

Recapping the 2022 California Legislative Session: What Was and What Wasn't - Part 2: Promoting Telehealth and Tackling Out-of-Network Costs and Prescription Drug Prices

In the previous issue of the California Legislative Beat, we recapped noteworthy bills from year two of California's 2021-2022 legislative term, specifically legislation that sought to regulate healthcare competition and ensure affordable access (see [Recapping the 2022 California Legislative Session - Part 1](#)). In this second part of the two-part series, we turn to bills that aimed to eliminate surprise out-of-network costs, advance telehealth, and rein in prescription drug prices, including ones that were signed into law and some important ones that didn't make the cut.

Surprise Out-of-Network Costs

While California has some of the most stringent surprise billing protections in the country, the legislature continued to consider legislation that would further expand those protections for consumers given the prevalence of difficult to avoid surprise billing situations.

What Didn't Pass

Expanding Out-of-Network Billing Protections (AB 510): Currently, California legislation provides out-of-network surprise billing protection by requiring that a noncontracting individual health professional obtain an enrollee's written consent at least 24 hours in advance of care before billing or collecting the out-of-network

amount directly from the enrollee. [AB 510](#) proposed to add additional patient protections by extending the current required time period between consent and care by two full days – to at least 72 hours. The bill also requires the health care consent disclosure to include a list of contracted providers at the facility who would be able to provide the services in-network.

Protections from Out-of-Network Ambulance Costs (AB 2709 and AB 1107):

Most surprise bills arise in emergency situations, particularly if a patient uses emergency medical transportation services. [AB 1107](#) (2021) and [AB 2709](#) (2022) targeted such costs from ground ambulance providers and proposed that enrollees using an out-of-network ground ambulance should pay no more than what the cost-sharing amount would be if the enrollee had received the same services from an in-network ground ambulance provider. Under AB 1107, the health plan would pay for these noncontracting emergency ground medical transportation services at the contracted rate pursuant to the plan policy. AB 2709 further proposed that the plan or insurer shall reimburse a noncontracting ground ambulance provider the greater of the average contracted rate or 125% of the Medicare reimbursement rate and prohibits the noncontracting ground ambulance provider from billing the enrollee or sending to collections the excess amount.

As much of the attention was focused on federal price transparency rules and the state’s new health care cost commission, none of these lesser-known bills passed this term. Nonetheless, as certain surprise billing issues persist, these targeted bills may return in some form in future legislative terms.

Telehealth

The COVID-19 pandemic brought increased flexibilities for the access and coverage of telehealth services during the state of emergency. As the pandemic fades from the public attention, telehealth remains an important tool to promote affordable healthcare access. The legislature enacted several measures in the 2021 session to further access of telehealth services and continued to do so in 2022.

What Passed

Expanding Access to Telehealth Services (AB 32): As pandemic-enabled telehealth expansions are set to expire at the end of the state of emergency, the California legislature enacted [AB 32](#) to permanently expand the use of telehealth services for Medi-Cal beneficiaries. This legislation clarifies and permanently expands the definition of telehealth to include not only video appointments but also telephonic and audio visits. It permits the establishment of a new patient relationship using an audio-only synchronous interaction when the visit is related to certain sensitive services (such as mental or behavioral health or sexual and reproductive health) or when the patient requests or attests they do not have access to video.

Regulating Telephone Medical Advice Services (AB 1102): The legislature also enacted The telephone medical advice service is also required to comply with requests for information made by the respective healing arts licensing boards. This law would ensure that the services provided are competent and quality health care with accountability measures.

What Didn't Pass

Telehealth Access for Mental Health Services (AB 935): Amidst the worsening mental health crisis, the legislature also attempted to address the rising need through expanded telehealth coverage by [AB 935](#), which would provide mental health care via telehealth for children, pregnant and postpartum persons. The proposal requires health care service plans and health insurers, including Medi-Cal managed care plans, to provide these vulnerable individuals access to consultation by a mental health clinician by telephone or telehealth video.

Prescription Drug Costs

High prescription drug prices remain at the forefront of healthcare affordability issues impacting Californians and continue to be on the agenda of the state legislature, as it considered a variety of proposals in the 2021-2022 term aimed at

enhancing prescription drug affordability.

What Passed

Information on Prescription Drugs (AB 2352): Information about prescription drugs help consumers make better informed choices about costs and promote competition. The legislature enacted [AB 2352](#) this session to promote transparency in information relating to prescription drugs. The new law requires a health care service plan to provide specified information about a prescription drug upon request, including coverage and cost-sharing, drug benefits, any lower cost or clinically appropriate alternatives, and the drug's cash price. The health plan must respond in real time—no later than one business day after a change is made—to ensure the information is current. This legislation also prohibits a health plan from restricting a health care provider from disclosing any information about the prescription drug or penalizing a provider for prescribing a lower cost drug.

What Didn't Pass

Targeting Out-of-pocket Cost-sharing and Deductible (AB 933 and AB 97)

Currently, health insurers and pharmacy benefit managers negotiate rebates when medications are purchased from the drug manufacturers. These negotiated rebates are typically not considered when patient cost-sharing is calculated, so the savings from these rebates would bypass consumers, allowing health insurers and pharmacy intermediaries to retain billions of dollars. To reform this rebate system, [AB 933](#) proposed to require an enrollee's defined out-of-pocket cost-sharing for each prescription drug to be calculated at the time of transaction and that health care service plans must pass on at least 90% of the pharmaceutical rebates to the patient.

With the growing population of Americans impacted with diabetes, many states have considered legislation that address the exponentially growing price for insulin. California introduced [AB 97](#) in 2021 to reduce the costs to obtain insulin by prohibiting a health care plan from imposing a deductible on insulin. Specifically, enrollees would not have to meet their deductible before paying their copayment or coinsurance for their insulin prescription. AB 97 passed 70-0 in the Assembly but failed to progress in the Senate.

System-level Proposals: Value-based Purchasing (SB 521) and Drug Importation (AB 458)

At the system level, the legislature also considered [SB 521](#), which allows the Department of Health Care Services (DHCS) to enter value-based arrangement contracts with drug manufacturers for the Medi-Cal program. The bill is in line with the [final rule](#) adopted in December 2020 by the Centers for Medicare & Medicaid Services (CMS) which supports state flexibility in value-based purchasing of prescription drugs. The proposal would have allowed for more value-based treatment plans by providing a manufacturer rebate if the treatment underperforms based on the agreed-upon outcome metric.

Like several other states, California also considered the importation of prescription drugs from Canada to increase overall competition and reduce costs. [AB 458](#) proposed to create the Affordable Prescription Drug Importation Program within the California Health and Human Services Agency (CHHSA). Under the program, the state would be a licensed wholesaler that imports prescription drugs for the exclusive purpose of dispensing those drugs to program participants. A contracted importer would be required to establish a wholesale prescription drug importation list that identifies the prescription drugs that have the highest potential for cost savings to California.

While neither the bills targeting out-of-pocket costs nor the system-wide proposals passed the legislature, they represent incremental efforts and sustained legislative attention on high prescription drug costs which will no doubt bring more progress in future terms.

California's legislature will kick off the 2023-2024 term and reconvene on December 5, 2022. Stay tuned to The Source's California Legislative Beat for the latest legislative action in California.