurring rate fluctuations in the insurance market.[9] Despite the opposition, AB 1130 reflects legislation that has been urged by an overwhelming number of Californians. Enacting AB 1130 is a significant step in addressing and remedying the issue of healthcare costs concerning many Californians.

On the other hand, provisions of AB 1132 that target healthcare consolidation and

would be supplementary to AB 1132, was gutted through subsequent amendments. Research has shown that higher costs for healthcare services arise from market consolidation.[10] AB 1132, as originally introduced in 2021, would have established a more robust process to oversee healthcare consolidation and anticompetitive practices to curb rising healthcare costs. However, in April, the Assembly amended the bill and removed all healthcare consolidation oversight and antitrust provisions furthering competition from the proposed legislation. The current amended AB 1132 is focused solely on care coordination for patients that have dual Medicare and Medi-Cal coverage.

## PRESCRIPTION DRUG COST CONTAINMENT & AFFORDABILITY STRATEGIES

Prescription drugs prices remain a major affordability issue for many consumers. This term, the legislature is considering two bills that promote affordability and cost containment of prescription drug prices at various levels. Specifically, AB 97 targets the problem of insulin affordability. In comparison, SB 521 takes aim at system-level reform to contain pharmaceutical costs.

### AB 97: Ensuring Insulin Affordability

Reducing the cost of life-sustaining insulin is crucial for a large and growing population of Californians living with diabetes. Currently more than four million Californian adults have diabetes, and this population is likely to grow with approximately 200,000 new type 1 diabetes diagnoses each year.[11] Despite the growing population impacted with diabetes, the price for insulin has exponentially grown to triple the cost. This dire change has resulted in financial hardships for this population, and the legislature has recognized that one-fourth of the population utilizing insulin reported underuse due to the high-cost burden.[12] Due to this stark reality, Assembly Member Nazarian proposed, and the Assembly passed AB 97, which would ensure that Californians have access to medically necessary insulin by reducing the costs to obtain insulin. The measure, as currently amended, would prohibit a health care plan or health disability insurance policy[13] from imposing a deducible on insulin. In other words, AB 97 does not impose new coverage

requirements; rather, the measure modifies the cost-sharing conditions of an already covered prescription drug. Specifically, enrollees would not have to meet their deductible before paying their normal copayment or coinsurance for their insulin prescription.[14]

The bill analyses note a couple of oppositional concerns which question the impact on long term cost.[15] For example, the California Association of Health Plans, the Association of California Life and Health Insurance Companies, and America's Health Insurance Plans all oppose AB 97 arguing it would increase cost, reduce choice and competition, and incentivize employers to avoid state regulation by seeking alternative coverage options. Despite these concerns, AB 97 was passed 70-0 in the Assembly, and the measure is currently held under submission in the Senate.

AB 97 is also consistent with past proposed legislation that recognized the legislative need to address the growing cost of insulin. AB 2203, proposed but not passed during the last session due to shortened legislative calendar due to COVID-19, would have mandated a cap of insulin copayment amounts and authorized the attorney general to investigate insulin costs and whether additional consumer protections are warranted.[16] Though AB 97 does not go as far as AB 2203, the Senate has the opportunity to lower healthcare costs and increase access to life-sustaining insulin for a huge population of Californians by passing AB 97 in the 2022 session.

**SB 521: Medi-Cal Value-Based Arrangements with Drug Manufacturers**

In addition to targeted measures, the legislature is also considering system-level reforms to contain pharmaceutical costs. SB 521, which passed the Senate, focuses on the health needs of Medi-Cal beneficiaries by allowing the Department of Health Care Services (DHCS) to enter value-based arrangement contracts with drug manufacturers. In essence, the arrangements allow for more value-based treatment plans by providing a manufacturer rebate if the treatment underperforms based on the agreed-upon outcome metric.[17]

This contracting method is not novel. The Assembly's bill analyses noted that other states have implemented similar efforts.[18] Furthermore, the Assembly's bill

analyses noted that "[p]ayment models emerging since passage of the federal Affordable Care Act have emphasized VBP [value-based purchasing] for achieving outcome-based quality measures [and] in December 2020, the federal Centers for Medicare & Medicaid Services (CMS) adopted a final rule to support state flexibility in prescription drug VBP."[19] Thus, although the long-term effects on costs still need to be determined, SB 521 aligns with federal support of state VBP efforts and many other state Medicaid programs that have already adopted similar measures.[20]

**AB 1278: Transparency of Provider and Drug Company Conflicts of Interest**

AB 1278, which passed the Assembly, is a bill that would promote transparency with regards to provider conflict of interest. The measure would require physicians to post and provide patients with Open Payments database notices. The Open Payments Database is a federally mandated program maintained by CMS that requires reporting entities–manufacturers and group purchasing organizations (entities that purchase or negotiate the purchase of drugs, devices, or supplies for a group of individuals or entities)–to make specific reports regarding payments made to providers (e.g., physicians and teaching hospitals).[21] Though AB 1278 does not change the reporting requirements of the Open Payments Database, the measure increases the opportunity that the public will learn or and utilize the database since it requires physicians and teaching hospitals to communicate multiple notices of the database. Ultimately, AB 1278 will amplify the impact of the federal database in California. [22]

According to the Center for Public Interest Law (CPIL), sponsor of AB 1278, "[D]isclosure of financial conflicts of interest by doctors is a moral obligation not enforced by law. AB 1278 would remedy this problem by mandating physician disclosure of any financial conflicts of interest to their patients, and empowering patients to make better and more informed choices about their treatment."[23] AB 1278 not only increases healthcare transparency, but also empowers patients to take control of their healthcare decisions.

In 2021, the legislature has enacted, and Governor has approved, key legislation

impacting the healthcare market and healthcare quality, but the legislature can pass even additional meaningful legislation in 2022 addressing pharmaceutical costs, continued telehealth access and quality, transparency at various healthcare levels, and system-wide reforms advancing cost containment and healthcare quality. Stay tuned to the California Legislative Beat in the new year for latest developments in the state legislature.

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[1] Assemb. Floor Analysis, Assemb. Bill No. 32, 2021-2022 Reg. Sess. at pg. 4 (Ca. 2021) (as amended May 24, 2021).

[2] Id.

[3] Id.

[4] S. Floor Analyses, Assemb. Bill No. 1102, 2021-2022 Reg. Sess. at pg. 4 (Ca. 2021) (as introduced Feb. 18, 2021).

[5] https://sourceonhealthcare.org/2021-california-health-care-legislation-part-1-healthcare-market-and-system-reform-proposals-lead-the-way/#_ftnref2.

[6] https://stateofreform.com/featured/2021/06/california-positioned-to-create-nation-leading-health-care-cost-control-entity/.

[7] Id.

[8] Id.

[9] Id.

[10] https://a02.asmdc.org/press-releases/20210219-asm-jim-wood-introduces-priority-health-care-package.

[11] A.B. 97. 2021-2022 Reg. Sess. § 1(a) (Ca. 2021).

[12] A.B. 97. 2021-2022 Reg. Sess. § 1(a) (Ca. 2021).

[13] The measure would apply to all such plans and policies that have been issued, amended, delivered, or renewed on or after January 1, 2022.

[14] http://analyses.chbrp.com/document/view.php?id=1557.

[15] S. Com. on Health, Assemb. Bill No. 97, 2021-2022 Reg. Sess. at pg. 6 (Ca. 2021) (as amended Mar. 30, 2021).

[16] S. Com. on Appropriations, Assemb. Bill No 97, 2021-2022 Reg. Sess. at pg. 2 (Ca. 2021) (as amended Aug. 17, 2021).

[17] S. Com. on Health, S. Bill No. 521, 2021-2022 Reg. Sess. at pg. 3 (Ca. 2021) (as amended Feb. 17, 2021).

[18] Assemb. Com. on Appropriations, S. Bill No. 521, 2021-2022 Reg. Sess. at pg. 1 (Ca. 2021) (as amended Apr. 12, 2021) (noting Washington, Michigan, Massachusetts, Arizona, Texas, Oklahoma, Alabama, Louisiana, and Colorado have all implemented similar efforts for groundbreaking treatments).

[19] Assemb. Com. on Appropriations, S. Bill No. 521, 2021-2022 Reg. Sess. at pg. 1 (Ca. 2021) (as amended Apr. 12, 2021).

[20] S. Com. on Health, S. Bill No. 521, 2021-2022 Reg. Sess. at pg. 3 (Ca. 2021) (as amended Feb. 17, 2021).

[21] The public can search the database at https://openpaymentsdata.cms.gov.

[22] Assemb. Com. on Bus. & Professions, Assemb. Bill No. 1278, 2021-2022 Reg. Sess. at pg. 4 (Ca. 2021) (as amended Mar. 17, 2021).

[23] Id.