Recapping the 2021 Session: Healthcare Legislation Passed in California

In the 2021 legislative session, California's democratic-held legislature has passed roughly 800 bills, 770 of which have been enacted after approval by Governor Newsom.[1] A number of bills impacting the healthcare industry passed overwhelmingly in both houses, yet a couple of critical bills were vetoed. Notably, the COVID-19 pandemic, which shifted legislative focus away from healthcare costs in 2020, has amplified the various pitfalls of the healthcare system. This session, the legislature returned to propose several bills to mitigate these shortcomings and address healthcare costs and access. This post summarizes the enacted and vetoed bills that enhance healthcare delivery, ensure healthcare access and coverage, promote price transparency, and reinforce competition and enforcement.

ENCOURAGING TELEHEALTH ADOPTION AND ACCESS

Though telehealth has gained popularity with the rise of technology, virtual services gained even more prominence with the onset of the COVID-19 pandemic. This session, the legislature proposed and passed a number of bills targeting increases in telehealth services, which furthers the overarching goal of expanding healthcare delivery.

AB 457 enacts the Protection of Patient Choice in Telehealth Provider Act, which requires healthcare service plans and health insurers to inform patients of the necessary information, such as cost sharing obligation for out-of-network benefits, to make informed decisions when accessing telehealth services from third-party corporate telehealth

providers.[2] Additionally, to address fragmented care when utilizing third-party providers, AB 457 requires that any records provided through a third-party telehealth provider be provided to the patient's primary care physician. As the bill analysis noted, by expanding telehealth services, employers and health plans stand to save due to the replacement of costly physician visits and emergency visits with less costly virtual visits. Moreover, "increased convenience may tap into unmet demand for health care, and new utilization may increase overall healthcare spending."[3]

Despite overwhelming support in both houses of telehealth-related measures, Governor Newsom vetoed SB 365, a measure that would have improved specialty telehealth care for low-income individuals insured through Medi-Cal. The bill would have required electronic consultation (e-consult) services provided by a Medi-Cal provider to be reimbursed under Medi-Cal. Under existing law, e-consult services are reimbursable for the specialist provider, but the primary care provider initiating the e-consult is not able to bill for this telehealth service. SB 365 would not only save time and money for patients but would benefit, by way of equitable reimbursement, all participating providers conducting e-consult services. Just as with the other telehealth measures that have been enacted this session, SB 365 has the potential to save money for patients and health providers by determining whether an in-person visit is necessary. Nevertheless, Governor Newsom vetoed the measure citing, in his veto message, inconsistency with the federal law's definition of e-consult services.

In summary, telehealth is a growing area that has garnered widespread use and support. Access to telehealth will also likely increase with the legislature's concurrent efforts in expanding broadband access. Two enacted bills, AB 14 and SB 4, aim to close the digital divide by planning, facilitating, and deploying broadband infrastructure, with a goal of providing

broadband access to no less than 98% of Californians. The COVID-19 pandemic has exemplified how the massive digital divide separates Californians from all sorts of opportunities, including access to telehealth services. Streamlining access to telehealth has the potential to impact the healthcare market and costs for both the insured and healthcare entities.

Notably, these telehealth measures should not be viewed in a vacuum – these telehealth actions also impact some of the other passed bills that relate to the healthcare market.

EXPANDING HEALTHCARE ACCESS & COVERAGE

The Governor approved a couple of bills that impact healthcare cost by way of expanding healthcare access and benefit coverage. Notably, the impact of COVID-19 drove the legislature to enact some measures that address shortcomings of the system which the pandemic brought to light.

SB 510 requires health plans and insurers to cover costs associated with COVID-19 testing and immunization regardless of whether the service is provided through an in-network or out-of-network provider. The measure would also apply to future diseases when declared a public emergency by the California Governor. Ultimately, SB 510 would prevent any surprise billing for "administrative fees" or out-of-pocket cost for out-of-network providers that many people seeking COVID-19 prevention previously experienced.[4]

Additionally, ensuring access to mental health care is of particular importance as the prevalence of mental health and substance abuse disorders rapidly increased during the COVID-19 pandemic.[5] While prior law and regulations have set clear timely access requirements for initial mental health and substance abuse appointments with nonphysician providers (e.g., therapists), the law did not address timely access to *follow-up* care. In response, the Governor signed SB 221, which

reduces wait times for mental health follow-up care by requiring that patients be offered return appointments no more than 10 days following their previous session. Opponents of the bill cited issues of therapist shortage and concerns about quality of care given the lack of workforce, but lawmakers pushed back, and the bill received overwhelming support in both houses.[6] Notably, the law does not take effect until July 1, 2022, which enables health plans time to comply, such as hiring additional therapists.[7]

SB 280 is another successful bill that expands healthcare coverage. The measure requires large group health insurance policies to cover medically necessary basic healthcare services, but also prohibits these insurers from using marketing practices or benefit designs that discourage the enrollment of an individual with significant health needs. Insurer violation of these requirements may be subject to administrative penalties.

ENSURING TRANSPARENT & FAIR BILLING PRACTICES

In addition to legislation that would expand and clearly communicate healthcare coverage, the legislature also passed a few bills that specifically target healthcare billing and transparency to promote greater consumer control over their health care.

SB 368 systematizes and increases transparency for an insured regarding their insurance deductible and out-of-pocket maximum. Specifically, the measure requires insurers and health plans to provide an enrollee or insured the accrual balance toward their annual deductible and out-of-pocket maximum during any month in which benefits were used. Moreover, the service plan or insurer is required to maintain a system that allows for an enrollee or insured to request their most up-to-date accrual balances from their service plan

or insurer at any time.

In addition to insurance transparency, two other enacted bills target hospitals' obligations in communicating fair billing policies to patients and the general public. AB 532 strengthens existing law—which requires hospitals to maintain understandable written policies regarding discount payments for qualified patients—by requiring that hospitals establish a systematized process of notifying patients of these written policies. Additionally, these written patient notices must include the internet addresses of specific health consumer assistance entities, information regarding Covered California and Medi-Cal eligibility, and the hospital's list of shoppable services. The notice is required to be provided at the time of service if the patient is conscious and able to receive such notice. Significantly, hospitals will be required to automatically (i.e., not upon specific request, as prior law allowed) provide uninsured patients with an estimate of charges for services and an application for financial assistance or charity care.

While AB 532 focuses on hospital transparency in *disclosing* discounted payment options to qualified patients, AB 1020 increases patient eligibility for hospital financial assistance. AB 1020 expands eligibility for charity care and discounted payments by raising the income level for financial assistance from 350% of federal poverty level (FPL) to 400% FPL. Furthermore, similar to AB 532's systematized notice requirements, AB 1020 requires hospitals to display notice of their policy for financially qualified and self-pay patients on the hospital's website. Additionally, AB 1020 prohibits a hospital from selling patient debt to a debt buyer, unless specified conditions—such as sending patient notice of the debt along with the hospital's financial assistance options—are met.

In summary, all these enacted bills promote and require fair billing and transparent costs for healthcare services,

providing greater protection for patients.

ENFORCING FAIR PRACTICE & CONSUMER PROTECTION

The legislature was also successful in enacting various enforcement measures promoting fair healthcare competition. The existing Unfair Competition Law (UCL) authorizes various government entities with enforcement authority to protect consumers and promote fair business practices. SB 461 gives concurrent authority to the county counsel of any county in which a city has a population more than 750,000 people to bring actions under the UCL. According to Senator Cortese, the author of the bill, "SB 461 will close an enforcement gap and enable these county counsels to better protect consumers and promote fair competition. The bill also aligns with other important consumer protection statutes in California, such as the False Advertising Law, which broadly authorizes county counsels to combat deceptive business practices."[8] With this enactment, anticompetitive healthcare practices will be better monitored and enforced due to the wider scope of government enforcement authority.

In addition to government and regulatory entities, healthcare consumer interests are further advanced through consumer advocacy initiatives. Prior law established the Consumer Participation Program, which allows the Department of Managed Health Care (DMHC) to award consumer advocates for their contributions—on issues such as unfair billing patterns—to DMHC regulations that impact a significant number of healthcare consumers. This program has been in existence for more than 15 years, and the newly enacted AB 326 would extend the operation of the program indefinitely. Since the establishment of the program, DMHC approved 57 Petitions to Participate and 38 Applications for an Advocacy Award.[9] For example, during the 2019-2020 fiscal year, DMHC awarded three Advocacy Awards to Health Access of California (HAC),

including for its contribution to DMHC's adoption of regulations related to health care plan compliance, financial solvency of certain organizations, and prescription drug coverage transparency.[10] Given the established track record of the Consumer Participation Program, extending the program indefinitely will incentive consumer advocates to further represent and promote interests of healthcare consumers.

SUPPORTING PHARMACEUTICAL CHOICE AND PATIENT AUTONOMY

In the prescription drug market, the legislature passed and the Governor approved a few bills that would help ensure the quality and value of pharmaceutical care given to patients. Specifically, the legislature focused on measures that enhance pharmacist autonomy and consumer choice.

Two enacted measures, SB 362 and AB 1064, support pharmacist and pharmacy-employee autonomy. First, SB 362 addresses the negative impact of performance quotas, a fixed number of duties (e.g., prescriptions filled), on pharmacies.[11] Quotas are quantitative corporate metrics used by some pharmacies, e.g., CVS, Walgreens, and Rite Aid, to evaluate pharmacist-employee performance.[12] While these metrics may be helpful in measuring large-scale employee performance, reports spanning the decade found negative implications, including patient death, due to these quotas.[13] Specifically, SB 362 prohibits a chain community pharmacy, a chain of 75 or more stores in California under the same ownership, from establishing a quota to measure a pharmacist or technician's performance of duties. Second, AB 1064 works to expand pharmacist scope of practice. AB 1064 authorizes pharmacists to initiate and administer any vaccine approved or authorized by the U.S. Food and Drug Administration (FDA) for persons three years of age and older, including the COVID-19 vaccine. Prior law required that the vaccine be listed as *routine* immunization for it to be independently initiated and

administered by a pharmacist. AB 1064 is yet another bill enacted this session that supports and recognizes the significant role of pharmacists, especially during the COVID-19 pandemic.

Aside from regulation of pharmacists, AB 347 promotes patient and prescriber drug choice by adding protections, including a step therapy exception request and appeal process, to the current Utilization Management protocols. Step therapy protocols, where the enrollee is required to first try and fail alternatives before coverage is available for the initially prescribed medication, help health plans and insurers control costs.[14] AB 347 strikes a balance between the common use of step therapy and ensuring timely access to treatments by requiring health plans or insurers to expeditiously approve a step therapy exception if specific criteria are satisfied. Ultimately, AB 347 preserves the cost control mechanism of step therapy while ensuring timely access to necessary medication for patients.

Finally, SB 524 as passed by the legislature would have curbed anticompetitive behavior in the pharmaceutical industry, but the Governor vetoed the measure. SB 524 proposes to prohibit healthcare service plans or health insurers from engaging in "patient steering," by requiring an enrollee or insured to have their pharmacy services provided by a specific pharmacy, which is usually owned by the pharmacy benefit manager (PBM) or health plan.[15] The legislature found that such practices "[are] designed to eliminate competition and can result in higher costs for the patient and for the healthcare system as a whole."[16] SB 524 would have given patients greater healthcare autonomy by selecting their own pharmacies "to ensure they receive quality care and are not steered to increase profit margins for PBMs."[17] Though Governor Newsom acknowledged these goals, he vetoed the bill, citing lack of clarity in what business entities and relationships are intended to be affected since the bill did not define "agent"

or "corporate affiliate," which could lead to misinterpretation or lack of enforceability. Currently, SB 524 is in the Senate, and consideration of the Governor's veto is pending.

The legislature has passed an outstanding number of measures this session and still has the opportunity to pass additional meaningful healthcare measures in 2022, year two of the 2021-2022 legislative term. Specifically, as of this writing, the legislature has a number of pending healthcare related bills that have passed at least one house. Some notable measures include AB 97 (addressing insulin affordability), AB 1130 (establishing the Office of Health Care Affordability), and AB 1132 (prohibiting anticompetitive healthcare contracting practices). Stay tuned to California Legislative Beat next month for a discussion of these measures and their outlook in the 2022 legislative session.

---

[1] https://calmatters.org/politics/2021/10/california-bills-newsom-vetoes/.

[2] This is when a corporation contracted with a health care service plan provides health care services exclusively through a telehealth platform.

[3] Concurrence in S. Amendments of Assemb. Bill No. 457, 2021-2022 Reg. Sess. at pg. 2 (Ca. 2021) (as amended Sept. 3, 2021).

[4] S. Rules Com., Off. of S. Floor Analyses, S. Bill No. 510, 2021-2022 Reg. Sess. at pg. 5 (Ca. 2021) (as amended Sept. 3, 2021).

[5] *See* S.B. 221. 2021-2022 Reg. Sess. § 1(e) (Ca. 2021).

[6] *See* April Dembosky, *California Bill Would Reduce Wait Times for Mental Health Appointments*, KQED (Oct. 5, 2021), https://www.kqed.org/news/11891049/california-bill-would-reduce-wait-times-for-mental-health-appointments.

[7] *See* Bernard J. Wolfson, *California Law Aims to Strengthen Access to Mental Health Services*, Kaiser Health News (Nov. 1, 2021), https://khn.org/news/article/california-law-aims-to-strengthen-access-to-mental-health-services/.

[8] Assemb. Floor Analysis of S. Bill No. 461, 2021-2022 Reg. Sess. at pg. 4 (Ca. 2021) (as introduced Feb. 16, 2021).

[9] Concurrence in S. Amendments of Assemb. Bill No. 326, 2021-2022 Reg. Sess. at pg. 1 (Ca. 2021) (as amended Sept. 3, 2021).

[10] *Id.* at 1-2.

[11] S.B. 362. 2021-2022 Reg. Sess. § 1 (Ca. 2021).

[12] S. Rules Com., Off. of S. Floor Analyses, S. Bill No. 362, 2021-2022 Reg. Sess. at pg. 4 (Ca. 2021) (as amended July 7, 2021).

[13] *Id.* at 5.

[14] Concurrence in S. Amendments of Assemb. Bill No. 347, 2021-2022 Reg. Sess. at pg. 2 (Ca. 2021) (as amended Sept. 3, 2021).

[15] *See California Health Care Legislative Update,* Nat'l L. Rev. (June 15, 2021), https://www.natlawreview.com/article/california-health-care-legislative-update.

[16] S.B. 524. 2021-2022 Reg. Sess. § 1(b) (Ca. 2021).

[17]
https://cpha.com/advocacy/legislation/current-legislation/.