



DATE: November 23, 2011
TO: Our Valued Client Partners & Friends
FROM: HIB Account Team
RE: **LEGISLATIVE UPDATE 2011-10: California Legislation**

We are pleased to bring you our **Legislative Update 2011-10: California Legislation**. This memorandum provides an overview of recent California laws and how they affect health care. As always, please feel free to contact your HIB Account Team for assistance.

CALIFORNIA LEGISLATION

As 2012 approaches, Health Care Reform remains center stage. However, California employers also must pay attention to changes in state and local laws/regulations.

KEY CHANGES

1. **Pregnancy Leave ([SB 299](#) and related statutes)** This law expands the Pregnancy Disability Leave law in California to require employers to maintain the same level of insurance benefits during the pregnancy leave as were available to the pregnant employee prior to taking pregnancy leave. (Effective January 1, 2012).

Note: we will discuss this change in much greater detail in a separate legislative update.

2. **“Discretionary Clauses” in Life, Health, and Disability Policies ([SB 621](#))**. Insurers frequently retain sole discretion to determine whether an insured is entitled to benefits in situations in which benefits are conditioned upon whether or not a person is totally disabled. For example, a doctor may certify an individual to be totally disabled; however, the insurer can override the doctor’s decision, asserting its rights to do so under its “sole discretion” provision, leaving the insured no ability to challenge the insurer’s decision. SB 621 eliminates the use of discretionary clauses, giving the insured the ability to challenge the insurer’s decision. (Effective January 1, 2012).
3. **Healthy San Francisco**. In 2011, the San Francisco Board of Supervisors has debated over the ability of an employer to meet its benefits obligation using a Medical Expense Reimbursement Plan where unused benefits are forfeited at the end of the plan year. Although the Mayor (Lee) vetoed the last proposal (which would have required employers to make benefits generally non-forfeitable) the Board of Supervisors has revamped the resolution (two years to collect benefits). We expect the Mayor may not veto this new version. We will keep you posted on the issue.

OTHER STATE LEGISLATION

- **Autism ([SB 946](#))**. SB 946 amends California’s mental health parity law by requiring health plans and health insurance policies to cover behavioral health therapy for pervasive developmental disorder, more commonly known as autism. SB 946 also requires plans and insurers to maintain adequate networks of autism service providers and establishes an Autism Advisory Task Force in the Department of Managed Health Care. (Effective July 1, 2012).
- **Dependent Children Life Insurance ([SB 220](#))**. For purposes of life insurance coverage, current law limits the age of eligible dependents to all unmarried children from birth through age 20, or age 24 if the dependent child is in school. This bill expands coverage for dependent children under a group life insurance policy by requiring



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coverage be continued until age 26, regardless of the child's marital status or whether the child is attending an educational institution. (Effective January 1, 2012).

- **Genetic Information (SB 559).** SB 559 adopts the genetic discrimination protection found in the Genetic Information and Nondiscrimination Act (GINA) and expands on the federal law by prohibiting discrimination based on genetic information in the areas housing, business services, emergency medical services, licensing qualifications, life insurance coverage, mortgage lending, and participation in state-funded or state-administered programs. (Effective January 1, 2012).
- **Guaranteeing Maternity Services (AB 210 and SB 222).** Under current law, healthcare service plans such as HMOs regulated by the Department of Managed Health Care are required to provide maternity services, but health insurers, regulated by the Department of Insurance are not. These two bills eliminate this loophole by requiring health plans sold in the individual and small group markets provide coverage for maternity services for all insureds. (Effective July 1, 2012).
- **Hospital Billing Transparency (SB 751).** SB 751 prohibits a contract by or on behalf of a plan or insurer and a licensed hospital, from containing a provision that restricts the ability of the plan or insurer to furnish information to end users concerning the cost range of procedures or the quality of services performed by the hospital or facility. (Effective January 1, 2012).
- **Organ Donation (SB 272).** This law requires that leave granted by employers for bone marrow or organ donation to be calculated in business days rather than calendar days. The one-year period is measured from the date the employee's leave begins and consists of 12 consecutive months. SB 272 also provides that the leave is not a break in the employee's continuous service for the purpose of his or her right to paid time off and employers may condition the initial receipt of leave upon the employee's use of a specified number of earned but unused days for paid time off. (Effective January 1, 2012).

FEDERAL TAX CONFORMITY AND PPACA COMPLIANCE

- **Additional Tax Conformity (AB 242).** Effective January 1, 2012, this bill conforms California law with specific tax provisions of Patient Protection and Affordable Care Act (PPACA):
 - a) Provides that, for taxable years beginning on or after January 1, 2013, qualified small employers can offer simple cafeteria plans to employees without violating the cafeteria plan nondiscrimination rules (IRC §125(j));
 - b) Allows small employers to offer exchange-participating health plans through cafeteria plans effective in 2014 (IRC §125(f));
 - c) Excludes from income certain qualified health care benefits provided after March 30, 2010, to a member of an Indian tribe, the member's spouse, or the member's dependents (IRC §139D); and,
 - d) Excludes from income, for taxable years beginning on or after January 1, 2010, certain payments received by an individual taxpayer under the National Health Service Corps loan repayment or forgiveness programs. (IRC §108(f)(4)).



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- **Department of Managed Health Care: Improving Consumer Assistance ([AB 922](#)).** AB 922 attempts to improve the Office of Patient Advocate's (OPA) ability to assist California health care consumers by providing a central, enhanced center to handle consumer questions and complaints. The bill also transfers the Office of Patient Advocate, and the Department of Managed Health Care (DMHC), to the Health and Human Services Agency. (Effective January 1, 2013 for DMHC and July 1, 2012 for OPA).
- **Dependent Coverage ([AB 36](#)).** As previously discussed in our Memorandum 2011-3, AB 36 provides both administrative and tax relief to California employers and their employees by the adoption of the federal rules regarding the tax treatment of adult dependents under age 27 electing group health care coverage pursuant to the PPACA. (Effective retroactive to March 30, 2010).
- **Health Benefit Exchange: Standardized Application and Renewal ([AB 1296](#)).** AB 1296 requires the California Health and Human Services Agency establish a standardized single application form and related renewal procedures, including the electronic verification process as required by PPACA, for Medi-Cal, the Healthy Families Program, the Exchange, and county programs. (Commencing January 14, 2014).
- **Ratio of Expenditures to Premium Revenues ([SB 51](#)).** SB 51 allows state regulators to enforce the Medical Loss Ratio provision contained in PPACA that requires insurers in the large group market to spend 85% of premium dollars on health care. Insurers in the small group and individual markets will be required to spend 80% of health care dollars on actually providing health care rather than for administration or profit. (Effective January 1, 2012).

We will keep you informed of other California legislation as it becomes relative to benefits.

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