

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

SB 595 (Roth)
Version: February 15, 2023
Hearing Date: April 11, 2023
Fiscal: Yes
Urgency: No
CK

SUBJECT

Covered California: data sharing

DIGEST

This bill narrows the restriction on Covered California's disclosing personal information received from the Employment Development Department, requiring consent only before disclosing such information to a certified insurance agent or a certified enrollment counselor.

EXECUTIVE SUMMARY

Existing law requires regular sharing of data between the Employment Development Department (EDD) and Covered California. Covered California must request specified information on each new applicant for unemployment compensation, state disability, and paid family leave. This data includes names, contact information, and social security numbers.

The law currently restricts Covered California from disclosing any of the personal information received from EDD to anyone without the consent of the applicant whose information is to be disclosed. The author and sponsors share concerns that this limitation prevents Covered California from sharing this data with their vendors who actually carry out the marketing and outreach envisioned by the data sharing statute.

This bill drastically narrows this restriction so that consent of the applicant is only required before sharing the information with a certified insurance agent or a certified enrollment counselor.

The bill is cosponsored by Western Center on Law and Poverty, California Pan-Ethnic Health Network, and Health Access. It is supported by a number of groups, including Latino Coalition for a Healthy California and Courage California. It is opposed by Oakland Privacy.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Provides, pursuant to the California Constitution, that all people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy. (Cal. Const. art. I, § 1.)
- 2) Establishes the California Health Benefit Exchange, also known as Covered California, as California's health benefit exchange for individual and small business purchasers as authorized under the federal Patient Protection and Affordable Care Act (ACA). (Gov. Code § 100500 et seq.)
- 3) Requires the director of the Employment Development Department (EDD) to permit the use of any information in the director's possession to the extent necessary to carry out certain enumerated purposes, including to enable federal, state, or local governmental departments or agencies, to verify or determine the eligibility or entitlement of any applicant for, or a recipient of, public social services, as specified, when the verification or determination is directly connected with, and limited to, the administration of public social services. (Unemp. Ins. Code § 1095.)
- 4) Requires Covered California, starting no later than September 1, 2023, and at least monthly thereafter, to request specified information from EDD of each new applicant for unemployment compensation, state disability, and paid family leave. This includes names, social security numbers, and contact information. (Gov. Code § 100503.9(a).)
- 5) Requires Covered California to use this information to market and publicize the availability of health care coverage through Covered California and engage in outreach activities to the individuals whose information was shared. (Gov. Code § 100503.9(b)(1).)
- 6) Prohibits Covered California from disclosing personal information obtained from EDD without the consent of the applicant. (Gov. Code § 100503.9(b)(3).)
- 7) Requires Covered California to at all times take reasonable measures to safeguard the confidentiality of any personal information obtained by EDD and not disclose that information for any purpose other than to market and publicize the availability of health care coverage through Covered California to the individuals whose information they have received. (Gov. Code § 100503.9(b)(4).)

- 8) Provides that all personal information received from EDD shall at all times be subject to applicable privacy and information security-related requirements arising under federal and state law. (Gov. Code § 100503.9(b)(5).)

This bill allows Covered California to disclose personal information obtained from EDD without the consent of the applicant except to a certified agent or a certified enrollment counselor, subject to other restrictions and applicable federal and state privacy laws.

COMMENTS

1. Stated intent of the bill

According to the author:

Access to information regarding health insurance options is one of the primary barriers to achieving universal healthcare coverage in the State, especially as Californians experience transitions in employment and income. Last year, SB 644 (Leyva) was passed and established a vital partnership between Covered California and the Employment Development Department (EDD) for the purpose of conducting direct outreach on affordable healthcare coverage options to community members who applied for unemployment insurance, or other EDD programs. However, after signing SB 644 (Leyva) into law, the Governor called on the Legislature to introduce follow-up legislation to ensure that the provisions of the bill enable timely communication to individuals to reduce burdens of applying for health insurance and to minimize gaps in coverage. SB 595 will do just that. SB 595 will ensure greater accessibility to health insurance for Californians, regardless of their employment status.

2. Balancing privacy with greater outreach to populations in need

As authorized by the Affordable Care Act, California established the California Health Benefit Exchange, more commonly known as Covered California, as California's health benefit exchange for individual and small business purchasers.¹ As stated on its own website:

The Covered California Health Exchange is the government agency offering subsidized Obamacare plans for this state. The California Health Exchange was created to assist citizens and legal residents with applying for marketplace coverage in order to comply with the Affordable Care Act ("ACA"). When the law was passed in 2010, each of the 50 states had to

¹ Gov. Code § 100500 et seq.

decide to either create a state-run health insurance exchange or offer enrollment through a federally-operated exchange. This state chose to create their own exchange and called it “Covered California”.²

Since its creation, Covered California has invested immense resources in marketing and outreach to ensure all that need health care coverage are able to secure it. In fact, they are statutorily obligated to undertake whatever activities are necessary to market and publicize the availability of health care coverage and federal subsidies and to undertake outreach and enrollment activities that seek to assist enrollees and potential enrollees with enrolling and reenrolling in Covered California’s exchange in the least burdensome manner, including populations that may experience barriers to enrollment, such as the disabled and those with limited English language proficiency.³

However, a group of nonprofit organizations working to ensure broad access to health care expressed that such efforts could benefit from access to data that would assist Covered California in directly targeting those most likely in need. As jobs and health care insurance in this country are closely linked, oftentimes when one loses their employment their coverage is also lost. While EDD would share information with clients about Covered California, it was only after a claim had been successfully approved.

In 2022, SB 644 (Leyva, Ch. 983, Stats. 2022) sought to address that issue by requiring Covered California, starting no later than September 1, 2023, and at least monthly thereafter, to request from EDD information on each new applicant for unemployment compensation, state disability, and paid family leave. The requested information is extensive:

- last name;
- first name;
- middle initial;
- social security number;
- date of birth;
- race or ethnicity, to the extent available;
- preferred language;
- gender;
- all mailing addresses, including city, state, and zip code;
- all telephone numbers, including home, work, and cellular;
- email address, to the extent available;
- date of most recent job loss, to the extent available;

² What is Covered California?, Covered California, https://www.healthforcalifornia.com/covered-california?gclid=EA1aIQobChMI5bN6v30_QIV0y6tBh3bUOD_EAAYASAAEgliKvD_BwE. All internet citations current as of April 1, 2023.

³ Gov. Code § 100503(k).

- wages or prior wages;
- the EDD program for which the applicant filed;
- date the claim was filed;
- claimant eligibility status;
- date initial payment was approved by EDD;
- the weekly benefit amount;
- the benefit period start date; and
- the benefit period end date.⁴

SB 644 requires Covered California to use this information to market and publicize the availability of health care coverage through Covered California and engage in outreach activities to the individuals whose information was shared, consistent with their statutory obligation cited above. (Gov. Code § 100503.9(b)(1).)

While the information exchange serves a noble purpose, privacy concerns always arise when such sensitive data is exchanging hands. Therefore, SB 644 was amended to include various privacy and security protections. First, it included use limitations; Covered California is prohibited from using or disclosing the information for “any purpose other than to market and publicize the availability of health care coverage through the Exchange.” Secondly, the statute establishes an obligation on Covered California to take reasonable measures to safeguard the confidentiality of any personal information obtained. The law also states that the personal information received is “subject to applicable privacy and information security-related requirements arising under federal and state law.” However, it is not clear what function this provision serves, as applicable laws apply without it.

Finally, and most relevant here, SB 644 prohibited Covered California from disclosing personal information obtained from EDD without the consent of the applicant. This ensures applicants have some measure of control over their information. It is this latter protection that this bill seeks to loosen.

This bill allows Covered California to disclose personal information obtained from EDD without the consent of the applicant except to a certified agent or a certified enrollment counselor, subject to other restrictions and applicable federal and state privacy laws. The sponsors of the bill, Western Center on Law and Poverty, California Pan-Ethnic Health Network, and Health Access, explain the need for the change:

[C]urrent statute limits Covered California’s ability to send outreach materials to Californians in need, as it would require the agency’s trusted, contract vendors to obtain individual consent prior to contacting individuals.

⁴ Gov. Code § 100503.9(a).

SB 595 would add clarifying language that allows Covered California to engage in outreach activities while protecting individuals from receiving cold calls from insurance agents and enrollment counselors without individual consent. This simple fix would allow Covered CA to connect with and enroll consumers in health care coverage while protecting consumer privacy under both state and federal law. Without the passage of SB 595, the agency will be unable to share health care options with Californians who have experienced unemployment or reduced work hours when they need it most.

While this change allows for increased disclosure of sensitive personal information, there are clear countervailing public policy benefits. In addition, the other protections of the statute continue to apply. Namely, Covered California continues to be prohibited from using or disclosing the information, with or without consent, for any purpose other than carrying out their statutory duty to market and publicize the availability of health care coverage. However, to ensure that the obligations to secure this data and that limit the permissible uses of the data, the author has agreed to amend the bill to ensure that any parties to whom this personal information is disclosed, are also bound by these privacy-protective provisions:

Amendment

“A person or entity that receives personal information from the Exchange pursuant to this section shall at all times take reasonable measures to safeguard the confidentiality of any personal information obtained from the Exchange and shall at no time use or disclose that information for any purpose other than to market and publicize the availability of health care coverage through the Exchange to individuals, as directed by the Exchange.”

Writing in an oppose-unless-amended position, Oakland Privacy raises concerns about what this change in the law opens up: “Under the language currently proposed, the Exchange would be free to share personal information received from EDD with any party who is not a certified insurance agent or a certified enrolled counselor, as long as the stated reason for the sharing has something to do with marketing and publicity.” Oakland Privacy argues this opens up data sharing beyond the ostensible reason provided for the loosened protection:

Unspecified flexibility with personal information that is being forwarded by the Employment Development Department without the consent of the applicant, who may or may not be interested in securing health insurance via the Exchange, is not consistent with the intent of SB 644. It is also not consistent with fundamental privacy protection practices. The state has a responsibility to only share personal information without consent for

specific and narrowly tailored purposes that are clearly defined and not excessively flexible.

SUPPORT

California Pan-Ethnic Health Network Org (co-sponsor)

Health Access California (co-sponsor)

Western Center on Law & Poverty (co-sponsor)

Coalition of California Welfare Rights Organizations

Courage California

Latino Coalition for a Healthy California

Maternal and Child Health Access

National Health Law Program

Small Business Majority

The Children's Partnership

OPPOSITION

Oakland Privacy

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation: SB 644 (Leyva, Ch. 983, Stats. 2022) *See* Comment 2.

PRIOR VOTES:

Senate Health Committee (Ayes 11, Noes 0)
