



April 13, 2018

Sacramento, California

John A. Norwood  
*Counselor at Law*

Erin Norwood  
*Publisher*

*Contributors*  
Brittany Trudeau  
Ted Wait

[Contact Us](#)  
info@nalobby.net

Capitol Place  
915 L Street, Suite 1110  
Sacramento, CA 95814

(916) 447-5053  
(916) 447-7516 fax

---

[California Links](#)

**State Senate**

**State Assembly**

## Assembly Member Introduces Legislation With Major Implications; Regulates Healthcare Prices

On Monday, Assembly Member Ash Kalra (Dem-San Jose) held a press conference to announce the introduction of [AB 3087](#), which establishes a commission to set rates for healthcare services based off what the government pays for such services under Medicare. The commission, which would be an independent state entity, would determine the rates for all services covered by commercial health plans, including those offered by employers to their workers and those sold in the individual marketplace. Public health programs, including Medicare and Medicaid, would not be affected by those price caps. The measure also requires the commission to track all health expenditures in the state and set a goal for those costs in the future. That approach, known as "global budgeting," allows the state to keep track of overall spending and intervene if that trajectory seems too high.

The proposal takes some inspiration from the model established by Maryland, in which the state sets the prices paid by all payers – including insurance companies and public healthcare programs – for hospital services. Assembly Member Kalra said the measure marks a shift in the healthcare debate, from maximizing insurance coverage to addressing the cost of care. Driving the measure is the country's escalating healthcare spending, which is by far the highest in the world. The US spends about 18% of its gross domestic product on healthcare, nearly doubling the average of other advanced industrialized nation. From 2002 to 2016, premiums for those who get insurance through their employer have gone up more than 240%, according to the California Healthcare Foundation. Overall inflation went up about 40% during that time.

The bill was endorsed by some of the state's biggest labor groups, including the California Labor Federation and Service Employees International Union – California. These groups allege consolidation in the healthcare industry is causing prices to increase. A reporter asked whether this could lead to lower health industry profits, causing an access problem, to which Kalra said "this is already a marketplace issue."

The bill is certain to receive fierce opposition from physicians and hospitals, setting the stage for a battle between some of the Capitol's top lobbying heavyweights. Opponents counter that capping prices could inhibit patients' ability to get care by driving doctors out of the

## Department of Insurance

### Secretary of State

### Official Legislative Information

state and hospitals to scale back services. The California Medical Association called the bill a "poorly conceived, unprecedented threat to patient access to healthcare," and the California Hospital Association is naturally opposed. The California Association of Health Plans said it was reviewing the plan, but has opposed price regulations in the past.

The bill's sponsors say their proposal has built in flexibility to the cost controls by setting up an appeals process, allowing healthcare providers to contest a decision by the commission if they can prove it causes financial hardship. Proponents also face friction on the left from advocates of single-payer healthcare, namely the California Nurses Association, who espouse an alternate vision of how to overhaul the state's healthcare system. Despite the political hurdles, an effort to rein in prices is appealing to some policymakers, as healthcare costs increasingly consume state budgets, employers' bottom lines, and workers' paychecks.

## Insurance Legislative Update & Preview Of What Is To Come

[SB 880](#) (Pan, Dem-Sacramento) allows the State Compensation Insurance Fund to engage in a pilot project to pay temporary disability benefits by debit card. This is not a new issue and many states already allow this. California, as interpreted by the Division of Workers Compensation, however, does not allow for it.

[SB 937](#) (Weiner, Dem-San Francisco) as introduced sets forth a comprehensive set of requirements for lactation accommodation. The bill increases risk of tort acts against employers and includes construction requirements for lactation rooms. The bill is triple referred to committee, which makes for more passage obstacles. There is a broad-based employer coalition opposing SB 937, including the American Insurance Association. SB 937 is pending in Senate Judiciary. It is also referred to the Senate Transportation and Housing Committee.

While addressing the same subject, [AB 1976](#) (Limón, Dem-Santa Barbara) simply states that a lactation room cannot be a bathroom. AB 1976 is in the Senate pending committee referral.

[SB 1086](#) (Atkins, Dem-San Diego) deletes the sunset on the extended statute of limitations for dependents to file death claims under workers' compensation when the deceased employee was a public safety officer. This is pending in the Senate Appropriations Committee.

[SB 1240](#) (Stone, Rep-La Quinta) as amended requires a pharmacy to immediately convey prescription profile information of a patient to a requesting pharmacy caring for that patient, except for price and cost information. This bill will be heard in the Senate Business and Professions Committee April 16.

[SB 1300](#) (Jackson, Dem-Santa Barbara) is a comprehensive rewrite of California's laws regarding sexual harassment. The bill is opposed by a broad coalition of business groups led by the Chamber of Commerce. As a practical matter, if this gets chaptered there will need to

be considerable more training and resources spent on harassment prevention training. For example, the bill states, “an employer shall also provide bystander intervention training that includes information and practical guidance on how to enable bystanders to recognize potentially problematic behaviors and to motivate bystanders to take action when they observe problematic behaviors. The training and education shall also include exercises to provide bystanders with the skills and confidence to intervene as appropriate and to provide bystanders with resources they can call upon that support their intervention.” This is pending in the Senate Judiciary Committee.

[AB 1772](#) (Aguiar-Curry, Dem-Napa) as amended April 11 further extends the time to file claims to clarify and expand upon the additional six-month periods for which a policyholder may submit a claim for replacement costs due to delays in construction of a home or residence beyond the control of the insured. The bill also added several co-authors. This is set for Assembly Insurance Committee hearing April 18.

[AB 1752](#) (Low, Dem-San Jose) as amended deletes the ability of the Board of Pharmacy to add medications to the Controlled Substance Utilization Review and Evaluation System (CURES) database. As amended it still adds Schedule V controlled substances to the CURES database. This passed the Assembly Business and Professions Committee this week and is now in the Assembly Public Safety Committee.

[AB 1787](#) (Salas, Dem-Bakersfield) as amended in the Assembly Appropriations Committee establishes a consistent timeline for finalizing Valley Fever case reports. This passed the Assembly Appropriations Committee on the consent calendar on April 11.

[AB 1976](#) (Limón, Dem-Santa Barbara) modifies workplace standards around the availability of a private lactation space. Specifically, this bill requires an employer to make reasonable efforts to provide an employee with a room, other than a bathroom, to express breast milk in private. It passed the full Assembly on April 9 on a 57-1 vote.

[AB 1998](#) (Rodriguez, Dem-Pomona ) as amended requires, by June 1, 2019, every healthcare practitioner authorized to prescribe opioids classified as Schedule II and Schedule III to adopt a safe prescribing protocol. The bill requires the practitioner to note the reason the safe prescribing protocol was not followed if, in the practitioner’s professional judgment, adherence to the safe prescribing protocol is not appropriate for a patient’s condition. The bill makes the failure to develop or adhere to the protocol unprofessional conduct and enforceable. The bill is set for Assembly Health Committee hearing on April 17. This is an important bill to watch. It was substantially amended on April 11 which suggests that the author may be working with the California Medical Association. The interaction between this and the new treatment guidelines for workers’ compensation needs to be considered if the bill moves forward.

[AB 2046](#) (Daly, Dem-Anaheim) adopts two non-controversial recommendations from the State Auditor regarding workers’ compensation fraud fighting efforts: (1) requires that a governmental agency in possession of information relating to workers’ compensation fraud to, upon request of another governmental agency that uses the information for purposes of

investigation, prosecution, or detection of workers' compensation fraud provide that information to the requesting agency, and (2) authorizes the Fraud Assessment Commission to augment, rather than offset, its annual assessment on employers to fund the workers' compensation fraud program with unused funds from previous assessments. This bill is pending in the Assembly Appropriations Committee.

[AB 2594](#) (Friedman, Dem-Los Angeles), as amended April 11, deletes the tolling language for the time spent during a claim being investigated as it relates to the time to bring a lawsuit under the standard fire policy. The bill still extends the time to bring suit if the event causing the loss is related to a declared state of emergency. This measure will be heard in the Assembly Insurance Committee on April 18.

[AB 2613](#) (Reyes, Dem-San Bernardino) repeals current penalty provisions regarding timely payment of wages and makes an employer or other person acting individually or as an officer, agent, or employee of another person subject to a penalty of \$200, payable to each affected employee, per pay period where the wages due are not paid on time. The bill provides that the additional penalty does not apply to the failure to pay the final wages of an employee who is discharged or quits. This applies to payroll processing services offered by private employer organizations and staffing firms. This measure is set for hearing April 18 in the Assembly Labor Committee.

[AB 2963](#) (Kalra, Dem-San Jose) relates to reporting of worker blood lead levels and states that if blood lead levels are above the standard set by the Department of Public Health's Occupational Lead Poisoning Prevention Program then it is a serious violation by the employer for Occupational Safety and Health Administration purposes. This bill is pending in the Assembly Appropriations Committee.

## Corporation Board Equality Bill Set For Hearing

This week [SB 826](#) by Senators Jackson and Atkins, a bill that would mandate a minimum number of women be placed on the board of directors of all publicly held corporations that are incorporated in California, was set for hearing in the Senate Business and Finance Committee on April 18<sup>th</sup>. This bill would have far-reaching implications for all corporations that are established or do business in California, as the bill was amended on April 3<sup>rd</sup> to apply to both foreign corporations as well as California domestic corporations.

SB 826 would require that a corporation incorporated in California or a foreign corporation with their primary executive offices located in California include at least one woman on their board of directors no later than December 21, 2019. Following that, by the end of 2021 the minimum number of women would be increased to two for a board of directors with five or fewer members, and three for boards of six or more. Additionally, the bill would require the Secretary of State's office to publish reports on the number of corporations that have complied with the law, and to impose fines to those in violation.

There are a number of concerns with this bill, which would have far-reaching impacts on all corporations that are headquartered in California. It is currently unclear how this bill would be enforced by the Secretary of State's office, as the bill does not define how or when

compliance would be determined. Additionally, the fact that a board of directors is generally elected by the shareholders of the corporation instead of selected by the corporation itself is not addressed by the measure. If the bill were to be passed as it stands there is no consideration for how corporations with elected boards would be forced to select and ensure the appointment of a female member. Additionally, as the bill also extends to foreign corporations, concerns with the commerce clause have been raised as well.

This is certain to be a contentious and hard-fought bill, so stay tuned for more as it comes up for hearing.

## Assembly Business & Professions Committee Acts On Opioid Crisis Legislative Package

On Tuesday, the Assembly Business and Professions Committee approved a package of bills to address the largest public health epidemic in history – opioid addiction.

[AB 1751](#) (Low, Dem-Cupertino): Controlled Substance Utilization Review & Evaluation Database Interstate Information Sharing

This measure authorizes the Department of Justice to enter into an agreement with an entity operating an interstate data share hub for the purposes of participating in interjurisdictional information sharing between prescription drug monitoring programs across state lines.

[AB 1752](#) (Low, Dem-Cupertino): CURES Database Schedule V Addition

The bill requires a dispensing pharmacy, clinic, or other dispenser to report the information required by the CURES database no more than one working day after a controlled substance is dispensed.

[AB 1753](#) (Low, Dem-Cupertino): CURES Database Prescription Serial Number

This bill requires prescription forms for controlled substance prescriptions to have a uniquely serialized number, in a manner prescribed by the Department of Justice.

[AB 2086](#) (Gallagher, Rep-Yuba City): CURES Database Pharmacist Access

This bill allows prescribers to access the CURES database for a list of patients for whom they prescribe.

[AB 2256](#) (Santiago, Dem-Los Angeles): Law Enforcement Furnished Naloxone

This bill authorizes a pharmacy or wholesaler to furnish naloxone hydrochloride or other opioid antagonists to a law enforcement agency.

[AB 2487](#) (McCarty, Dem-Sacramento): Opiate-Dependent Patient Treatment

This bill requires the application for a physician's and surgeon's certificate to include proof of satisfactory completion of a course on opiate-dependent patient treatment and management that meets the requirement of the federal Comprehensive Addiction Recovery Act and also includes at least 8 hours of instruction in buprenorphine treatment of opioid use disorders.

[AB 2741](#) (Burke, Dem-Inglewood): Minor Age Opioid Prescriptions

This bill prohibits a prescriber from prescribing more than a 5-day supply of opioid medication to a minor unless the prescription is for specified uses.

[AB 2760](#) (Wood, Dem-Santa Rosa): Naloxone Patient Education

This bill requires a prescriber to provide naloxone hydrochloride for patients when conditions are present and to provide education to those patients and their households.

[AB 2789](#) (Wood, Dem-Santa Rosa): Electronic Prescription Data Transmission

This bill requires healthcare practitioners authorized to issue prescriptions to have the capability to transmit electronic data transmission prescriptions, and requires pharmacies to have the capability to receive those transmissions.

[AB 2859](#) (Caballero, Dem-Salinas): Pharmacy Safe Storage

This bill requires a chain community pharmacy or an independent community pharmacy that dispenses Schedule II, III, or IV controlled substances to display safe storage products within the pharmacy department.

## First Week Of Legislative Hearings For Labor & Employment Legislation

The Chamber Employment Coalition met this week to discuss the roster of labor and employment bills that are currently under consideration.

The following highlights bill passage at this week's Senate and Assembly Labor Committee hearings:

### Senate Labor Committee

[SB 937](#) (Wiener, Dem-San Francisco) requires a lactation room or location to include access to a sink and refrigerator in close proximity to the employee's work space. The bill establish a procedure for an employer with fewer than 5 employees to apply to the Division of Labor Standards Enforcement for an undue hardship exemption from the lactation room or location requirement. The author appears willing to work with stakeholders, which he has a reputation for so industry remains hopeful this will remain the case.

[SB 1284](#) (Jackson, Dem-Santa Barbara) requires California employers to submit paydata to the Department of Industrial Relations (DIR). This could create a false impression of wage

discrimination or unequal pay where none exists and, therefore, subject employers to unfair public criticism, enforcement measures, and significant litigation costs to defend against meritless claims, according to CalChamber. The author did state yesterday at hearing that she was willing to amend the bill so that paydata is not subject to a public records request, making this information confidential within DIR. DIR and other state agencies that are permitted to access the paydata would be fined \$1,000 per incident for public data breach, which the Chamber believes to be too low. The Chamber is preparing for a Senate Floor fight on this Chamber-designated “Job Killer” bill.

[SB 1300](#) (Jackson, Dem-Santa Barbara) increases litigation by removing the standing requirement for a plaintiff alleging failure to prevent harassment or discrimination when no harassment occurs, limits the use of severance agreements, and prohibits the use of a general release or non-disparagement clause in employer / employee contracts. The Chamber is preparing for a Senate Floor fight on this Chamber-designated “Job Killer” bill.

#### **Assembly Labor Committee**

[AB 2366](#) (Bonta, Dem-Alameda) extends existing employment protections to victims of sexual harassment. Current law prohibits an employer from discharging, or discriminating or retaliating against, an employee who is a victim of domestic violence, sexual assault, or stalking and who takes time off from work to obtain, or attempt to obtain, any relief to help ensure the health, safety, or welfare of the victim or his or her child. Existing law makes it a misdemeanor for an employer to refuse to rehire, promote, or restore an employee who has been determined to be so eligible by a grievance procedure or legal hearing. The Chamber is seeking language requiring an employee to have a court document or police report before being eligible to take leave from trauma caused by sexual harassment.

[AB 2946](#) (Kalra, Dem-San Jose) extends the period to file a workplace discrimination complaint to within 3 years (currently 6 months) after the occurrence of the violation. The Chamber especially opposes plaintiff attorney fee payment by defendants in the bill.

[AB 2841](#) (Gonzalez-Fletcher, Dem-San Diego) changes the requirements of the employer’s alternate sick leave accrual method to require no less than 40 hours of accrued sick leave or paid time off by the 200th calendar day of employment. The bill raises the limitation on sick leave carried over to the following year of employment to 40 hours or 5 days. The author is not open to amendments.

The following bills of particular concern / interest to the Chamber will be heard or potentially be heard next week in the Assembly and Senate Labor Committees:

#### **Assembly Labor Committee**

[AB 1867](#) (Reyes, Dem-Fontana) requires an employer with 50 or more employees to maintain records of employee complaints of sexual harassment for 10 years from the date of filing. The Chamber is seeking a 5-year requirement and wants a written complaint to trigger a sexual harassment investigation to reduce frivolous situations. The author has signaled willingness to work with industry.

[AB 1870](#) (Reyes, Dem-Fontana) extends the period to 3 years for which complaints alleging unlawful employment or housing practices may be filed with the Department of Fair Employment and Housing (DFEH). Current law provides one year. The Governor is expected to sign the bill, the Chamber is seeking 2 years as some accommodation to industry, as well as limit it to sexual harassment. DFEH conducts about 500 sexual harassment cases a year.

[AB 2079](#) (Gonzalez-Fletcher, Dem-San Diego) requires employers provide sexual harassment training to janitorial personnel, some of which work for multiple employers. This creates unnecessary and costly duplicative training. Employers would be required to use trainers that make at least \$25 an hour for the instruction. Statute already requires some level of instruction along these lines as well.

[AB 2907](#) (Flora, Rep-Lodi) authorizes an employer to cure any violation regarding itemized wage statements by using a cure procedure. The Chamber supports the bill because it is some form of tort reform. But, the Chamber is not actively working the bill because it requires going back 3 years to fix wage statements, and if one is missed it opens employers to litigation.

[AB 2482](#) (Voepel, Rep-El Cajon) permits a nonexempt employee to request an employee-selected flexible work schedule providing for workdays up to 10 hours per day within a 40-hour workweek. This is Chamber sponsored.

[AB 2613](#) (Reyes, Dem-Fontana) makes an employer or other person acting individually or as an officer, agent, or employee of another person who fails to pay or causes a failure to pay wages of each employee subject to a penalty of \$200 per pay period where the wages due are not paid on time. The Chamber is opposed.

[AB 2732](#) (Gonzalez-Fletcher, Dem-San Diego) makes it unlawful for an employer to knowingly destroy, conceal, remove, confiscate, or possess any actual or purported passport or other immigration document, or any other actual or purported government identification document of another person in the course of committing, or with the intent to commit, trafficking, peonage, slavery, involuntary servitude, a coercive labor practice, or to otherwise avoid any obligation imposed on the employer with regard to laws governing employment.

[AB 2770](#) (Irwin, Dem-Thousand Oaks) includes among privileged communications complaints of sexual harassment by an employee to an employer based on credible evidence by the employer to interested persons and witnesses regarding a complaint of sexual harassment during an investigation and 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 is the Chamber's bill.

[AB 2963](#) (Kalra, Dem-San Jose) requires the Department of Public Health to report to the Division of Occupational Safety and Health (CalOSHA) any instance when a worker's blood lead level is at or above a certain amount. The operative word in the bill is "any." The author thinks any amount of lead in an employee is harmful. This applies to employees that are required to be tested for the substance in the blood stream. The Chamber is opposed.



CalOSHA conducts 30,000 investigations on reported blood lead levels and this adds 800 to the workload, it is expected. This measure is in response to a recent oxide battery exposure event.

[AB 3031](#) (Quirk, Dem-Hayward) requires an employer whose employees are involved in using power tools or other equipment for the cutting, grinding, coring, or drilling of concrete or masonry materials to provide training to those employees to reduce health hazards associated with the inhalation or ingestion of dust arising from those operations. No Chamber members have expressed concern.

[AB 3081](#) (Gonzalez-Fletcher, Dem-San Diego) prohibits an employer from discharging or in any manner discriminating or retaliating against an employee because of the employee's status as a victim of sexual harassment. The Chamber opposes.

#### **Senate Labor Committee**

[SB 1113](#) (Monning, Dem-Carmel) authorizes the Mental Health Services Oversight and Accountability Commission to establish a framework and voluntary standard for mental health in the workplace that serves to reduce mental health stigma, increase public, employee, and employer awareness of the recovery goals of the Mental Health Services Act, and provide guidance to California's employer community to put in place strategies and programs, determined by the commission, to support the mental health and wellness of employees. No Chamber members have expressed concern on this measure.

#### **Legislation Not Moving**

[AB 1938](#) (Burke, Dem-Inglewood) prohibits an employer or other covered entity or employment agency from making a nonjob-related inquiry about whether a job candidate has children. The author is not moving the bill.

[AB 2765](#) (Low, Dem-San Jose) authorizes an organization that is a digital marketplace to contribute to a marketplace contractor (eg. website developer) benefit plan established to provide employment benefits to marketplace contractors. The author pulled this measure from hearing and does not appear to be moving it forward.