

# CALIFORNIA SENATE OFFICE OF RESEARCH

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## *Federal Update*

### HEALTH ACTIONS DURING PRESIDENT BIDEN'S FIRST 100 DAYS IN OFFICE

In the first 100 days of his administration, President Biden has focused on providing a comprehensive response to the COVID-19 pandemic, passing the American Rescue Plan (ARP) Act, and proposing investments to expand access to health care and restore America's public health infrastructure. This brief highlights health-related actions and policy changes made by the Biden administration and explores how the changes will affect California.

#### **ARP ACT (H.R. 1319)**

Signed into law on March 11, 2021, the ARP Act is a \$1.9 trillion spending package aimed at providing COVID-19 relief. It also marks one of the biggest investments in the Affordable Care Act (ACA) since the landmark law was passed in 2010. Below are a few highlights from the ARP Act that have made significant changes to health care affordability and expanding access.

#### **RELIEF ON ACA HEALTH INSURANCE MARKETPLACE PREMIUMS**

The ACA (H.R. 3590) made premium tax credits available to people purchasing health coverage on the ACA Health Insurance Marketplace but generally only when their incomes fall between 100 percent and 400 percent of the federal poverty level (FPL). The ARP Act expands marketplace subsidies above 400 percent FPL and increases subsidies for those making between 100 percent and 400 percent FPL. Many consumers with household incomes from 100 percent to 150 percent FPL will have \$0 premium plans from which to choose.<sup>1</sup> Under the ACA, individuals with incomes above 400 percent FPL were ineligible for subsidies, creating a "subsidy cliff."<sup>2</sup> Under the ARP Act, the 400 percent FPL cap is lifted, and the act instead requires individuals with incomes above 400 percent FPL to contribute no more than 8.5 percent of their household income toward a benchmark plan. The Congressional Budget Office (CBO)

and Joint Committee on Taxation project the enhanced subsidies would attract approximately 1.7 million people to gain coverage through the marketplace, 1.3 million of whom would be new to the marketplace or previously uninsured.<sup>3</sup> It is important to note the subsidy expansions are temporary and will end by 2022. However, in President Biden's recent American Families Plan, he proposed making the subsidy expansions permanent.<sup>4</sup>



## CALIFORNIA PERSPECTIVE

Before the ARP Act passed, California implemented legislation aimed at expanding subsidies for those in Covered California and was the first state to provide subsidies for individuals above 400 percent FPL.<sup>5</sup> The ARP Act increases subsidies beyond the assistance previously provided by the California state subsidy program (see Table 1 on page 3). Covered California estimates that 2.5 million Californians stand to benefit from the new and expanded subsidies.<sup>6</sup> Most of Covered California's currently enrolled consumers will see an average of \$119 in monthly premium savings.<sup>7</sup> Covered California estimates about 810,000 Californians who are uninsured and eligible for health insurance coverage through Covered California are now able to enroll for as little as \$1 a month. Additionally, through the ARP Act, 1 million lower-income Californians became eligible for free Medi-Cal.<sup>8</sup> Following the signing of the ARP Act, Covered California announced opening a new special enrollment period that began on April 12 and runs through the end of 2021 for uninsured and/or unsubsidized Californians to sign up for coverage.

The subsidies will no longer exist by 2023 if not made permanent. Despite the ARP Act's substantial improvements in the affordability of coverage through Covered California, it is projected that California will still have 3.2 million uninsured Californians younger than 65 in 2022, or approximately 9.5 percent of the population younger than 65.<sup>9</sup>

**Table 1: Covered California—2021 Coverage Year: Comparison of Subsidies for Benchmark Silver Premium Plan<sup>10</sup>**

Income Range		Required Contribution as Share of Income			Enrollees to be Redetermined Automatically Pursuant to the ARP Act	
Income as percent of Federal Poverty Level (FPL)	Income for single household	Affordable Care Act	California State Subsidy Program	American Rescue Plan	Covered California Enrollees	Percent of Total*
Under 138%**	\$0–\$17,609	2.07%	0.0%	0.0%	38,000	3%
138%–150%***	\$17,609–\$19,140	3.1%–4.14%	N/A	0.0%	226,000	16%
150%–200%	\$19,140–\$25,520	4.14%–6.52%	N/A	0.0%–2%	442,000	31%
200%–250%	\$25,520–\$31,900	6.52%–8.33%	6.24%–7.8%	2%–4%	236,000	16%
250%–300%	\$31,900–\$38,280	8.33%–9.83%	7.8%–8.9%	4%–6%	198,000	14%
300%–400%	\$38,280–\$51,040	9.83%	8.9%–9.68%	6%–8.5%	192,000	13%
Above 400%	\$51,040 and up	Not eligible for subsidies	9.68%–18%****	8.5%	112,000	8%

\* Numbers may not add up to 100 percent due to rounding.

\*\* Individuals with income at or below 138% of FPL are generally eligible for Medi-Cal, California’s Medicaid program. In certain limited circumstances, however, they are eligible for the federal premium tax credit and the California state subsidy program.

\*\*\* Under the American Rescue Plan, Covered California enrollees receiving unemployment insurance (UI) in 2021 are treated as though their income is more than 138.1% of FPL for the purposes of the federal premium tax credit, meaning their required contribution for a benchmark plan will be 0%.

\*\*\*\* Eligibility for the California state subsidy program ends at 600% of FPL.

### **ELIMINATION OF MEDICAID DRUG REBATE CAP**

The ARP Act contains the first drug pricing legislative action taken by the Biden administration, eliminating the statutory cap on rebates drug manufacturers pay to state Medicaid programs, which will provide significant savings for the federal government and states. The drug rebates act as a discount off the purchase price, and eliminating the cap means drug company discounts paid to state Medicaid programs can increase. Before this change, drug manufacturers could pay only up to 100 percent of the average manufacturer price in rebates (not including supplemental rebates) to state Medicaid programs for Medicaid-covered drugs. Once the total amount of rebates a manufacturer pays to Medicaid for a drug reaches the 100 percent rebate cap, the manufacturer is not required to pay additional rebates if the drug price continues to

outpace inflation. The cap effectively allows some drug manufacturers that have imposed very large price increases over time not to pay rebates equal to the full difference between their price increases and inflation. The policy change will have the largest impact on brand drugs with prices that have been or will be consistently raised and have reached the 100 percent rebate cap. The former Health and Human Services (HHS) secretary reported that in 2019, more than 2,300 drugs were at the 100 percent cap on rebates.<sup>11</sup> CBO estimates that lifting the rebate cap under the Medicaid Drug Rebate Program would reduce federal Medicaid spending by \$15.9 billion over the next 10 years (2021–30).<sup>12</sup>

As stated in a report by the Medicaid and Children’s Health Insurance Program (CHIP) Payment Access Commission, removing the rebate cap would allow the inflationary rebate to achieve its full effect and create substantial savings for Medicaid, relieving some fiscal pressure on states by allowing them to maintain the same level of drug coverage at a lower cost.<sup>13</sup> Proponents view elimination of the cap as a way to not only lower net prices for states through rebates that could potentially be greater than the purchase price but also to deter further steep price increases. State spending could decrease for Medicaid drugs because states would receive the nonfederal share of any increases in rebate amounts. This is unlikely to have any measureable effect on Medicaid beneficiaries.<sup>14</sup> This measure is set to take effect on January 1, 2024.



## CALIFORNIA PERSPECTIVE

Medi-Cal is the nation’s largest Medicaid program, serving roughly 13 million individuals. Additionally, Medi-Cal is the largest purchaser of pharmaceutical services in California.<sup>15</sup> In 2018–19, prescription drug spending in California, which includes both federal and state spending, was approximately \$8 billion and reflects about 8 percent of overall Medi-Cal spending.<sup>16</sup> It is unknown exactly how much California could save with the Medicaid drug rebate cap elimination as several unpredictable factors play a role such as future growth in drug prices and how drug manufacturers could change their pricing strategies when the cap is eliminated.<sup>17</sup>

## PUBLIC HEALTH INVESTMENTS

The chronic underfunding of public health infrastructure at all levels of government affected the government’s ability to respond to the COVID–19 pandemic. The federal Centers for Disease Control and Prevention (CDC), which uses half of its program funding to support state and local public health efforts, experienced a 10 percent reduction in its overall budget and a 30 percent reduction in the public health emergency preparedness fund in the past decade (2010–19).<sup>18</sup> The ARP Act includes

billions in direct and indirect funding for public health to respond to the COVID–19 pandemic, including \$7.5 billion for COVID–19 vaccine distribution; \$48.3 billion for testing, contact tracing, and personal protective equipment; and \$7.66 billion to bolster the public health workforce. The bill also includes \$350 billion in state and local financial aid that recipients have broad flexibility to spend for eligible uses, which include public health purposes, among other things. The funding included in the ARP Act builds on more than \$66 billion in public health emergency response funding appropriated in previous federal stimulus bills. The majority of this funding was allocated to CDC, which distributed about half of those funds to state, local, and tribal governments.<sup>19</sup> Most of the emergency funding included in the ARP Act is allocated for specific activities tied to the COVID–19 pandemic response. However, \$3 billion in funding will support a new grant program to recruit and retain public health professionals beyond the pandemic.

The Biden administration also requested \$8.7 billion for CDC in the president’s fiscal year 2022 discretionary budget, an increase of \$1.6 billion (or 18 percent) over the 2021 enacted level of funding.<sup>20</sup> The increased funding request is in recognition of the need to restore public health infrastructure, modernize public health data collection, and build workforce capacity.



## CALIFORNIA PERSPECTIVE

Like funding at the federal level, spending on public health in California also decreased in the past decade. According to one estimate, per capita spending at the state level has dropped 18 percent since 2008.<sup>21</sup> Of the ARP Act funding, the California Department of Public Health (CDPH) was allocated \$357 million for COVID–19 vaccine activities and \$888 million for COVID–19 testing to support school reopening (Los Angeles County received a separate allocation of \$302 million).<sup>22</sup> As of May 2021, it is unclear how much California will receive for nonschool reopening-related testing activities and public health workforce funding. Based on California’s COVID–19 vaccine funding allocation, it is possible California will receive an additional \$380 million to support investments in the public health workforce.

Although ARP Act funding is tied to specific COVID–19-related activities, allowable uses include information technology, data modernization, and facilities and laboratory enhancements. At this point, it is unclear how much of the federal stimulus funding appropriated to California is being used for short-term vs. long-term investments. In a recent hearing of the Senate Budget and Fiscal Review Committee, CDPH Director Dr. Tomás Aragón suggested that some of the federal funding spent on the state’s data infrastructure during the COVID–19 public health emergency will improve those

systems moving forward. However, more details will be needed from the state and local health departments to determine how the federal stimulus funding was used and what enhancements to the public health capacity and workforce will benefit California beyond the COVID–19 pandemic.

## EXTENDING POSTPARTUM MEDICAID COVERAGE

Medicaid pays for more than four in 10 births and must cover pregnant women through 60 days postpartum. After that period, states can and have made very different choices regarding whether eligibility for Medicaid coverage continues. The ARP Act allows states to receive funding if they extend Medicaid and CHIP eligibility to pregnant individuals for 12 months postpartum, effective April 1, 2022, for up to five years. Postpartum care encompasses a range of health needs, including recovering from childbirth, following up on pregnancy complications, managing chronic health conditions, and addressing mental health conditions. This is particularly important for women who experience pregnancy complications or have chronic conditions, such as hypertension or diabetes, which is highest among women of color.<sup>23</sup> The option for states to extend postpartum Medicaid coverage comes at a time when the nation’s rate of maternal mortality is rising, and studies are beginning to show many of these deaths occur after pregnancy-related Medicaid coverage ends.<sup>24</sup> Understanding the causes of maternal mortality and morbidity is complex, and there are multiple factors, but research indicates that access to health care is vital.<sup>25</sup> Extending postpartum coverage is not mandatory and states that elect this new option must provide full Medicaid benefits during pregnancy and the extended postpartum period.



### CALIFORNIA PERSPECTIVE

Approximately 45 percent of in-hospital births in California are covered by Medi-Cal, and 85 percent of mothers on Medi-Cal had at least one postpartum visit in 2017.<sup>26</sup> California passed previous legislation—AB 577 (Eggman), Chapter 776, Statutes of 2019—that extends Medi-Cal coverage for up to a year if the individual is diagnosed with a maternal mental health condition during their pregnancy, postpartum period, or within 90 days of the postpartum period. The Department of Health Care Services (DHCS) has proposed trailer bill language as part of the governor’s 2021–22 May revision of the budget to include funding for this new federal Medicaid option of extending Medi-Cal coverage postpartum. DHCS has noted that by adopting this policy there would be a reduction of \$11 million in fiscal year 2021–22 due to the overlap in population with the state’s Postpartum Care Extension program.<sup>27,28</sup>



## OTHER HEALTH POLICY CHANGES

### ENDING THE 2019 PUBLIC CHARGE RULE

President Biden signed an executive order on February 2 requiring the secretary of state, attorney general, and Homeland Security secretary to review all agency actions related to the 2019 public charge rule implemented by the Trump administration.<sup>29</sup> The rule significantly expanded the criteria immigration officials use to determine whether an individual seeking immigration status is likely to become dependent on the federal government by broadening the definition of a public charge to include noncash benefits, such as Medicaid, supplemental nutrition aid, and federal housing assistance. On March 9, the Homeland Security secretary announced the federal government would no longer enforce the 2019 public charge rule.<sup>30</sup>



### CALIFORNIA PERSPECTIVE

In 2019, it was reported that one out of four low-income immigrant adults in California reported avoiding public programs such as Medi-Cal or nutrition assistance programs out of fear that participating would negatively affect their own immigration status or that of a family member.<sup>31</sup> Studies showed the public charge rule had this chilling effect on immigrants beginning in 2018.<sup>32</sup> While it is too early to see the full impact of repealing the public charge rule, advocacy groups are working to increase public awareness among immigrant families about the policy reversal under the Biden administration.

### TITLE X RULE CHANGE

President Biden issued a memorandum on January 28 directing the HHS secretary to review the 2019 Title X rule and other regulations governing the Title X program.<sup>33</sup> The Title X grant program is the only federal program dedicated to providing individuals with comprehensive family planning and related preventative services, with focus given to low-income and uninsured patients. In 2019, the Trump administration finalized a rule prohibiting Title X grant recipients from referring clients to abortion services (also known as the gag rule) and requiring grantees to create a physical and financial separation between Title X and non-Title X activities.<sup>34</sup> The new restrictions caused one-quarter of all Title X funding sites to withdraw from the program, reducing the capacity of the national network by 46 percent.<sup>35</sup> HHS published a proposed rule on April 15 that revokes the 2019 changes and prioritizes equity for historically underserved communities.<sup>36</sup> The Biden administration also supports increased federal funding for the Title X program. The ARP Act included \$50 million in federal stimulus funds for current grantees of the Title X program, and

President Biden’s fiscal year 2022 discretionary funding request, released in April, proposes \$340 million, an increase of 16 percent over the 2021 enacted level of funding.



## CALIFORNIA PERSPECTIVE

The 2019 final rule diminished the Title X network in California, limiting patient access to Title X services. The largest Title X sub-recipient of grant funding to leave the program after the 2019 rule change (among others) was Planned Parenthood, which serves clients in rural and low-income areas of the state. After the April announcement of the proposed rule change by the Biden administration, Planned Parenthood President and CEO Alexis Johnson expressed the intent of the organization to rejoin the program when the rule is finalized.<sup>37</sup> The 2019 rule change also opened the door for new grantees and providers whose services more closely aligned with the Trump-era rule change. Before the 2019 rule change, Essential Access Health was the only primary grantee of the Title X program in California. After the rule change, the Obria group, which does not provide referrals to abortion services, became the second grantee in California, distributing Title X funding to a network of 12 sub-recipients operating around 25 sites.<sup>38,39</sup> Continued participation in the Title X program by groups that joined the network as a result of the 2019 rule change is uncertain, but the U.S. Department of Health and Human Services’ Office of Population Affairs has confirmed the Obria Group is no longer a Title X grantee in California. With the expected reentry of Planned Parenthood and other providers, the Title X network in California is anticipated to return to pre-2019 levels and serve more rural and low-income areas.\*

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\* Planned Parenthood operates 108 clinics across seven independent affiliates. For many counties across the state, Planned Parenthood is the only Title X provider, especially in rural counties such as Humboldt and Kern. The influx of federal stimulus funding and proposed increases to the appropriation for the Title X program also will likely increase California’s baseline funding.



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  - <sup>8</sup> Covered California, legislative briefing, May 7, 2021.
  - <sup>9</sup> University of California, Berkeley Labor Center, “American Rescue Plan Improvements to Covered California Affordability: Who Gains?” April 13, 2021, <https://laborcenter.berkeley.edu/american-rescue-plan-improvements-to-covered-california-affordability-who-gains/>.
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