



CHA's 2020 Legislative
Wrap Up Webinar

November 16, 2020



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Welcome

Liz Mekjavich
Vice President, Publications & Education
California Hospital Association



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Questions

Online questions throughout the presentation

Type your question in the Q & A box, press enter

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Faculty from the California Hospital Association



Kathryn Austin Scott has over 20 years of experience in public policy and serves as the association's head lobbyist in Sacramento where she directs the California lobbying team.



Gail Blanchard-Saiger is vice president of labor and employment for the association. Ms. Blanchard-Saiger provides leadership for state legislative and regulatory issues related to hospital human resources and labor relations.



BJ Bartleson provides leadership in developing, communicating and implementing CHA policy related to nursing, emergency services, trauma and medication safety. She is a nurse leader with 30 years of experience as an administrator, researcher and clinician.

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Faculty from the California Hospital Association



Jackie Garman oversees and coordinates the association's legal representation on litigation critical to the hospital industry and evaluates the legal impact of legislation and regulations on hospitals.



Amber Ott represents members' financial interests related to Medicare, Medi-Cal, commercial payers and other government entities. She is responsible for providing advocacy and support on financial and reimbursement issues affecting California hospitals and health systems.

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Opening Comments

Kat Scott

Senior Vice President, State Relations and Advocacy



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What Happened in 2020?

Key legislative highlights in 2020:

- Coronavirus curtailed legislative session
- Super-Majority remains in both houses
- Pandemic Response/PPE requirements
- Held Affordability conversation for 2021
- Labor laws were front and center

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Objectives for Today

Review the key statutory changes to:

- Labor Laws
- Nurse Practitioner Oversight
- 5150 Tele-assessment
- Hospital Closure Notification
- All Payer Claims Database

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2020 Labor & Employment Legislative Report

Gail M. Blanchard-Saiger
Vice President & Counsel, Labor and Employment



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Laws That Went Into Effect Immediately

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COVID Supplemental Paid Sick Leave

AB 1897 - Labor Code 248.1

Summary: Effective September 9, 2020, although employers had until September 19, 2020 to provide the leave. Creates California's COVID Supplemental Paid Sick Leave. Intended to apply to employers not covered by the federal Families First Coronavirus Response Act. Provides 80 hours for full time employees and formula to calculate hours for part-time and variable shift employees. Available when an employee is ordered to quarantine/isolate by public health, advised to quarantine/isolate by a health care provider or directed not to report to work by the employer due to concerns about transmission. Employers who previously provided COVID-specific paid leave may take a credit for such time provided.

Sunsets December 31, 2020, unless the Families First Coronavirus Response Act leave laws are extended.

Recommendations:

- ✓ Determine whether you are covered by the Families First Coronavirus Response Act (health care opt out changed on September 16). If so, determine whether you will opt out for qualified employees
- ✓ Implement the policies and procedures necessary to comply with California's COVID Supplemental Paid Sick Leave
- ✓ www.calhospital.org/education-event/covid-19-supplemental-paid-sick-leave

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Workers' Compensation Presumption for COVID

SB 1159 - Labor Code 3212.87 and 3212.88

Summary: Effective September 17, 2020. Adopts a COVID-19 specific presumption in the workers' compensation system for employees that test positive for COVID-19. The bill is retroactive to July 6, 2020 and expires on January 1, 2023.

- Codifies the Governor's Executive Order that created a presumption in the workers' compensation system, from March 19 – July 5 for employees that were required to leave their home to go to work during the stay-at-home order;
- Creates a presumption in the workers' compensation system for fire, police and hospital employees;
- Creates a presumption in the workers' compensation system for employees working in other workplaces that experience an "outbreak"; and
- Requires the Commission on Health and Safety and Workers' Compensation to evaluate the impact of these presumptions on the workers' compensation system.

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Workers' Compensation Presumption for COVID (cont.)

It is important to note that:

- All hospital employees are subject to the presumption; however, for employees who are not in direct patient care roles or who are not custodial employees in contact with COVID patients, the hospital may rebut the presumption by showing the employee was not in contact with a COVID patient.
- Workplaces other than hospitals are subject to the “outbreak” section. There are numerous administrative/reporting obligations.

Recommendations:

- ✓ Meet with your Workers' Compensation team (internal and external), as well as Employee Health and Leave of Absence teams to develop appropriate policies and procedures
- ✓ www.calhospital.org/covid19-workers-compensation

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Independent Contractor Status

AB 2257 – Labor Code 2775 et seq

Summary: Effective September 4, 2020. Re-organizes the statutory structure developed in AB 5. The ABC test is now codified in Labor Code 2775. Modifies the business-to-business provision, now codified in Labor Code 2776, including, but not limited to, a change to the following factor:

- The business service provider is providing services directly to the contracting business rather than to customers of the contracting business. *This subparagraph does not apply if the business service provider's employees are solely performing the services under the contract under the name of the business service provider and the business service provider regularly contracts with other businesses.*

Recommendations:

- ✓ Review the changes to the law with counsel
- ✓ Determine whether the changes impact any of your independent contractor relationships and/or individuals you may have re-classified as a result of AB 5

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Laws That Go Into Effect January 1, 2021

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Personal Protective Equipment Stockpile

AB 2537 - Labor Code 6403.3

Summary: Requires general acute care hospitals to create a stockpile of specified personal protective equipment beginning April 1, 2021. The stockpile represents 90 days of normal consumption. Hospitals may be relieved of the obligation as to specific PPE if it can show it placed an order that was not fulfilled or the items were damaged or stolen. Also requires general acute care hospitals to be prepared as of January 15, 2021, to report to the department, under penalty of perjury, its highest seven-day consecutive daily average consumption of personal protective equipment during the 2019 calendar year, upon request by the department.

There are many ambiguities in this law. CHA has developed a workgroup to provide input and assistance. CHA will be working with Cal/OSHA to provide clarification.

Recommendations:

- ✓ Identify implementation lead and team
- ✓ Begin to evaluate PPE data available as well as supply chain status
- ✓ Monitor developments as reported by CHA

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Personal Protective Equipment Inventory and State Stockpile

SB 275 - Labor Code 6403.1; Health & Safety Code 131021

Summary: Creates a Personal Protective Equipment Advisory Committee to make recommendations about the state's personal protective equipment (PPE) stockpile and health facility PPE inventory requirements. Requires Cal/OSHA to develop regulations for health facility PPE inventory requirements based on the Advisory Committee recommendations. Health facilities must comply with the inventory requirements by January 1, 2023 or one year after the regulations are final.

Recommendations:

- ✓ Identify implementation lead and team
- ✓ Begin to evaluate PPE data available as well as supply chain status
- ✓ Monitor developments as reported by CHA

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California Family Rights Act

SB 1383 – Government Code 12945.2

Summary: Extends California Family Rights Act to employers with five or more employees. Expands family care leave to include grandparent, grandchild, adult child, sibling and domestic partner. Unclear whether it applies to "parent-in-law."

Recommendations:

- ✓ Update leave of absence policies and procedures
- ✓ Provide training to supervisory staff and others involved in leave of absence management

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COVID Workplace Notice and CalOSHA Enforcement

AB 685 - Labor Codes 6409.6 and 6432

Summary: Requires all employers to provide notice of potential exposure to COVID-19 in the workplace. While there are special provisions with respect to notice to employees whose job duties necessarily bring them into contact with individuals who are known to have COVID-19 or are persons under investigation, the new law does apply to all employers including health facilities. In addition, the law allows CalOSHA to use an expedited process for citing serious violations related to COVID-19.

Recommendations:

- ✓ Develop necessary policies and procedures to comply with notice requirements
- ✓ www.calhospital.org/education-event/covid-19-workplace-notice-requirements

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Want to Learn More?

Visit CHA's website for Education "On-Demand" to take a deeper dive into today's issues and **much more**:

Labor & Employment Law Legislative Updates Webinar

Recorded Oct. 29, 2020

- COVID-19-related supplemental paid sick leave at the local, state and federal level
- Workers' Compensation changes related to COVID-19
- Employee notice provisions related to COVID-19
- New wage and hour laws, including independent contractor classification
- Cal/OSHA guidance on the Aerosol Transmissible Disease Standard, wildfire smoke regulations and others

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Advance Practice in Nursing

BJ Bartleson, RN, MS, NEA-BC
Vice President, Nursing & Clinical Services



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AB 890

- AB 890 creates two new categories of NPs (103 NP & 104 NP) to function independently without standardized procedures
- Hospitals and NPs may continue their current practice arrangements (physician supervision and standardized procedures) for NPs who do not meet the criteria, or who choose not to pursue independent practice
- **In order for NP eligibility to practice independently, certain provisions of the law need further refinement through promulgation of regulations by the BRN**

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AB 890 – 103 NP

- 103 NP (2837.103) eligible to practice in clinics, health facilities, medical group practice, home health agency, hospice
- Exempt settings: correctional treatment centers and state hospitals
- Requirements – Passed National Board Certification, OPES exam (if necessary), holds NP Certification from an accrediting body, BRN-approved NP education, TTP program completion

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AB 890 – 104 NP

- Independent practice outside those listed in 103 NP settings
- Independent practice/business pursuant to already existing laws, such as a nursing corporation
- Requirements: same as 103
- BRN will issue a separate NP certificate once the NP completes all of the 104 NP requirements and submits an application to the BRN, **does not go into effect until January, 2023**

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Other Issues

- BRN NP Advisory Committee
- Obligations – inform patients they are an NP, not a physician in understandable language
- Post a notice, practice within their education/training/certification
- Refer when appropriate
- Carry liability insurance

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Medical Staff Membership, Privileges, Voting Rights, and Discipline

- 103 & 104 NPs are authorized for medical staff eligibility and rights differently under AB 890
- 103 shall adhere to all applicable medical staff bylaws of the department to which the 103 is assigned. Shall not vote at department, division, or other meetings unless the vote is regarding the determination of NP privileges with the organization, peer review of NP practice, whether a licensee's employment is in the best interest of the communities served by the hospital, or the vote is otherwise allowed by applicable bylaws

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Medical Staff Membership, Privileges, Voting Rights and Discipline (cont.)

- 104 NPs – are eligible for membership of an organized medical staff. May vote at meetings of the department to which the NP is assigned
- Discipline – if a medical staff administrator takes certain actions against a 103 or 104 NP as a result of peer review, the 103 or 104 will be reported to the BRN via an 805 report

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Prohibition of Control Over NP Practice

- For 103 NPs who practice in delineated settings, which in general are facilities and organized settings – those settings shall not interfere with, control, or otherwise direct the professional judgement of an NP

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SB 1237 – Certified Nurse Midwives

- Creates a specific low risk scope for CNM's that requires no written guidelines, policies or even standardized procedures for furnishing medication within that scope
- Adds interconception care
- Nothing must be signed by a physician if practicing solely within the scope of low risk

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SB 1237 – Certified Nurse Midwives (cont.)

- The bill gives CNMs, regardless of the practice locations, the ability if they wish to collaboratively manage and attend the births of patients outside of low risk care: if
 - They have a written/signed, mutually agreed upon P&P with a physician that delineate parameters for consultation, collaboration, referral and transfer of a patients care

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SB 1237 – Certified Nurse Midwives - Furnishing

- Furnishing of all scheduled meds(II-V) require standardized procedures
- Furnishing for low risk patients does not need standardized procedures (unless scheduled med)
- Allows for furnishing outside of low risk category with standardized procedures
- Removes 4:1 physician supervision ratio

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SB 1237 – Certified Nurse Midwives

- Allows for episiotomy & repair of lacerations in all settings without standardized procedures
- Requires new reporting on hospital transfers, i.e., Reason for transfer, but not until 2024/2025

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Want to Learn More?

Visit CHA's website under Education to examine today's topics in depth:

SB 1237 Nurse-Midwives: Scope of Practice Webinar

Register for live webinar, Nov. 30, 2020, 1 – 2:30 p.m., PT

Successful Transition of Hospitals to New Requirements Under AB 890 Webinar

Webinar recording available next week under Education On-Demand

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Behavioral Health & Hospital Notices Regarding Services or Closure

Jackie Garman

Vice President, Legal Counsel



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Behavioral Health

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AB 3242 (Irwin): Lanterman-Petris-Short Act: Telehealth

Amends H & S Code § 1799.111; amends W & I Code § 5151 and adds § 5150.5

Lanterman-Petris-Short (LPS) Act provides for involuntary commitment of persons with mental health disorders for varying lengths of time for purpose of treatment and evaluation, provided specified requirements are met.

- Authorizes use of telehealth to conduct an examination, assessment, or evaluation that is specified, required, or authorized by the LPS Act as it relates to the involuntary commitment and treatment of individuals.
 - “Telehealth” defined in Bus. & Prof. Code § 2290.5: “the mode of delivering health care services and public health via information and communication technologies to facilitate the diagnosis, consultation, treatment, education, care management, and self-management of a patient’s health care ... [I]ncludes synchronous interactions and asynchronous store and forward transfers.”

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Hospital Notices Regarding Services or Closure

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AB 2037 (Wicks): Health Facilities: Notices

Amends H & S Code § § 1255.1, 1255.25

- Eliminating or reducing level of emergency medical services:
 - **180 days prior notice** to CDPH, local government entity, contracted health care service plans
 - Simultaneous public notice in a manner likely to reach a significant number of residents of the community
- Closing GAC or APH facility:
 - **120 days** prior notice to CDPH and board of supervisors of the county
 - Public notice to be posted simultaneously at entrance to all affected facilities
- Eliminating or relocating supplemental services
 - **90 days prior notice** to CDPH and board of supervisors of the county
 - Public notice to be posted simultaneously at entrance to all affected facilities

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AB 2037: Health Facilities: Notices (cont.)

- Additional requirements for public notice applicable to all actions
 - Written notice to city council in which facility is located
 - Continuous notice in conspicuous location on facility's homepage
 - Notice published in conspicuous location in newspaper of general circulation serving local geographical area continuing for at least 15 publication dates
 - Continuous notice posted in conspicuous location within website of newspaper of general circulation servicing local geographical area in which facility is located
 - Notice posted at entrance of every community clinic within the county in which the facility is located that gives permission for posting

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All Payer Claims Database (APCD)

Amber Ott
Group Vice President, Data and Analytics



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AB 80 – All Payer Claims Database (APCD)

- Requires the Office of Statewide Health Planning and Development (OSHPD) to create and administer an APCD
- Substantially complete by **July 1, 2023**
- Data submitters
 - **Mandatory:** health plans, insurers and the Department of Health Care Services
 - **Voluntary:** providers, suppliers, self-insured employers and the Centers for Medicare & Medicaid Services

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AB 80 – All Payer Claims Database (cont.)

- **Three years** of data included in release of APCD
- Data elements
 - **Utilization Data:** diagnosis codes, procedure codes, revenue codes, national drug codes service dates and facility type
 - **Pricing Information:** contracted rates, allowed amounts, value-based payments, fee schedules, deductibles and copayments
 - **Personally Identifiable Information:** name, address, date of birth and social security number
 - **Personal Health Information:** age, gender, race, ethnic, gender identity, sexual orientation, health status and health condition

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AB 80 – All Payer Claims Database (cont.)

- Data release
 - Only deidentified aggregate patient data shall be included in publicly available analysis
 - Personal consumer information obtained will be confidential
 - APCD Advisory Committee and Data Release Committee to develop criteria, policies and procedures for access to and release of nonpublic data
 - CHA holds a seat on the Advisory Committee
 - Data use agreement required to be reviewed and approved prior to users accessing or obtaining nonpublic data

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2021 – What Lies Ahead

Kat Scott

Senior Vice President, State Relations and Advocacy



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What to Expect in 2021?

What's around the corner?

- Continue Social Distancing for the Legislative Process
- Coronavirus Response
- Health Care Affordability
- Surprise Medical Billing
- Integration/Consolidation
- Difficult Budget Deficits
- Labor Law Expansions

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How You Can Help ...

What really makes the difference?

- Engage your legislators early and often
 - Tell them your story
 - 30-minute Zoom
 - 20-minute call
- CHPAC Support

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Thank You and Evaluation

Thank you for participating in today's webinar.
An online evaluation will be sent to you shortly.

For education questions, contact:
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