

State Legislative Brief

New California Laws 2008-3



The California Legislature has passed numerous new laws in 2007 effecting group health plans and plan sponsors. The purpose of this memorandum is to alert our clients to the impact of these new laws.

Unpaid Leave

AB 392 requires that a qualified employer allow a qualified employee to take up to 10 days of unpaid leave during a qualified leave period. For purposes of this law, the following definitions apply:

- **Qualifying employer:** All private employers and public agencies with 25 or more employees.
- **Qualifying employee:** The spouse of a qualifying member of the Armed Forces who works an average of 20 or more hours per week as an employee and who provides reasonable notice to the employer requesting unpaid leave. The employee must submit written documentation certifying that the qualifying member will be on leave during the time the leave is requested.
- **Qualifying member:** A member of the Armed Forces, National Guard or Reserves, who has been deployed to a current combat zone.
- **Qualifying leave period:** The period during which the qualifying member is on leave from deployment in an active combat theater.

Employers may not use the leave for this purpose as an offset against other employee rights to take time off. The law is effective immediately. The law does not address its potential applicability to domestic partners who serve in the military. However, there is a strong argument that the law would apply to domestic partners in light of the California Domestic Partner Act effective January 1, 2005.

This law is effective immediately.

Healthy Care Treatment

AB 1324 will prevent health care service plans (Knox-Keene) and health insurers from rescinding or modifying pre-authorized treatment or services provided by health care providers for any reason, including its subsequent rescission, cancellation, or modification of the insurance contract or its subsequent determination that it did not make an accurate determination of eligibility.

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It is important to note that this law will not apply to self-funded health plans, to the extent they are not subject to regulation by the Department of Managed Health Care or the Department of Insurance. It is also important to note that carriers cannot cite mistakes in eligibility as a reason to reverse its decision to cover a treatment or service otherwise payable under the plan.

Suggested Actions: Plan sponsors should audit eligibility lists on a regular basis to assure that benefits do not accrue to ineligible individuals (e.g. former employees).

This law is effective as of January 1, 2008.

Protected Health Information

AB 1298 expands the provisions of the confidentiality of Medical Information Act as well as other California personal information privacy laws to apply to electronic health information held by any organization regarding any California resident.

In brief, the law expands the definitions of personal information to include “medical information” and “health insurance information.” “Medical information” is defined as any information regarding an individual’s medical history, mental or physical condition, or medical treatment or diagnosis by a healthcare professional. “Health insurance information” is an individual’s health insurance policy number or subscriber identification number, any unique identifier used by a health insurer to identify the individual, or any information in an individual’s application and claims history, including any appeals records.

It also expands coverage to businesses who maintain medical information for use by individuals or providers, such as the recently popular medical benefit organizers found on the internet. The new law contains both civil and criminal penalties.

The new law will require the holders of electronic medical information to notify all effected California residents in the event of a breach (or reasonable suspicion of a breach). The entity holding the electronic medical data need not be located in California, and, of course, includes employers maintaining health plan data in an electronic unencrypted format. Due to the significance of this new law, we will prepare a more detailed update on its terms.

Other Law Effective January 1, 2008

1. **AB 895** will require insurers and health care service plans (Knox-Keene) to include a complete statement of its coordination of benefits provisions in its booklet certificates or evidence of coverage (EOC). Additionally, plans which are primary would pay its maximum benefit; plans which are secondary are to pay the lesser of the amount it would have paid as primary and the enrollee’s total out of pocket cost payable under the primary dental plan. This law is effective January 1, 2008.
2. **SB 192** extends the requirement that Mexican pre-paid health care plans doing business in California (specifically San Diego and Imperial Counties) must be licensed by the Department of Managed health Care. SB 192 extends the provisions of an exiting law, set to expire January 1, 2008, for an indefinite period of time. These plans apply solely to Mexican nationals legally employed in the two counties.

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3. **SB 443** liberalizes existing law to allow tissue and sperm transplantation where such tissue or sperm has been collected from HIV positive donors, subject to certain prophylactic treatments.
4. **SB 962** requires pregnant women to receive information about options of donating umbilical cord blood. AB 34 establishes an umbilical cord blood collection program.

We will keep you informed of any additional information regarding these laws.

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