Roundup of selected state health developments, third-quarter 2022

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Nov. 4, 2022

In this article

States revised, clarified and expanded leave mandates during the third quarter of 2022, with developments in California, Colorado, Connecticut, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Oregon, Rhode Island, Washington and Washington, DC. Changes affected paid family and medical leave (PFML), paid sick leave, unpaid leave and even paid military leave. California led the way in insurance coverage mandates as legislative sessions ended throughout the US. Regulators in Arkansas and Louisiana focused on additional pharmacy benefit manager (PBM) restrictions. California extended the period for COVID-19 supplemental paid sick leave and insurance coverage of COVID-19 testing. Washington finalized long-term care (LTC) insurance rules. Philadelphia adopted a commuter benefit mandate.

Leave laws

During the third quarter, several jurisdictions focused attention on paid and unpaid time-off mandates. California and Washington, DC, expanded existing PFML programs, with California focusing on benefit amounts and the district focusing on duration. Regulatory activity occurred in three states starting programs next year, with Colorado and Oregon implementing mandatory programs and New Hampshire offering a voluntary program. Other states like Massachusetts, New York and Rhode Island announced 2023 contribution rates and maximum benefits. A pending Michigan case may change major aspects of its accrued paid sick leave requirement. California increased bereavement leave benefits and modified its paid military leave rules in response to wildfires. Connecticut and New Jersey revised general leave notice requirements.

PFML

California

California's current wage replacement rates for paid family leave (PFL) and state disability insurance (SDI) will continue through the end of 2024.

Beginning in 2018, PFL/SDI benefits temporarily increased from 55% to 60%–70% of wages, depending on income. Originally set to expire at the end of 2021, this temporary provision was previously extended through 2022. A new law (2022 Ch. 878, SB 951) keeps the current rates in effect until 2025, when weekly benefits will increase to 90% of wages for workers earning up to 70% of the state average weekly wage (SAWW), and either 70% of wages or 65% of the SAWW for higher earners. Weekly benefits will still be subject to a maximum.

For details on COVID-19-related leave in California, see the COVID-19 section below.

Colorado

With contributions under Colorado's Family and Medical Leave Insurance (FAMLI) program starting in January 2023, the FAMLI Division is focusing on employer-offered equivalent private plans (insured or self-funded). Because regulations were not finalized until Nov. 1, approval of some private plans may not occur before 2023. As a result, the FAMLI Division has adopted a temporary procedure for employers seeking private plan approval:

1. Register with the FAMLI Division via MyFAMLI+ Employer.
2. Collect FAMLI premiums starting in January 2023. Employees are liable for up to half of the 0.9% payroll tax.
3. Remit premiums and wage reports on a quarterly basis.
4. Receive reimbursement from the FAMLI Division, less a private plan administration fee, once the private plan is approved.
5. Discontinue premium remittance and wage reports.

The private plan application deadline is Oct. 31, 2023, for approval before Jan. 1, 2024. Private plans approved after Jan. 1, 2024, will not be refunded.

In August, Colorado finalized rules on benefits and employer participation requirements (premium rules were finalized in January, but amendments to those rules are currently pending). Highlights of the new rules include:

- Employers — including those seeking approval of private plans — must register with the FAMLI Division via MyFAMLI+ Employer by Jan. 1, 2023.

- Leave benefits for qualifying conditions are available starting in 2024, even if the condition's onset occurs in 2023.
- Family members include those with a "significant personal bond," determined by a "totality of the circumstances" and based on factors like shared financial responsibility, emergency contact notifications and cohabitation.
- Employers' quarterly wage reports are subject to a late penalty of $50 per employee.

Massachusetts

Massachusetts has posted 2023 PFML contribution rates. The 2023 contribution rates will drop from the current 0.68% to 0.63% of wages up to the Social Security maximum wage base. Employers with 25 or more Massachusetts employees will contribute 0.312% (down from 0.336% in 2022); employees will contribute 0.318% (down from 0.344% in 2022). Employers with fewer than 25 workers in the state do not have to contribute but must collect and remit employee contributions. The 2023 maximum weekly benefit (based on the SAWW) is $1,129.82.

The Department of Family and Medical Leave (DFML) has confirmed that a recent budget law (2022 Ch. 126, HB 5050) does not allow employees to use paid time off (PTO) to top off PFML benefits during an approved leave. However, recent DFML guidance notes that employees may use PTO during the seven-day waiting period before benefits begin and for time off on scheduled workdays during intermittent or reduced-schedule leave.

For more details, see 2022 state paid family and medical leave contributions and benefits (Jan. 19, 2022).

New Hampshire

New Hampshire has selected MetLife as the preferred insurer for voluntary PFML benefits that start in 2023. Under the Granite State Paid Family Leave Act, the program will provide up to 60% wage replacement for up to six weeks of leave to eligible employees needing to care for their own or a family member with a serious medical condition, bond with a new child, manage a qualifying military exigency or care for an injured or ill service member.

Employers do not have to participate but may do so voluntarily by contracting directly with MetLife or a different insurance company or by self-insuring an equivalent plan. Employers that purchase a plan with MetLife will be eligible to receive a Business Enterprise Tax (BET) credit for up to 50% of the premium paid by the employer on behalf of employees. Employers can opt for a plan providing 12 weeks of leave, but the tax credit will only be available for the equivalent of six weeks of premiums.

If an employer does not participate in the program, individual employees can elect coverage through MetLife and pay weekly premiums not exceeding $5. Employers with 50 or more employees (nationwide) will have to collect and remit premiums for employees who enroll in the program. Those employers also will have to provide job protections and continue group health plan coverage for employees on leave.

Employer enrollment will begin Dec. 1, and open enrollment for employees of nonparticipating employers will run from Jan. 1, 2023, through March 2, 2023. FAQs provide additional information. For more details, see New Hampshire enacts voluntary paid family leave program (July 15, 2021).

New York

New York has posted rates for 2023 PFL benefits. Employee contributions will decrease from 0.511% to 0.455% of wages, up to an annual maximum employee contribution of $399.43 (down from $423.71).

For qualifying leaves starting in 2023, eligible employees will continue to receive 67% of their average weekly wage for up to 12 weeks. The annually adjusted maximum will rise to $1,131.08 per week (up from $1,068.36 per week). Qualifying leave will continue to include leave taken because an employee or the employee's minor dependent child is under a COVID-19 quarantine or isolation order.

Oregon

Starting on Jan. 1, 2023, contributions for Oregon's PFML insurance (PFMLI) will be 1% of wages, as posted by the Oregon Employment Department (OED). Contributions will be capped at a maximum wage base of $132,900, indexed annually using the Consumer Price Index for All Urban Consumers, West Region. Employees will contribute 60%, and employers with 25 or more employees will contribute 40%. Small employers will be eligible for an assistance grant if they contribute. Otherwise, the state will fund the remaining 40% for small-employer PFMLI. PFMLI benefits will start on Sept. 3, 2023.

OED has launched a portal (Frances Online) for equivalent plan applications. Equivalent plans require OED approval and must provide benefits equal to or greater than state-mandated benefits. Employers seeking approval must file a declaration of intent by Nov. 30, 2022, begin withholding contributions on Jan. 1, 2023, and complete the application by May 31, 2023. The state will refund premiums remitted once the equivalent plan is approved.

Rhode Island

Rhode Island updated its maximum and minimum weekly benefit for temporary disability/caregiver leave, effective July 1. The maximum benefit is $1,007 (up from $978); the minimum benefit remains unchanged at $114. Rhode Island's 2022 taxable wage base remains $81,500, with an employee contribution of 1.1% of wages. Employers do not need to contribute.

Washington

Washington's Employment Security Department (ESD) adopted PFML rules effective Sept. 8 to implement provisions from a law (2022 Ch. 153, SB 5532) that took effect June 9:

- **Postnatal period.** Leave in the first six weeks after birth is categorized as medical leave, unless the employee chooses family leave for that period. Under amended regulations (effective Sept. 8), only an employee giving birth is eligible for postnatal medical leave. The only documentation required is a birth certificate, a healthcare provider's birth certification or other documentation verifying the birth.

- **Bereavement leave**. Employees may take up to seven calendar days of paid family leave after a miscarriage or the death of a child with whom the employee would have been or were bonding after birth or adoption. Under the same amended regulations (also effective Sept. 8), the only documentation required after a child's death is a document that substantiates the death.
- **Parties to collective bargaining agreements (CBAs)**. Under amended regulations, a PFML exemption for CBAs in effect on Oct. 19, 2017, expires at the end of next year.

For more details, see Washington enacts numerous benefit, insurance and related laws (April 14, 2022).

Washington, DC

Washington, DC, passed two measures related to its universal paid leave law. First, an emergency budget law (2022 Act 24-470) expands the duration of paid leaves, effective for claims filed on or after Oct. 1. The maximum duration of qualifying paid parental, family and medical leave is now 12 weeks — plus another two weeks of prenatal leave — in a 52-workweek period.

Second, emergency legislation (2022 Act 24-542) expands a 2021 law prohibiting short-term disability (STD) policies from offsetting or reducing benefits to reflect estimated or actual UPL benefits. The emergency law broadens this prohibition to include STD policies issued outside of the district. Although the emergency law was set to expire on Oct. 25, a follow-up emergency bill (2022 Act 24-586) extends the extraterritorial provision until Jan. 23, 2023. In addition, 2022 Act 24-586 will make the offsetting ban permanent and will presumably take effect after the required 30-day congressional review period, which started on Oct. 21. In Washington, DC, emergency legislation bypasses the standard 30-day congressional review period but is valid for 90 days at most.

Paid sick leave

Michigan

A recent state court decision voided legislative changes to the Earned Sick Time Act and the Improved Workforce Opportunity Wage Act. The judge concluded the "adopt-and-amend" approach — under which the legislature adopted proposed ballot initiatives and then substantially changed them during the same session — violated the state constitution. However, the court stayed its decision, now on expedited appeal to the Michigan Court of Appeals, although a decision is not anticipated until late December at the earliest. The stay expires on Feb. 19, 2023, but additional stays are possible.

Here are the major differences in the two versions of the paid sick leave law:

Leave requirement	Amended (and current) law	Original law
Source	Enacted by state legislature	Originally on ballot
Accrual rate	One hour per 35 hours worked, capped at 40 hours per year	One hour per 30 hours worked, with no cap
Annual use cap	40 hours	72 hours (10 or more employees; 40 hours (fewer than 10 employees)
Carryover of unused leave	Limited to 40 hours	Unlimited carryover required
Exempt employees	Overtime-exempt employees under the federal Fair Labor Standards Act; part-time, temporary/seasonal or variable-hour employees; and CBA-covered employees	CBA-covered employees until the CBA expires
Small-employer exception	Yes, not applicable to employers with fewer than 50 employees	No
Preemption of local laws	Local laws preempted	Local laws permitted
Prohibition on employer retaliation	No	Yes

The current law remains in effect for now, but if the lower court's decision is affirmed on appeal, the law will revert to its original terms. For more details on the Michigan paid sick leave requirement currently in effect, see Roundup: State accrued paid leave mandates (April 29, 2022).

Provisions applicable to unpaid and paid leave

California

Two laws expand the California Family Rights Act (CFRA), effective Jan. 1, 2023. The first law (2022 Ch. 767, AB 1949) allows eligible employees to take up to five days of bereavement leave within three months of a family member's death. The leave is unpaid, unless the employer offers paid bereavement leave or the employee chooses to use accrued paid leave like sick or vacation time. CFRA applies to employers with five or more employees nationwide. Eligible employees must work in California and be employed for at least 30 days. Employers may request documentation.

The second law (2022 Ch. 748, AB 1041) expands the definition of "family member" to include blood relatives and anyone whose association with the employee is the equivalent of a family relationship. Employers can limit eligible employees to one "designated person" as a family member per year. This

expanded definition of family member also applies to the state's paid sick leave law but *does not apply* to the state's paid family leave law.

Connecticut

Connecticut's Department of Labor (CTDOL) finalized amendments to the state's Family and Medical Leave Act (CTFMLA) regulations, effective Aug. 3. Highlights include these changes:

- Expanding the definition of a family member to include anyone whose close association with an employee is equivalent to a family relationship, validated by a "simple written statement" signed by the employee
- Clarifying that client employers in a joint employment relationship with a professional employer organization (PEO) are typically the primary employer responsible for providing CTFMLA leave
- Confirming that leave is available before a child's actual placement or adoption and covers travel abroad to complete an adoption
- Addressing — for the first time – qualifying exigency leave and military caregiver leave, including certification requirements

In addition, CTDOL and the Connecticut Paid Leave Authority recently issued a general paid leave notice template for employer use by the initial July 1 deadline. This notice summarizes the CTFMLA and the Connecticut Paid Leave Act (CTPL). Going forward, employers must provide the notice to Connecticut employees on hire and annually. Employers may provide this notice separately or include it in an employee handbook or other written employee guidance. Electronic delivery is sufficient.

For CTPL, the maximum weekly benefit is based on a multiple (60x) of the state minimum wage. Because the minimum wage will increase from $14 to $15 per hour on June 1, 2023, the maximum weekly benefit will increase at the same time from $840 to $900. Starting Jan. 1, 2024, the state's minimum wage (and PFML maximums) will align with the federal DOL's Employment Cost Index.

New Jersey

New Jersey's Division on Civil Rights (DCR) recently finalized regulations related to the poster requirement under the Family Leave Act (FLA), which provides job and health benefit protections during paid and unpaid family leaves. The FLA poster display and distribution requirements apply to all nonfederal governmental employers regardless of size and private employers with at least 30 employees worldwide. Employers must provide the poster to employees annually and on request. Delivery may be by internet or intranet posting, email or in print. The regulations took effect Aug. 1.

Paid military leave

California

California has revised its military leave law (2022 Ch. 384, SB 939) to redefine "active duty" for state employees, who can take up to 30 days of paid military leave. Under the expanded definition, state employees in the National Guard may use paid military leave for required inactive duty training. For other inactivity duty obligations, these employees may continue to use vacation or paid time off. This law arose primarily due to a significant increase in National Guard deployments for state emergencies during California's fire season (June–December). This law does not affect nongovernmental or local governmental employers. The law took effect Sept. 17.

Insurance

California passed a flurry of legislation, including insurance mandates addressing issues like contraceptives, gender-affirming services, telehealth, mental health, prescription drugs and abortion. California also finalized rules related to the Summary of Dental Benefits and Coverage matrix (SDBC), with different effective dates depending on plan type. Other highlights include Rhode Island's special enrollment for pregnant women and Washington, DC's mandated coverage of medically necessary foods. Massachusetts set minimum creditable coverage (MCC) cost-sharing rates for 2023.

California

As the state's legislative session drew to a close, California passed six major laws applicable to insured plans administered by the California Department of Insurance (CDI) and healthcare service plans, including HMOs administered by the Department of Managed Health Care (DMHC). These laws do not apply to self-funded plans. California insurance laws do not apply on an extraterritorial basis to fully insured plans situsd in another state, as long as both the employer's principal place of business and a majority of employees are located outside of California. See the COVID-19 section below for additional details related to insurance coverage mandates.

Contraceptive coverage. The Contraceptive Equity Act (2022 Ch. 630, SB 523) expands the current contraceptive coverage requirement for plans (including Medi-Cal) to include over-the-counter birth control at an in-network pharmacy without a prescription, voluntary tubal ligation and vasectomies, without cost sharing for all enrollees. Plans may not impose prior authorization, step therapy or other utilization controls. Certain exclusions are available for religious employers. The expanded coverage requirements take effect for plan years starting in 2024.

Gender-affirming care. A law (2022 Ch. 822, SB 923) addresses gender-affirming services in plans (including Medi-Cal plans). Plans must implement two new requirements by March 1, 2025 (or within six

months of CDI/DMHC guidance and within 12 months of guidance from the California Health and Human Services Agency (CHHSA), if those dates fall before March 2025):

- Include in the provider directory (and through the plan's call center) in-network healthcare providers who provide a wide range of gender-affirming services
- Offer evidence-based cultural competency training for all plan staff who interact with enrollees, particularly those who identify as transgender, gender diverse or intersex

Telehealth dental care. A law (2022 Ch. 525, AB 1982) does not require dental plans to cover telehealth but implements notice and reporting requirements for dental plans that include telehealth from a third-party corporate telehealth provider (i.e., a provider available exclusively through a telehealth platform with no physical location). Effective Jan. 1, 2023, these plans must:

- Notify enrollees how third-party telehealth visits affect benefit limitations, including frequency limitations and annual maximums
- Report certain utilization data to CDI for insured plans and to DMHC for healthcare service plans

Maternal mental health. A new law (2022 Ch. 618, SB 1207) pushes the deadline for plans (including Medi-Cal) to offer a maternal mental health program promoting quality and cost-effective outcomes and addressing postpartum depression. The new deadline is July 1, 2023, four years from the original July 1, 2019, date.

Prescription drug disclosures. A law (2022 Ch. 590, AB 2352) requires plans to furnish specific information about a drug on request by an enrollee or a prescribing provider. Plans must provide information in "real time" and ensure the information is current (within one business day of any change). Required information includes eligibility for the drug, cost sharing, applicable utilization-management requirements and formulary alternatives. This requirement takes effect for plan years starting on or after July 1, 2023.

Religious objection disclosures. A law (2022 Ch. 562, SB 2134) applies to religious employers that exclude abortion and/or contraceptive coverage. Effective Jan. 1, 2023, these employers must disclose such exclusions in writing at initial enrollment and annually. The notice also must describe abortion and contraception benefits or services available at no cost through the newly established California Reproductive Health Equity Program.

Dental plan disclosures. Under a 2018 law (2018 Ch. 933, SB 1008), fully insured plans and healthcare service plans (including DHMOs) must provide a summary of dental benefits and coverage disclosure matrix (SDBC). The original law requires covered plans or employers sponsoring a covered group plan to provide an SDBC before initial enrollment (as part of application materials), annually before open enrollment (at least 30 days before plan renewal) and on request. Plans or plan sponsors also must communicate any SDBC changes before the revised coverage terms take effect. The SDBC may

be delivered via paper, email or posting on a prominent and accessible location of the plan's website. CDI and DMHC have clarified the effective dates for this disclosure, which vary by plan type:

- **Insured plans.** CDI adopted emergency regulations on Jan. 28, 2021, so disclosure requirements for fully insured dental plans first went into effect for policy years on and after Jan. 28, 2022. CDI's requirements apply for open enrollment periods occurring in 2022 for a plan year starting in 2023.
- **Healthcare service plans (HMOs).** DMHC adopted emergency regulations Sept. 1 and confirmed the effective date is Jan. 1, 2023. Employers may (but are not required to) comply with the notice requirements before this date, even for open enrollment periods occurring in 2022 for a plan year starting in 2023.

Copies of the SDBC template are in both sets of regulations and should be available from insurers and HMO vendors, which must make the completed matrix available when issuing the completed policy to plan sponsors.

Delaware

A Delaware law (2022 Ch. 388, HB 303) requires fully insured individual and group plans to provide a predeductible annual behavioral health "well check" with a clinician who has at least a master's degree. State Medicaid and governmental plans must also comply. Whether the law applies to self-funded plans is unclear. Although the law's definition of "carriers" that must comply includes third-party administrators, ERISA generally preempts state laws for self-funded plans.

Effective Jan. 1, 2024, the mandated wellness checks must include:

- Review of medical history
- Evaluation of adverse childhood experiences
- Use of appropriate screening tools
- Anticipatory behavioral health guidance

The law does not make an exception for high-deductible health plans (HDHPs) paired with health savings accounts (HSAs), but the wellness coverage may qualify as preventive care that HDHPs can cover on a predeductible basis without affecting an HSA participant's eligibility to make or receive contributions. Plans may impose cost sharing (coinsurance and copayments), allowable charge limitations, licensing requirements, and similar restrictions.

Massachusetts

Massachusetts has announced 2023 maximum deductibles and maximum out-of-pocket (MOOP) costs for a plan to meet MCC standards. The state's individual mandate requires residents to maintain MCC or face a potential tax penalty. Plan sponsors (or their vendors) must determine and disclose to plan participants and the Department of Revenue whether coverage meets MCC standards.

MCC deductibles	2023	2022
Individual-tier deductible	$2,850	$2,750
Individual-tier separate prescription deductible*	350	340
Family-tier deductible	5,700	5,500
Family-tier separate prescription deductible*	700	680

*The overall deductible maximum still applies to plans with a separate prescription deductible.

MCC MOOPs	2023	2022
Individual-tier MOOP	$9,100	$8,700
Family-tier MOOP	18,200	17,400

In addition, a Massachusetts law (2022 Ch. 127, HB 5090) requires coverage for abortion and abortion-related care under fully insured plans, HMOs, the state governmental health plan, nonprofit hospital service corporations, medical service corporations and the state Medicaid program (MassHealth). These services are not subject to cost sharing — including deductibles, coinsurance and copayments — unless required to preserve an HDHP's HSA-qualified status. The law also contains health-related protections for gender-affirming care not applicable to insurance, other than a nondiscrimination provision for medical malpractice insurance.

The insurance-related provisions take effect for 2023 plan years. The mandate does not apply to self-funded plans or fully insured plans sitused in another state.

Michigan

Effective Sept. 22, a Michigan law (2022 Pub. Act 119, SB 447) requires insurers to provide detailed claims utilization and cost information within 30 days of a request from an employer in the large-group market. The scope includes prescription drug data but excludes health information protected by the federal Health Insurance Portability and Accountability Act (HIPAA). The relevant period to cover in the disclosure is 24 months (or shorter if a plan has been in effect for less time).

Requesting employers must provide a signed nondisclosure agreement to the insurer and may not request the disclosure more than once per year. Notwithstanding the nondisclosure agreement, large employers must disclose the same information to any carrier or administrator solicited to provide benefits or administrative services.

The law does not apply to self-funded plans or on an extraterritorial basis to fully insured plans sitused in another state.

Rhode Island

A Rhode Island law (2022 Ch. 145 and Ch. 146, SB 2548 and HB 7454) requires fully insured plans to allow women to enroll in health coverage at any time during pregnancy, effective retroactively to the first of the month in which they apply. This special enrollment right does not preempt state or federal law and does not extend to other covered family members. Individual, small-group and large-group insured plans, including plans available on the state exchange (HealthSource RI), must comply. The law takes effect for 2023 plan years.

Under existing law, the state's insurance laws generally apply to fully insured plans sitused in another state when they cover Rhode Island residents.

Washington, DC

The Medically Necessary Foods Coverage Act (2022 Act 24-487) requires fully insured plans issued in Washington, DC, and multiple employer welfare arrangements in the city to cover medically necessary foods for the following diseases or conditions:

- Inflammatory bowel disease (including Crohn's disease and ulcerative colitis)
- Gastroesophageal reflux disease that is nonresponsive to standard medical therapies
- Malabsorption due to liver or pancreatic disease
- Immunoglobulin E (IgE) and non-IgE-mediated allergies to food proteins
- Food protein-induced enterocolitis syndrome
- Eosinophilic disorders
- Impaired absorption of nutrients caused by certain disorders
- Inherited metabolic disorders
- Any other diseases or conditions determined by the mayor through rule-making

Cost sharing and dollar, durational, and treatment limits must be in parity with other illnesses, conditions and disorders.

Self-funded plans and federal governmental plans are exempt. The law takes effect for 2023 plan years.

Prescription drugs

California will help manufacture some prescription drugs. Arkansas and Louisiana regulations clarified recent laws restricting PBM activities.

Arkansas

The Department of Insurance added Section 10 to the PBM rules, as directed by last year's law (2021 Act 665, HB 1804), which revised the Arkansas Pharmacy Audit Bill of Rights to:

- Limit PBMs' ability to recoup overpaid claims
- Cap audit frequency (no more than twice per calendar year) and scope (no more than 25 randomly selected prescriptions)
- Provide a frequency exception for investigations of insurance fraud, willful misrepresentation or abuse

The rules took effect Sept. 29. The law and rules apply to PBMs operating on behalf of fully insured and self-funded plans, including governmental plans. Based on existing law, Arkansas applies its PBM laws to all healthcare payors in the state, a broad scope that arguably includes fully insured plans sitused in another state to the extent those plans cover Arkansas residents.

For more details, see Roundup of selected state health developments, second-quarter 2021 (July 30, 2021).

California

CHHSA now has additional authority to address generic prescription drug and insulin supplies under a new law (2022 Ch. 838, SB 838). The California Affordable Drug Manufacturing Act of 2020 requires the CHHSA to enter into partnerships to increase patient access to affordable drugs. The amended 2022 law requires CHHSA to:

- Establish metrics to measure progress and efficiency and include those metrics in partnership contracts
- Enter into a partnership to produce at least one form of insulin that will be available at production and dispensing costs, regardless of the viability of a manufacturing pathway (which was previously a requirement)
- Consider guaranteed priority access to insulin for the state, guaranteed manufacture of at least four high-priority drugs with the greatest impact on lowering costs for patients in the state, and the creation of a state brand identifying biosimilar insulin and generic prescription drugs when entering partnerships
- Develop a California-based manufacturing facility for insulin once the legislature authorizes financing

The amendments take effect Jan. 1, 2023.

Louisiana

The Department of Insurance updated its prescription drug formulary rules to let fully insured plans modify a formulary during a plan year. The rules previously allowed formulary changes only at renewal, with at least 75 days' notice to the insurance commissioner. Now, midyear changes are permissible if three conditions are met:

- The drug cost increases more than $300 per prescription or refill, with an increase in the wholesale acquisition cost of at least 25% in the prior 365 days.
- An insurer provides at least 30 days' notice to the insurance commissioner.
- A plan has an exception process for physicians to address continuity-of-care concerns.

The rules apply to individual and group insured coverage. Under existing law, Louisiana applies its insurance and PBM laws on an extraterritorial basis to fully insured plans sitused in another state when they cover Louisiana residents.

These rules took effect Sept. 20.

COVID-19

California is one of a few states still addressing COVID-19 concerns. The state recently enacted laws mandating coverage of COVID-19 testing and related services beyond the federal Department of Health and Human Services' public health emergency (PHE) and extending supplemental paid sick leave (SPSL).

Insurance

A California law (2022 Ch. 545, SB 1473) extends required COVID-19-related coverage for insured plans and healthcare service plans (including HMOs). The law does not apply to self-funded plans.

COVID-19 testing and vaccines. Under prior law, plans had to cover COVID-19 testing and vaccines without prior authorization or cost sharing from in-network (IN) and out-of-network (OON) providers as long as the federal PHE is in place. Now, these requirements continue for six months after the federal PHE ends, at which point plans can discontinue no-cost coverage of OON providers (but the IN coverage must continue). Any OON coverage must be reasonable, based prevailing market rates, and OON providers must accept reimbursement as payment in full. Other changes to testing and vaccine coverage include:

- **Expedited processing not included.** Covered services related to COVID-19 testing do not include payments for the use of specialized equipment or expedited processing.
- **OON provider prohibitions.** OON providers may not sue an insured plan participant or report them to a consumer credit agency.

- **Therapeutics.** Effective immediately, plans and insurers must reimburse COVID-19 therapeutics that have an emergency use authorization from the US Food and Drug Administration. IN providers must receive the negotiated rate; OON providers must receive the prevailing market rate. Therapeutics from both IN and OON providers must be covered without cost sharing until six months after the PHE ends, at which point plans can charge OON cost sharing. Similar to the patient protections applicable to COVID-19 testing and vaccination, OON providers cannot balance bill, sue or report an insured plan participant to a consumer credit agency.
- **Public exchange enrollment period.** Covered California's annual enrollment period will change from Dec. 15–Jan. 31 to Nov. 1–Jan. 31, effective for policy years starting on or after Jan. 1, 2023. By comparison, the annual enrollment period for states using the federal Health Insurance Marketplace is Nov. 1–Jan. 15.

Leave

Two California laws delay the expiration dates for COVID-19 SPSL (2022 Ch. 736, AB 152) and workers' compensation (WC) (2022 Ch. 758, AB 1751). Under the COVID-19 SPSL law, benefits will now expire on Dec. 31, instead of Sept. 30. SPSL benefits include up to 40 hours of leave for several qualifying reasons and an additional bank of 40 hours for employees who test positive for COVID-19 or need to care for a covered family member who tests positive. For details, see States, cities tackle COVID-19 paid leave (revised Oct. 4, 2022). Also, see the Leave laws section above for other developments related to California's PFML and paid military leave programs.

The COVID-19 WC law extends certain WC provisions — including the disputable presumption that under certain circumstances, a COVID-19 illness or death arose out of and in the course of employment and is compensable — for an additional year to Jan. 1, 2024. Employees must exhaust SPSL and meet other requirements before qualifying. The temporary provisions apply to first responders and healthcare providers. Other employees are covered if testing positive during an outbreak at work for an employer with five or more employees.

Other benefit-related issues

Washington has clarified provisions of a LTC law that will start to take effect next year. Also starting in 2023, many Philadelphia employers will need to provide a commuter benefit program, joining other municipalities with similar mandates, including New York City, San Francisco, Seattle and Washington, DC. Oregon issued guidance on association health plans (AHPs). San Francisco published its 2023 rates under its Health Care Security Ordinance (HCSO).

Oregon

Oregon's Department of Consumer and Business Services adopted new rules, effective Sept. 1, for AHPs. Under the new rules, AHPs must meet these requirements:

- Association has actively existed for at least one year for a primary purpose other than obtaining insurance.
- The plan does not offer coverage for working owners.
- An attorney statement confirms the plan's ERISA compliance, among other things.
- The plan has an actuarial value of at least 60% if AHP members include small employers.

Philadelphia

Effective Dec. 31, a Philadelphia ordinance will require employers with at least 50 covered employees to provide a commuter benefit program. Covered employees must have worked at least 30 hours per week within city limits for the same employer in the past 12 months.

Programs must cover expenses for public transportation and commuter highway vehicles, as defined by Internal Revenue Code (IRC) § 132(f)(5)(B)). Programs also must provide an alternative for reimbursement of qualified bicycle commuting expenses (up to $20 per month) in accordance with IRC § 132(f). The ordinance does not require a parking benefit.

An employer may satisfy this obligation by offering one of these three options:

- Establishing a § 132(f) transportation plan for employees to pay for coverage on a pretax basis
- Paying transit expenses at current federal levels ($280 in 2022 and $300 in 2023)
- Providing a combination of the above two options

San Francisco

San Francisco has posted its 2023 Health Care Expenditures rates under the HCSO, applicable to employers with a San Francisco business registration certificate and at least 20 employees in total if at least one employee works in the city and county of San Francisco.

The 2022 and 2023 HCE hourly rates are as follows:

Employer size	Number of workers	2022 expenditure rate	2023 expenditure rate
Large	All employers with 100+ workers	$3.30 per hour	$3.40 per hour
Medium	Businesses with 20–99 workers Nonprofits with 50–99 workers	$2.20 per hour	$2.27 per hour
Small	Businesses with 0–19 workers Nonprofits with 0–49 workers	Exempt	Exempt

Special rules apply to self-funded plans. For details, see San Francisco Health Care Expenditure rates released for 2023 (Aug. 8, 2022).

Washington

The ESD adopted rules implementing changes from two LTC insurance laws (2022 Ch. 1, HB 1732 and 2022 Ch. 2, HB 1733) enacted in January. The rules address employee exemptions and employer responsibilities for premium deductions. Highlights include:

- Procedures for veterans with a service-connected disability to obtain a permanent exemption
- Procedures for individuals to obtain three types of conditional exemptions (including one for individuals with a permanent primary residence outside of the state) and employers' duty to notify ESD when an employee no longer meets the exemption criteria
- Required employee notice to an employer when a conditional exemption no longer applies
- Confirmation that the exemption from purchasing the state's LTC coverage required obtaining other LTC insurance before Nov. 1, 2021
- Clarification of employer responsibilities for employees with approved and discontinued exemptions
- Other rules related to self-employed individuals and employer audits

These rules took effect Oct. 29. Payroll deductions of 0.58% of wages will start on July 1, 2023. Long-term services and supports trust (LTSS) program benefits will first become available on July 1, 2026. For more details, see Washington changes long-term care law (April 13, 2022).

Related resources

Mercer Law & Policy resources

- States, cities tackle COVID-19 paid leave (regularly updated)
- San Francisco updates contractor-lessee health plan standards, pay rates (Aug. 31, 2022)
- Roundup of selected state health developments, second-quarter 2022 (Aug. 22, 2022)
- Massachusetts sets 2023 individual-mandate coverage dollar limits (Aug. 12, 2022)
- San Francisco Health Care Expenditure rates released for 2023 (Aug. 8, 2022)
- Roundup: State accrued paid leave mandates (April 29, 2022)
- Washington changes long-term care law (April 13, 2022)
- 2022 state paid family and medical leave contributions and benefits (Jan. 19, 2022)

- Washington, DC, amends and extends paid family and medical leave (Nov. 2, 2021)
- Roundup of selected state health developments, second-quarter 2021 (July 30, 2021)
- New Hampshire enacts voluntary paid family leave program (July 15, 2021)

Other Mercer resources

- Inclusive partner network
- Life, absence and disability
- MercerRx
- Total health management
- Voluntary benefits

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