

California Legislative Summary

**2017-2018 End Of Session
Legislative Summary**

November 2018

Keenan
HealthCare

Innovative Solutions. Enduring Principles.

CALIFORNIA LEGISLATIVE SUMMARY 2017-2018 END OF SESSION

The California Legislature completed its 2017-2018 session on August 31st and Governor Jerry Brown has signed or vetoed all of the legislation on his desk. The focus of the Legislature's attention this year reflected the broad issues that focused Americans' attention in 2018. The #MeToo and Times Up movements influenced the passage of legislation pertaining to sexual harassment and sexual assault. The national opioid crisis and focus on prescription drug pricing led to a number of new laws attempting to address those issues. And California has taken a lead in passing data privacy legislation that is widely seen as a harbinger of what other states are likely to do in coming years.

Through the course of the year, Keenan monitored more than three hundred bills affecting California hospitals, medical groups and other employers. Summarized below are the bills we watched that the Governor signed into law this year. All of them will go into effect on January 1, 2019, unless otherwise noted.

This summary has been formatted so that you may click on any of the links below and be taken directly to the legislation concerning that subject. In that way, we hope that this Briefing can be useful to many in your agency.

Please contact your Keenan HealthCare Account Manager, Claims Analyst or Risk Management Analyst if you would like more information on any of the legislation described below.

- Criminal History Checks
- Data Privacy/Cyber Security
- Day Care Facilities
- Dental, Vision and Specialized Health Plans
- Employment Discrimination
- Family/Sick/Other Leaves
- First Aid/AEDs
- Health Insurance Benefits
- Immigration Enforcement
- Individual and Small Group Health Insurance
- Insurance Claims Intercept
- Knox-Keene Health Care Service Plans
- Lactation Accommodations
- Life Insurance
- Long Term Care and Disability Insurance
- Mental Health
- Opioids

- Pharmacy Benefits
- Sexual Assault
- Sexual Harassment
- Special Districts
- Worker Injury Data
- Workers' Compensation - Disability Indemnity Payments
- Workers' Compensation - Fraud

Please contact your Keenan HealthCare Account Manager, Claims Analyst or Risk Management Analyst if you would like more information on any of the legislation described in this *Briefing*.

Keenan & Associates is not a law firm and no opinion, suggestion, or recommendation of the firm or its employees shall constitute legal advice. Clients are advised to consult with their own attorney for a determination of their legal rights, responsibilities and liabilities, including the interpretation of any statute or regulation, or its application to the clients' business activities.

TABLE OF CONTENTS

CRIMINAL HISTORY CHECKS	1
SB 1412 – APPLICANTS FOR EMPLOYMENT: CRIMINAL HISTORY	1
DATA PRIVACY/CYBER SECURITY.....	1
AB 375 – PRIVACY: PERSONAL INFORMATION: BUSINESSES	1
SB 1121 – CALIFORNIA CONSUMER PRIVACY ACT OF 2018	1
DAY CARE FACILITIES	2
AB 605 – CHILD DAY CARE FACILITIES: INFANT TO SCHOOL-AGE LICENSE.....	2
AB 2370 – LEAD EXPOSURE: CHILD DAY CARE FACILITIES.....	2
DENTAL, VISION, AND SPECIALIZED HEALTH PLANS	2
AB 1092 – HEALTH CARE SERVICE PLANS: VISION CARE SERVICES: FRAUD	2
AB 2499 – HEALTH CARE COVERAGE: MEDICAL LOSS RATIOS	2
SB 1008 – HEALTH INSURANCE: DENTAL SERVICES: REPORTING AND DISCLOSURES	2
EMPLOYMENT DISCRIMINATION	3
AB 2282 – SALARY HISTORY INFORMATION	3
FAMILY/SICK LEAVE/OTHER LEAVES	3
AB 2587 – DISABILITY COMPENSATION: PAID FAMILY LEAVE	3
SB 1123 – DISABILITY COMPENSATION: PAID FAMILY LEAVE.....	3
HEALTH INSURANCE BENEFITS	4
AB 1860 – HEALTH CARE COVERAGE: CANCER TREATMENT	4
AB 2941 – HEALTH CARE COVERAGE: STATE OF EMERGENCY	4
INDIVIDUAL AND SMALL GROUP HEALTH INSURANCE.....	4
AB 2472 – HEALTH CARE COVERAGE.....	4
SB 910 – CALWORKS: WELFARE-TO-WORK ACTIVITIES: HOURS.....	4
INSURANCE CLAIMS	5
AB 2802 – INSURANCE PAYMENTS: INTERCEPTION.....	5

KNOX-KEENE HEALTH CARE SERVICE PLANS	5
AB 2674 – HEALTH CARE SERVICE PLANS: DISCIPLINARY ACTIONS	5
SB 997 – HEALTH CARE SERVICE PLANS: PHYSICIAN TO ENROLLEE RATIOS.....	5
LACTATION ACCOMMODATIONS	5
AB 1976 – EMPLOYMENT: LACTATION ACCOMMODATION	5
LIFE INSURANCE	6
AB 1373 – INSURANCE	6
AB 2634 – LIFE INSURANCE	6
LONG TERM CARE AND DISABILITY INSURANCE	6
AB 2180 – LONG-TERM CARE AND DISABILITY INSURANCE	6
SB 1046 – INSURANCE: LONG-TERM CARE	6
MENTAL HEALTH	7
AB 2193 – MATERNAL MENTAL HEALTH	7
OPIOIDS	7
AB 1751 – CONTROLLED SUBSTANCES: CURES DATABASE	7
AB 1753 – CONTROLLED SUBSTANCES: CURES DATABASE	7
AB 2086 – CONTROLLED SUBSTANCES: CURES DATABASE	7
AB 2487 – PHYSICIANS/ SURGEONS: OPIATE-DEPENDENT PATIENT.....	8
SB 1109 – CONTROLLED SUBSTANCES: SCHEDULE II DRUGS: OPIOIDS.....	8
PHARMACY BENEFITS	8
AB 315 – PHARMACY BENEFIT MANAGEMENT	8
AB 2863 – HEALTH CARE COVERAGE: PRESCRIPTIONS.....	8
SB 1021 – PRESCRIPTION DRUGS	9
SEXUAL ASSAULT	9
AB 2302 – CHILD ABUSE/SEXUAL ASSAULT: MANDATED REPORTERS: STATUTE OF LIMITATIONS.....	9
AB 3109 – CONTRACTS: WAIVER OF RIGHT OF PETITION OR FREE SPEECH	9
SB 820 – SETTLEMENT AGREEMENTS: CONFIDENTIALITY.....	9

SEXUAL HARASSMENT	10
AB 2770 – PRIVILEGED COMMUNICATIONS: BY FORMER EMPLOYER	10
SB 1300 – UNLAWFUL EMPLOYMENT PRACTICES	10
SB 1343 – EMPLOYERS: SEXUAL HARASSMENT TRAINING.....	10
SB 224 – PERSONAL RIGHTS: CIVIL LIABILITY AND ENFORCEMENT	10
SPECIAL DISTRICTS.....	11
SB 929 – SPECIAL DISTRICTS: INTERNET WEB SITES	11
WORKER INJURY DATA	11
AB 2334 – OCCUPATIONAL INJURIES AND ILLNESS: EMPLOYER REPORTING REQUIREMENTS	11
WORKERS’ COMPENSATION—DISABILITY INDEMNITY PAYMENTS	11
SB 880 – WORKERS’ COMPENSATION	11
WORKERS’ COMPENSATION FRAUD.....	12
AB 2046 – WORKERS’ COMPENSATION INSURANCE FRAUD REPORTING	12

CRIMINAL HISTORY CHECKS

SB 1412 – Applicants For Employment: Criminal History

Current law prohibits an employer, whether a public agency or private individual or corporation, from asking an applicant for employment to disclose, from seeking from any source, or from utilizing as a factor in determining any condition of employment, information concerning participating in a pretrial or post trial diversion program or concerning a conviction that has been judicially dismissed or ordered sealed. This bill will clarify that these provisions do not prohibit an employer from asking an applicant about, or seeking from any source, information regarding a particular conviction of the applicant where conviction of a crime would legally prohibit someone from holding that job. This modification of California’s “ban the box” legislation should allow public employers to ask the questions they need to enable them to comply with other state laws in hiring employees for whom a prior criminal conviction is relevant.

DATA PRIVACY/CYBER SECURITY

This year, California enacted, and then promptly amended, a major consumer privacy bill which is likely to influence legislation in other states in the coming years. Most employers are still digesting the impact of AB 375 and SB 1121, both of which go into effect in 2020.

AB 375 – Privacy: Personal Information: Businesses

This bill enacts the California Consumer Privacy Act of 2018. Beginning January 1, 2020, the bill will grant a consumer a right to request a business to disclose the categories and specific pieces of personal information that it collects about the consumer, the categories of sources from which that information is collected, the business purposes for collecting or selling the information, and the categories of 3rd parties with which the information is shared. The bill also allows a consumer to request that a business delete his or her personal information. It will also require businesses to make disclosures about the information and the purposes for which it is used.

SB 1121 – California Consumer Privacy Act of 2018

SB 1121, the California Consumer Privacy Act of 2018 described above, under AB 375, requires, among other provisions, a business that collects personal information about a consumer to disclose the consumer’s right to delete personal information described above on its Internet Web site or in its online privacy policy or policies. This bill modifies that requirement by requiring a business that collects personal information about a consumer to disclose the consumer’s right to delete personal information in a form that is reasonably accessible to consumers and in accordance with a specified process.

DAY CARE FACILITIES

Many employers operate child day care centers onsite for their employees. The new laws below impose new requirements on those facilities.

AB 605 – Child Day Care Facilities: Infant To School-age License

This bill requires all day care centers to become licensed as child care centers by January 21, 2024. It requires the State Department of Social Services, in consultation with stakeholders, to adopt regulations on or before January 1, 2021, to create a child care center license to serve infant, toddler, preschool, and school age children. These regulations must include components for infant, toddler, preschool, and school age children, health and safety standards for children in care, and enhanced ability to transition children from one age group to the next.

AB 2370 – Lead Exposure: Child Day Care Facilities

This legislation requires a licensed child day care center located in a building constructed prior to 2010 to have its drinking water tested for lead contamination and notify parents of the results. It requires the facility to immediately make inoperable and cease using the affected fountains if the tests indicate elevated lead levels. It requires the State Water Resources Control Board (SWRCB) to post all test results received on its Web site. It also requires the California Department of Social Services (CDSS) to work in consultation with the SWRCB to adopt regulations for the testing of drinking water at licensed child care centers to ensure that the drinking water is lead free.

DENTAL, VISION, AND SPECIALIZED HEALTH PLANS

AB 1092 – Health Care Service Plans: Vision Care Services: Fraud

Annually, Vision Service Plan (VSP) reviews claims from more than 38,000 doctors nationwide serving nearly 80 million patients (over 18 million in California alone) using statistical extrapolation to identify potentially fraudulent claims. This bill allows VSP to continue to use statistical extrapolation and remain compliant with existing law, by requiring vision plans to use a statistically reliable method to investigate suspected fraud and recover overpayments, subject to oversight by the Division of Managed Health Care (DMHC).

AB 2499 – Health Care Coverage: Medical Loss Ratios

Current law in California requires every health plan to provide an annual rebate to each insured if the ratio of the amount of premium revenue expended by the plan on clinical services to the adjusted amount of premium revenue is less than 85% (80% for small group or individual plans.) Under existing law, all specialized health plans are exempt from this requirement. AB 2499 revises these rebate rules in California so that the exemption for specialized plans only applies to those that provide dental or vision services.

SB 1008 – Health Insurance: Dental Services: Reporting And Disclosures

This bill requires a health carrier that issues, sells, renews, or offers a health care service plan contract or insurance policy that covers dental services in California to utilize a uniform benefits and coverage

disclosure matrix, with specified contents. The bill requires the Department of Managed Health Care (DMHC) and the California Department of Insurance (CDI) to develop the uniform benefits and disclosure matrix in consultation with stakeholders. Once this benefits and disclosure matrix format is established, Keenan will update clients on what their employees can expect the new matrix to look like.

EMPLOYMENT DISCRIMINATION

AB 2282 – Salary History Information

In recent years, California and other states have begun limiting employers' ability to ask applicants about their salary history. The reasoning behind this move is that basing salary on past history can effectively perpetuate salary differentials that are based on factors other than experience or job performance. California law prohibits an employer from relying on the salary history information of an applicant for employment as a factor in determining whether to offer an applicant employment or what salary to offer an applicant, except in specific circumstances. An employer is required by law to provide the pay scale for a position to a job applicant, upon request. AB 2282 defines "pay scale," "reasonable request," and "applicant" for purposes of these provisions and specifies that these provisions do not prohibit an employer from asking about an applicant for employment's salary expectation for the position being applied for. This bill also authorizes an employer to make a compensation decision based on an employee's current salary as long as any wage differential resulting from that compensation decision is justified by one or more specified factors, including a seniority system or a merit system.

FAMILY/SICK LEAVE/OTHER LEAVES

AB 2587 – Disability Compensation: Paid Family Leave

Existing law, before January 1, 2018, deemed an individual to be eligible for family temporary disability benefits if, among other things, the individual was unable to perform his or her regular or customary work for a 7-day waiting period during each disability benefit period and prohibited payments for benefits during this waiting period. Existing law, on and after January 1, 2018, removes the 7-day waiting period for these benefits. Existing law authorizes an employer to require an employee to take up to two (2) weeks of earned but unused vacation before, and as a condition of, the employee's initial receipt of these benefits during any 12-month period in which the employee is eligible for these benefits. Existing law specifies that if an employer so requires an employee to take vacation leave, that portion of the vacation leave that does not exceed one (1) week is to be applied to the waiting period. This bill deletes that application of vacation leave to the waiting period, consistent with the removal of the 7-day waiting period for these benefits on and after January 1, 2018.

SB 1123 – Disability Compensation: Paid Family Leave

This legislation, which does not become effective until January 1, 2021, will expand the scope of the family temporary disability insurance (FTDI) program to allow paid time off to participate in a qualifying emergency related to the covered active duty or call to covered active duty of the individual's spouse, domestic partner, child or parent in the Armed Forces of the United States. This legislation will bring California in line with Washington and New York states in providing paid family leave for qualifying exigency military leaves under the Family Medical Leave Act (FMLA).

HEALTH INSURANCE BENEFITS

AB 1860 – Health Care Coverage: Cancer Treatment

Current law prohibits an individual or fully insured group health plan that provides coverage for prescribed, orally administered anticancer medications used to kill or slow the growth of cancerous cells from requiring an enrollee or insured to pay a total amount of copayments and coinsurance that exceeds \$200 for an individual prescription of up to a 30-day supply of a prescribed orally administered anticancer medication. Current law authorizes health care service plans to adjust that \$200 limit on January 1 of each year, to the extent that the adjustment does not exceed the percentage increase in the Consumer Price Index for that year. This bill extends the duration of this prohibition until January 1, 2024.

AB 2941 – Health Care Coverage: State of Emergency

This bill requires a fully insured health plan to provide its insureds who have been displaced by a state of emergency with access to medically necessary health care services. The bill requires a carrier, within 48 hours of a declaration of emergency by the Governor that displaces or has the immediate potential to displace enrollees or insureds, to file a notification with the appropriate department, containing specified information regarding how the plan or insurer is addressing the needs of its insureds during the state of emergency.

INDIVIDUAL AND SMALL GROUP HEALTH INSURANCE

While employers typically offer group health coverage, changes in the individual health insurance marketplace can still have an impact on the group health market. Changes to the individual market can impact whether an employee opts to obtain coverage through Covered California, as well as how Californians utilize the healthcare delivery system.

AB 2472 – Health Care Coverage

This bill requires the Council on Health Care Delivery Systems to prepare an analysis and evaluation to determine the feasibility of a public health insurance plan option as a way of offering more choices in the individual market.

SB 910 – CalWORKs: Welfare-To-Work Activities: Hours

This bill prohibits a health insurer from issuing, selling, renewing or offering a short-term limited duration health insurance policy for health care coverage in California. This bill will keep out what policymakers in Sacramento see as substandard coverage that undermines California's efforts to provide comprehensive coverage through Covered California. In enacting this law, California is moving in the opposite direction of the federal government, which has expanded the maximum time period of limited duration coverage so that it can compete directly with more expensive regular coverage.

INSURANCE CLAIMS

AB 2802 – Insurance Payments: Interception

This bill requires insurers to participate in a program to "intercept" insurance payments to parents that have unpaid child support obligations. Effective January 1, 2020, it will require insurers (but not self-insured plans) to identify and report claims for payment of at least \$1,000 for an economic benefit under a life insurance policy, disability income insurance policy, annuity, property and casualty insurance policy. This legislation does not apply to claims for benefits under a workers' compensation policy, which is already subject to information sharing obligations under Section 138.5 of the Labor Code.

KNOX-KEENE HEALTH CARE SERVICE PLANS

AB 2674 – Health Care Service Plans: Disciplinary Actions

AB 2674 requires the Department of Managed Health Care (DMHC) to review complaints of unfair payment patterns filed against Knox-Keene health care service plans by July 1, 2019, and at least annually thereafter. Sponsored by the California Medical Association (CMA), the intent of this legislation is to deter health plans from purposefully underpaying providers.

SB 997 – Health Care Service Plans: Physician to Enrollee Ratios

Current law requires a health care service plan to ensure that there is at least one full-time equivalent primary care physician for every 2,000 enrollees and authorizes the assignment of up to an additional 1,000 enrollees to a primary care physician for each full-time equivalent nonphysician medical practitioner supervised by that physician. This law was originally introduced to make California law consistent with the ACA definition of primary care physician and to assist with California's primary care provider workforce shortage. Under current law, these provisions were due to sunset on January 1, 2019. This bill deletes the repeal date, thereby continuing operation of these provisions indefinitely. This will help ensure the adequate access to primary care providers under health plans.

LACTATION ACCOMMODATIONS

In the last ten years, both the federal government and the state of California have enacted provisions to ensure that nursing mothers are provided with reasonable accommodations to express breast milk at work, if they wish to. This year, California expanded those requirements.

AB 1976 – Employment: Lactation Accommodation

Existing law requires every employer to provide a reasonable amount of break time to accommodate an employee desiring to express breast milk for the employee's infant child and requires an employer to make reasonable efforts to provide the employee with the use of a room or other location, other than a toilet stall, in close proximity to the employee's work area for the employee to express milk in private. This bill instead requires an employer to make reasonable efforts to provide an employee with use of a room or other location, other than a bathroom, for these purposes. The bill deems an employer to follow the requirement of providing a lactation location if it makes available a temporary lactation location that meets specified conditions, including that the temporary lactation location be used only for lactation purposes.

These changes align California law with protections for nursing mothers under federal law. Employers will need to ascertain and ensure that they are complying with this new standard.

LIFE INSURANCE

AB 1373 – Insurance

This bill provides that an employer-provided group life policy can include classes of former employees, including retirees, within the definition of “employees” eligible for coverage. This provision is intended to make California employer-provided group life coverage “portable,” in alignment with the model act adopted by the National Association of Insurance Commissioners (NAIC).

AB 2634 – Life Insurance

AB 2634 requires an insurer to provide a 90-day notice to the owner of a flexible premium life insurance policy prior to an increase in the cost of insurance or administrative charge and to provide an illustration or illustrations showing the impact on the policy values and necessary premium payments before and after the increase.

LONG TERM CARE AND DISABILITY INSURANCE

AB 2180 – Long-Term Care And Disability Insurance

This legislation clarifies the existing statutes governing long-term care insurance policies and life insurance policies that include an accelerated death benefit (ADB) feature. It provides that the insurer, at the insured's request, must provide a medical assessment to determine if the insured has a chronic illness and is eligible for benefits under a tax-qualified long-term care or life insurance ADB triggered by a chronic illness. It also sets forth the types of underwriting questions an insurer may ask when an applicant applies for ADB. Lastly, it updates the policies regarding the threshold for establishing eligibility for home care benefits and the provision of an alternate plan of care.

SB 1046 – Insurance: Long-Term Care

Existing law requires a policy or certificate to include a provision that gives the policyholder or certificate holder certain specified rights to reduce coverage and lower premiums. This bill provides that if a premium increases, a policyholder or certificate holder has a right to retain a policy or certificate while reducing coverage and lowering the premium and specifies options and information that an insurer would be required to provide under those circumstances. This bill enacts a provision from the model regulation adopted by the National Association of Insurance Commissioners (NAIC) and it is intended to protect the value of a policyholder’s benefits.

MENTAL HEALTH

AB 2193 – Maternal Mental Health

AB 2193 mandates that fully-insured health plans develop a maternal mental health (MMH) program to address mental health and behavioral issues by July 1, 2019. It also requires a licensed health care practitioner who provides prenatal or postpartum care for a patient to ensure the mother is offered screening or is appropriately screened for MMH conditions. According to a recent report, up to 20% of new or expectant mothers will experience a mental health disorder during pregnancy or the first year following childbirth, including depression, anxiety, and postpartum psychosis. Depression affects more than 16 million adults each year and maternal depression is the most common complication of pregnancy in the U.S.

OPIOIDS

Opioid abuse not only ruins lives, but it raises health care and workers' compensation costs to employers. This year, California enacted a series of bills intended to curb the opioid epidemic in the state.

AB 1751 – Controlled Substances: CURES Database

The California Department of Justice (DOJ) maintains the Controlled Substance Utilization Review and Evaluation System (CURES) database for prescribers to consult prior to prescribing a Schedule II-IV controlled substance. Use of the database is has been mandated under existing law since October 2, 2018. This bill requires the DOJ to adopt regulations by July 1, 2020 regarding the access and use of the information within CURES. The bill authorizes the DOJ to enter into an agreement with any entity operating an interstate data sharing hub, or any agency operating a prescription drug monitoring program in another state, for purposes of interstate data sharing of prescription drug monitoring program information, while ensuring that all access to data obtained from CURES complies with California law and meets the same patient privacy, audit, and data security standards employed and required for direct access to CURES.

AB 1753 – Controlled Substances: CURES Database

This legislation allows the Department of Justice (DOJ) to cap the number of security printers approved to manufacture regulated prescription pads and reduce the current number by regulation to no fewer than three. The bill also requires that all prescription pads be uniquely serialized, and that the DOJ link prescription pad serial numbers to corresponding records in the CURES prescription drug monitoring database when available.

AB 2086 – Controlled Substances: CURES Database

This bill will allow prescribers to access the CURES database for a list of patients for whom that prescriber is listed as a prescriber in the CURES database. This is intended to allow the prescriber to ascertain whether a stolen prescription pad was used to fraudulently write prescriptions.

AB 2487 – Physicians/ Surgeons: Opiate-Dependent Patient

AB 2487 authorizes a doctor to complete a one-time continuing education course of 12 credit hours in the subjects of treatment and management of opiate-dependent patients, including eight hours of training in buprenorphine treatment, or other similar medicinal treatment, for opioid use disorders as an alternative to the required CE course on pain management and the treatment of terminally ill and dying patients. Under federal law, doctors are only allowed to write prescriptions for buprenorphine if they have had at least eight hours of training for the treatment and management of patients with opioid use disorders and then applied for a waiver through the Drug Enforcement Administration (DEA). The DEA caps the number of patients a doctor with such a waiver can treat. This legislation is intended to raise the number of doctors who are eligible for such waivers, to increase the number of doctors who can use medicinal treatment for opioid use disorders.

SB 1109 – Controlled Substances: Schedule II Drugs: Opioids

This legislation requires warning labels for opioid prescription drug containers. It requires that the Opioid Factsheet for Patients be provided to athletes engaged in after-school youth sports and requires that prescribers discuss the dangers of opioid abuse and addiction with a minor patient or their parent or guardian prior to prescribing an opioid. It also requires that existing trainings for prescribers related to pain management include addiction risks associated with Schedule II drugs.

PHARMACY BENEFITS

According to polling conducted by the Kaiser Family Foundation, 80% of Americans say the cost of prescription drugs is unreasonable. California enacted three bills this year intended to address the cost of prescription drugs.

AB 315 – Pharmacy Benefit Management

This bill requires a pharmacy to inform a customer at the point of sale for a covered prescription drug whether the retail price is lower than the applicable cost-sharing amount for the prescription drug, unless the pharmacy automatically charges the customer the lower price. If the customer pays the retail price, the bill would require the pharmacy to submit the claim to the plan or insurer in the same manner as if the customer had purchased the prescription drug by paying the cost-sharing amount when submitted by the network pharmacy. The bill also provides that the payment rendered by an enrollee would constitute the applicable cost sharing under the plan. The bill imposes a duty of good faith and fair dealing on pharmacy benefit managers (PBMs) and requires PBMs to register with and report certain information to the Department of Managed Health Care (DMHC).

AB 2863 – Health Care Coverage: Prescriptions

AB 2863 limits the amount a fully-insured health plan may require an insured to pay at the point of sale for a covered prescription to either the lesser of the applicable cost-sharing amount or the retail price. The bill prohibits a fully-insured health plan from requiring a pharmacy to charge or collect a cost-sharing amount from an insured that exceeds the total retail price for the prescription drug and provides that the payment rendered by an insured would constitute the applicable cost sharing.

SB 1021 – Prescription Drugs

Current law prohibits the formulary or formularies for outpatient prescription drugs maintained by a health insurance carrier from discouraging the enrollment of individuals with health conditions and from reducing the generosity of the benefit for insureds with a particular condition. Current law, until January 1, 2020, provides that the copayment, coinsurance, or any other form of cost sharing for a covered outpatient prescription drug for an individual prescription shall not exceed \$250 for a supply of up to 30 days. Current law also requires a nongrandfathered individual or small group plan contract or policy to use specified definitions for each tier of a drug formulary. This bill will extend those provisions until January 1, 2024.

SEXUAL ASSAULT

In the wake of the #MeToo movement, the Larry Nasser sexual assault trial, and new revelations of past sexual abuse by clergy, California enacted a host of new laws to make it easier for victims of sexual assault to present claims and to testify in criminal proceedings.

AB 2302 – Child Abuse/Sexual Assault: Mandated Reporters: Statute of Limitations

Many healthcare workers are mandated reporters under California’s Child Abuse and Neglect Reporting Act (CANRA). This legislation will allow a case involving a mandated reporter’s failure to report a known or reasonably suspected incident of sexual assault to be filed at any time within five (5) years from the date of occurrence of the offense. This is an expansion of the statute of limitations for this misdemeanor violation, which had previously been one year.

AB 3109 – Contracts: Waiver of Right of Petition or Free Speech

AB 3109 provides that a provision in a contract or settlement agreement entered into on or after January 1, 2019, that waives a party’s right to testify in an administrative, legislative, or judicial proceeding concerning alleged criminal conduct or alleged sexual harassment on the part of the other party to the contract or settlement agreement, or on the part of the agents or employees of the other party, when the party has been required or requested to attend the proceeding pursuant to a court order, subpoena, or written request from an administrative agency or the Legislature, is void and unenforceable. While this bill will not outlaw non-disclosure agreements, it will limit their scope so that victims and witnesses cannot be prevented from testifying in legal or legislative proceedings when asked to do so.

SB 820 – Settlement Agreements: Confidentiality

This bill prohibits a provision in a settlement agreement that prevents the disclosure of factual information relating to certain claims of sexual assault, sexual harassment, or harassment or discrimination based on sex, that are filed in a civil or administrative action. The bill will make a provision in a settlement agreement that prevents the disclosure of factual information related to the claim, as described in the bill, entered into on or after January 1, 2019, void as a matter of law and against public policy. The bill also provides that a court may consider the pleadings and other papers in the record or any other findings of the court in determining the factual foundation of the causes of action specified in these provisions. Similar to AB 3109, this bill limits the ability of a defendant to require a non-disclosure clause as part of the

settlement of a civil suit. However, the scope of SB 820 is broader than AB 3109, applying to sex-based discrimination in addition to assault and harassment. Furthermore, it applies to all disclosures of factual information, not just testimony in a legal or legislative proceeding.

SEXUAL HARASSMENT

AB 2770 – Privileged Communications: By Former Employer

Current law makes certain publications and communications privileged and, therefore, protected from civil action, including certain communications concerning the job performance or qualifications of an applicant for employment that are made without malice by a current or former employer to a prospective employer. This bill will include among those privileged communications complaints of sexual harassment by an employee to an employer based on credible evidence and communications by the employer to interested persons and witnesses regarding a complaint of sexual harassment during an investigation and it authorizes an employer to answer whether or not a decision to not rehire a person is based on the employer's determination that the former employee engaged in sexual harassment. This bill is intended to free employers from the fear of a lawsuit if they share information regarding credible sexual harassment complaints made against a former employee.

SB 1300 – Unlawful Employment Practices

SB 1300 amends the anti-harassment provisions of the Fair Employment and Housing Act (FEHA) to expand potential employer liability to all forms of harassment by nonemployees. It allows (but does not require) employers to provide bystander training to employees. It also prohibits an employer, in exchange for a raise or bonus, or as a condition of continued employment, from requiring the execution of a release of a claim or right under FEHA or from requiring an employee to sign a nondisparagement agreement or other document that purports to deny the employee the right to disclose information about unlawful acts in the workplace, including sexual harassment. The bill would provide that an agreement or document in violation of either of those prohibitions is contrary to public policy and unenforceable. Finally, SB 1300 provides that a prevailing defendant is prohibited from being awarded fees and costs unless the court finds the action was frivolous, unreasonable, or groundless.

SB 1343 – Employers: Sexual Harassment Training

This legislation is the first major harassment training legislation since AB 1825. Effective January 1, 2020, it will require an employer who employs five (5) or more employees to provide at least two (2) hours of sexual harassment training to all supervisory employees and at least one (1) hour of sexual harassment training to all nonsupervisory employees once every two (2) years. The bill requires the Department of Fair Employment and Housing to develop or obtain 1-hour and 2-hour video training courses on the prevention of sexual harassment in the workplace and to post them on the department's Internet Web site.

SB 224 – Personal Rights: Civil Liability and Enforcement

Existing law establishes liability for sexual harassment when the plaintiff proves specified elements, including, among other things, that there is a business, service, or professional relationship between the plaintiff and defendant and there is an inability by the plaintiff to easily terminate the relationship. This

bill removes the requirement for a plaintiff to prove that there is an inability to easily terminate the relationship. As physicians, psychotherapists and dentists are among the types of professional relationship which the law presumes such a relationship exists, this lessening of the standard of proof for a plaintiff would make it somewhat easier to establish a claim for sexual harassment.

SPECIAL DISTRICTS

SB 929 – Special Districts: Internet Web Sites

Beginning on January 1, 2020, SB 929 will require every independent special district to maintain an Internet Web site that clearly lists contact information for the special district. Under this law, an “independent special district” is defined to include any special district having a legislative body all of whose members are elected by registered voters or landowners within the district, or whose members are appointed to fixed terms, and excludes any special district having a legislative body consisting, in whole or in part, of ex officio members who are officers of a county or another local agency or who are appointees of those officers other than those who are appointed to fixed terms. Hospital districts that meet this definition of independent special district will need to either comply or establish that they cannot comply under one of the enumerated reasons in the statute before January 1, 2020.

WORKER INJURY DATA

AB 2334 – Occupational Injuries and Illness: Employer Reporting Requirements

This legislation requires that, in the event the U.S. Occupational Safety and Health Administration (OSHA) eliminates the requirement for electronic submission of workplace injury and illness data, then the California Division of Occupational Safety and Health (Cal/OSHA) shall adopt regulations requiring employer electronic submission of this information to the Division.

WORKERS’ COMPENSATION—DISABILITY INDEMNITY PAYMENTS

SB 880 – Workers’ Compensation

This bill will, until January 1, 2023, authorize an employer, with the written consent of the employee, to deposit disability indemnity payments for the employee in a prepaid card account that meets specified requirements, including, among other things, allowing the employee reasonable access to in-network automatic teller machines. The bill will require employers to provide all necessary aggregated data on their prepaid account programs to the Commission on Health and Safety and Workers’ Compensation (CHSWC) upon request and will require the commission to issue a report on or before December 1, 2022, to the Legislature regarding payments made to those prepaid card accounts.

WORKERS' COMPENSATION FRAUD

AB 2046 – Workers' Compensation Insurance Fraud Reporting

The Workers' Compensation Insurance Fraud Reporting Act requires the Employment Development Department (EDD) to release, upon written request, to an authorized governmental agency, relevant information that the EDD may possess relating to any specific workers' compensation insurance fraud investigation. The act authorizes an authorized governmental agency that is provided with information pursuant to those provisions to release or provide that information in a confidential manner to any other authorized governmental agency for purposes of investigation, prosecution, or prevention of insurance fraud or workers' compensation fraud. AB 2046 will require the authorized governmental agency that is provided with information pursuant to those provisions to release or provide that information upon request, unless it would violate federal law or otherwise compromise an investigation.