AMENDED IN SENATE JUNE 3, 2003

AMENDED IN SENATE MARCH 18, 2003

SENATE BILL No. 2

Introduced by Senators Burton and Speier

December 2, 2002

~~An act to add Section 12693.705 to the Insurance Code, to add Part 8.5 (commencing with Section 2020) to Division 2 of the Labor Code, to amend Section 131 of, and to add Section 976.7 to, the Unemployment Insurance Code, and to add Section 14005.42 to the Welfare and Institutions Code, relating to health care coverage, and making an appropriation therefor.~~ *An act to add Part 8.5 (commencing with Section 2020) to Division 2 of the Labor Code, relating to health care coverage.*

LEGISLATIVE COUNSEL'S DIGEST

SB 2, as amended, Burton. Health care coverage.

Existing law does not provide a system of health care coverage for all California residents and does not require employers to provide health care coverage for employees and dependents, other than coverage provided as part of the ~~worker's~~ *workers'* compensation system for work-related employee injuries. Existing law provides for the creation of various programs to provide health care services to persons who have limited incomes and meet various eligibility requirements. These programs include the Healthy Families Program administered by the Managed Risk Medical Insurance Board, and the Medi-Cal program administered by the State Department of Health Services. Existing law provides for the regulation of health care service plans by the

Department of Managed Health Care and health insurers by the Department of Insurance.

~~This bill would require employers to provide health care coverage for eligible employees and dependents that is equivalent to coverage required to be provided by health care service plans, but that includes coverage for basic prescription drugs. As an alternative, the bill would authorize an employer to comply with this requirement by paying a fee to the state for similar coverage. The bill would authorize an employer to require an eligible employee to pay up to 20% of the cost of the coverage. The bill would not require an employer to provide coverage for the dependent spouse or domestic partner of an eligible employee who is eligible for coverage from another employer.~~

~~This bill would create the State Health Purchasing Program, which would be administered by the Managed Risk Medical Insurance Board. The bill would require the board to arrange health plan coverage through a purchasing pool for employers who have paid a fee for employee health coverage rather than arranging their own coverage. The bill would require the board to determine annually the fee to be paid by these employers. The fee and employee contributions would be collected by the Employment Development Department and would be deposited in the newly created State Health Purchasing Fund. The money in the fund would be continuously appropriated to the board for the purposes of the program. The bill would require specified health benefits to be provided through the program and would require the board to establish copayments and deductibles for enrollees. The bill would authorize the board to coordinate coverage under the program with coverage available under the Medi-Cal program and the Healthy Families Program. The bill would require enrollees obtaining coverage arranged through the State Health Purchasing Program to provide certain information to the board relative to income and eligibility under penalty of perjury, thereby creating a new crime and imposing a state-mandated local program. The bill would enact other related provisions.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

This bill would declare the intent of the Legislature to ensure health care coverage for working Californians and their families.

Vote: majority. Appropriation: ~~yes~~ *no*. Fiscal committee: ~~yes~~ *no*. State-mandated local program: ~~yes~~ *no*.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) The Legislature finds and declares that working Californians and their families should have health insurance coverage.

(b) The Legislature further finds and declares that most working Californians obtain their health insurance coverage through their employment.

(c) The Legislature finds and declares that in 2001, more than 6,000,000 Californians lacked health insurance coverage at some time and 3,600,000 Californians had no health insurance coverage at any time.

(d) The Legislature finds and declares that more than 80 percent of Californians without health insurance coverage are working people or their families. Most of these working Californians without health insurance coverage work for employers who do not offer health benefits.

(e) The Legislature finds and declares that people who are covered by health insurance have better health outcomes than those who lack coverage. Persons without health insurance are more likely to be in poor health, more likely to have missed needed medications and treatment, and more likely to have chronic conditions that are not properly managed.

(f) The Legislature finds and declares that employers who do not provide health benefits to their workers have an unfair competitive advantage over those employers who provide health benefits. Employers who provide health benefits often pay directly for the failure of other employers to provide health benefits by providing health benefits to spouses and other dependents who should be covered by the spouse’s or dependent’s employer. Employers who provide health benefits also pay directly when a previously uninsured person becomes an employee and the

accumulated health costs due to lack of insurance burden the employer providing health benefits.

(g) The Legislature further finds and declares that health benefit costs in California generally are lower than costs in other states but employers generally are less likely to offer coverage.

(h) The Legislature further finds and declares that controlling health care costs can be more readily achieved if all working people and their families have health benefits so that cost shifting is minimized.

(i) It is therefore the intent of the Legislature to assure that working Californians and their families have health benefits and that their employers shall either provide those benefits or pay a user fee to the State of California so that the state may serve as a purchasing agent to pool those fees to purchase coverage that would otherwise have been purchased directly by employers.

(j) The Legislature further finds and declares that, while covering all working people and their families will substantially reduce the number of Californians without health insurance, several million Californians will still lack health coverage.

(k) It is therefore not the intent of the Legislature to reduce or eliminate funding for safety net programs that provide access to care for those who remain uninsured.

~~SEC. 2. Section 12693.705 is added to the Insurance Code, to read:~~

~~12693.705. To further the purposes of the State Health Purchasing Fund created pursuant to Chapter 2 (commencing with Section 2040) of Part 8.5 of Division 2 of the Labor Code, the board shall reduce or eliminate documentation and verification requirements for enrollees in that program. Nothing in this section shall affect the board's authority to verify eligibility as permitted by federal law.~~

~~SEC. 3.~~

SEC. 2. Part 8.5 (commencing with Section 2020) is added to Division 2 of the Labor Code, to read:

PART 8.5. EMPLOYEE HEALTH INSURANCE

CHAPTER 1. GENERAL PROVISIONS

Article 1. Title and Purpose

2020. This part shall be known and may be cited as the Health Insurance Act of 2003.

2020.5. It is the purpose of this part to ensure that all working Californians and their families are provided health care coverage.

2021. This part shall not be construed to diminish any protection already provided pursuant to collective bargaining agreements or employer-sponsored plans that are more favorable to the employees than the health care coverage required by this part.

~~Article 2. Definitions~~

~~2022. Unless the context requires otherwise, the definitions set forth in this article shall govern the construction and meaning of the terms and phrases used in this chapter.~~

~~2022.1. "Health plan" means an insurer, health care service plan, self-funded employer-sponsored plan, multiple employer trust, or Taft-Hartley Trust as defined by federal law, authorized to pay for health care services in this state.~~

~~2022.2. "Dependent" means the spouse, minor child, permanently disabled child, or legally dependent parent of a covered employee.~~

~~2022.3. "Employee" means a person as defined in Article 1.5 (commencing with Section 621) of Chapter 3 of Part 1 of Division 1 of the Unemployment Insurance Code.~~

~~2022.4. "Employer" means an employer, as defined in Article 3 (commencing with Section 675) of Chapter 3 of Part 1 of Division 1 of the Unemployment Insurance Code, employing for wages or salary ____ or more persons to work in this state.~~

~~2022.5. "Employment" is defined in Article 1 (commencing with Section 601) of Chapter 3 of Part 1 of Division 1 of the Unemployment Insurance Code.~~

~~2022.6. "Principal employer" means the employer for whom an employee works the largest number of hours in any month.~~

~~2022.7. "Wages" means all remuneration for services from whatever source, including commissions, bonuses, and tips and gratuities, paid directly to an individual by a customer or his or her employer.~~

~~Article 3. Coverage~~

~~2023. An employer shall provide health care coverage to each employee pursuant to this chapter. An employer shall also provide health care coverage to any dependent of an employee who is not receiving coverage from a different employer. An employer is not required to provide health care coverage to the dependent spouse or domestic partner of an employee who is eligible for coverage from another employer.~~

~~2023.1. An employer required to provide health care coverage pursuant to this chapter may do any of the following:~~

~~(a) Select and purchase that coverage from any health plan.~~

~~(b) Provide coverage through self-funded, employer-sponsored plans.~~

~~(c) Pay a fee to the Employment Development Department in the amount set forth in Section 2050.~~

~~2023.2. (a) An employer shall be responsible for the cost of health care coverage. However, where coverage exceeds the minimum benefits required by this chapter, the payment for that coverage shall be consistent with established practices. To the extent that the employee is responsible for paying all or a part of these costs, an employer shall withhold those amounts from the employee's salary and wages.~~

~~(b) An employer may require an employee to pay up to 20 percent of the cost of the coverage required by this chapter.~~

~~(c) An employer providing coverage exceeding the minimum benefits required by this chapter may charge a share of the cost of coverage provided, but that charge may not exceed the cost of the additional coverage.~~

~~(d) An employer may purchase health care coverage that includes additional out-of-pocket expenses, such as copayments or deductibles, but the out-of-pocket expenses for the employees shall not exceed the amounts specified in Section 2045.4.~~

~~2023.3. An employer shall provide health care coverage to every employee who has qualifying wages under the~~

~~Unemployment Insurance Code. An employer shall continue payments for health care coverage for an employee who is hospitalized or otherwise prevented by sickness or injury from working and earning wages, and for whom sick leave benefits are exhausted. This obligation shall continue for three months following the month during which the employee became hospitalized or disabled from working, or the month the employee becomes eligible for other public or private coverage, whichever occurs first. An employer shall not be required to provide health care coverage pursuant to this chapter with respect to an employee if any of the following occur:~~

~~(a) The employer is not the principal employer of the employee in terms of monthly hours worked.~~

~~(b) The employee is provided other health care coverage established under any law of the United States or this state.~~

~~(c) The employee is covered as a dependent under a health care service plan, health insurance policy, or self-funded employer-sponsored plan that has health care coverage benefits meeting the requirements of this chapter.~~

~~2023.4. The Employment Development Department shall adopt regulations to ensure that employers abide by the provisions of this chapter. Those regulations shall include provisions ensuring that employers do not circumvent the intent of this chapter by designating employees as independent contractors.~~

~~2023.5. Health care coverage provided in accordance with this chapter shall be equivalent to coverage required to be provided by health care service plans pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, but shall also include coverage of basic prescription drugs.~~

~~2023.6. An employer providing coverage pursuant to this chapter shall not be required to pay for benefits in any of the following circumstances:~~

~~(a) When the beneficiary is entitled to receive disability benefits or compensation under any workers' compensation or employers' liability law for the injury or illness.~~

~~(b) When health care services for an injury or illness are provided to the beneficiary by any federal, state, local, or other agency without charge.~~

~~2023.7. An employer shall not request or otherwise seek to obtain information concerning income or other eligibility~~

~~requirements for public health benefit programs regarding an employee, dependent, or other family member of an employee, other than that information about the employee's employment status otherwise known to the employer consistent with existing state and federal law and regulation. For these purposes, public health benefit programs include, but are not limited to, the Medi-Cal program, Healthy Families Program, Managed Risk Medical Insurance Program, and Access for Infants and Mothers program.~~

~~CHAPTER 2. STATE HEALTH PURCHASING PROGRAM~~

~~Article 1. Creation of Program and Powers of the Board~~

~~2040. The State Health Purchasing Program is hereby created. The program shall be managed by the Managed Risk Medical Insurance Board, which shall have equivalent powers to those granted to the board with respect to the Healthy Families Program under Section 12693.21 of the Insurance Code.~~

~~2040.2. The board shall arrange coverage for employers who pay a fee pursuant to subdivision (c) of Section 2023.1 by establishing and maintaining a purchasing pool for coverage of program enrollees to enable applicants without access to affordable and comprehensive employer-sponsored coverage to receive health benefits. The board shall negotiate separate contracts with participating health plans for the benefit package described in this chapter.~~

~~Article 2. Definitions~~

~~2041. Unless the context requires otherwise, the definitions set forth in this article shall govern the construction and meaning of the terms and phrases used in this chapter.~~

~~2041.1. "Fund" means the State Health Purchasing Fund created pursuant to Section 2110.~~

~~2041.2. "Program" means the State Health Purchasing Program, which includes a purchasing pool providing health care coverage for employees and their dependents for which the employer pays a fee rather than purchasing health care coverage that meets the standards of this part.~~

~~Article 3. Benefits and Enrollee Contribution~~

~~2045. The health care benefits coverage provided to enrollees shall be equivalent to the coverage required to be provided by health care service plans pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, but shall also include coverage of basic prescription drugs.~~

~~2045.3. The applicable employee contribution, not to exceed 20 percent, shall be established by the board and shall be collected by the employer and paid concurrently with the employer fee, pursuant to subdivision (c) of Section 2023.1. The employer may agree to pay any applicable employee contribution.~~

~~2045.4. (a) The board shall establish the required enrollee deductibles or copayment levels for specific benefits, including total annual copayments.~~

~~(b) No out-of-pocket costs other than copayments and deductibles in accordance with this section shall be charged to enrollees for health benefits.~~

~~(c) Coverage provided to enrollees shall not contain any preexisting condition exclusion requirements.~~

~~(d) No participating health plan shall exclude an enrollee on the basis of any actual or expected health condition or claims experience of that enrollee or a member of that enrollee's family.~~

~~(e) There shall be no variations in rates charged to enrollees, including premiums and copayments, on the basis of any actual or expected health condition or claims experience of an enrollee or enrollee's family member.~~

~~2045.5. (a) An enrollee who would qualify for Medi-Cal pursuant to Chapter 7 (commencing with Section 14000) of Part 3 of Division 6 of the Welfare and Institutions Code shall receive expanded benefits and shall not be charged copays or deductibles that exceed those charged by the Medi-Cal no-share-of-cost program.~~

~~(b) The board shall adopt regulations necessary to define and implement these expanded benefits.~~

~~2045.6. (a) An enrollee who would qualify for the Healthy Families Program pursuant to Part 6.2 (commencing with Section 12693) of the Insurance Code shall receive expanded benefits and shall not be charged copays or deductibles that exceed those charged by that program.~~

~~(b) The board shall adopt regulations necessary to define and implement these expanded benefits.~~

~~Article 4. Employer Fee~~

~~2050. The board shall annually determine the level of the fee to be paid by an employer who chooses to participate in the program. In determining the level of the fee, the board shall take into account the wages of the employees for whom coverage will be purchased, as well as other relevant factors.~~

~~2051. The board shall provide notice to the Employment Development Department of the amount of the fee in a time and manner that permits the Employment Development Department to provide notice to all employers of the estimated fee for the budget year pursuant to Section 976.7 of the Unemployment Insurance Code.~~

~~2052. Revenue from the employer fee and from associated employee contributions shall be deposited into the State Health Care Fund, which is created pursuant to Section 2110.~~

~~Article 5. Participating Health Plans~~

~~2060.3. (a) Notwithstanding any other provision of law, the board shall not be subject to licensure or regulation by the Department of Insurance or the Department of Managed Health Care.~~

~~(b) Participating health plans that contract with the program shall meet standards equivalent to those established for the Healthy Families Program pursuant to Section 12693.37 of the Insurance Code.~~

~~(c) For purposes of this chapter, the board shall have powers equivalent to the powers described in Sections 12693.48 and 12693.52 of the Insurance Code with respect to the Healthy Families Program.~~

~~(d) In adopting regulations to administer this chapter, the board shall ensure the continued viability of public hospitals and clinics, community clinics, and other safety net providers.~~

~~Article 6. Cost Containment~~

~~2070. (a) The board shall develop and utilize appropriate cost containment measures to maximize the cost-effectiveness of health care coverage offered under the program. Those measures may include the following:~~

~~(1) Limiting the expenditure of funds for this purpose to the price to the program for the lowest cost plan contracting with the program.~~

~~(2) Creating program rules that restrict the ability of an employer or applicant to drop existing coverage in order to qualify for the program.~~

~~(3) Other measures that the board deems necessary to ensure the affordability of coverage for employers, employees, and their dependents.~~

~~(b) The board may obtain information sufficient to assist it in determining whether the price paid for coverage is appropriate to ensure access to quality care, and whether a different price may be appropriate.~~

~~Article 7. Other Public Programs~~

~~2090. (a) The employer who has chosen to pay a fee to the fund shall provide information to the board regarding potential enrollees as prescribed by the board. In no case shall the board require or permit the employer to obtain from the potential enrollee information about the family income or other eligibility requirements for Medi-Cal, Healthy Families, or other public programs other than that information about the employee's employment status otherwise known to the employer consistent with existing state and federal law and regulation.~~

~~(b) The board shall obtain enrollment information from potential enrollees to be covered by the program. The enrollment information shall include information sufficient to determine whether the enrollee may be eligible for coverage under Medi-Cal, Healthy Families, or other public programs.~~

~~(c) An enrollee shall be covered by the program from the date that the board receives enrollment information from the enrollee.~~

~~(d) The board shall seek to assure continuity of coverage for those enrollees continuing to be covered by the program. An~~

~~enrollee shall not cease to be covered unless the board can document that the enrollee received notice 30 days prior to the termination of coverage.~~

~~2091. (a) Subject to subdivisions (b) and (c), the board shall require enrollees who may be applicants and recipients for Medi-Cal or Healthy Families to provide independent documentation that they meet the qualifications for eligibility only to the extent required by federal law.~~

~~(b) The board shall require every potential and continuing enrollee under this part to file an affirmation, signed under penalty of perjury, setting forth any facts about his or her annual income, applicable income deductions, and other qualifications for eligibility as may be required by the board. The statements shall be on forms prescribed by the board and developed jointly with the State Department of Health Services.~~

~~(c) Nothing in this section shall affect the authority of the State Department of Health Services or the board to verify eligibility as required by federal law.~~

~~2092. (a) The board shall provide to the State Department of Health Services information concerning the potential or continuing eligibility of enrollees in the program for Medi-Cal or Healthy Families.~~

~~(b) For those enrollees of the program who are determined to be eligible for Medi-Cal or Healthy Families, the board shall provide the state share of financial participation through the program.~~

~~2093. (a) Upon the effective date of coverage of a child eligible for the program, the board shall arrange for payment of providers who participate in the Child Health and Disability Prevention Program pursuant to Article 6 (commencing with Section 124025) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code, consistent with the equivalent requirements in Section 12693.41 of the Insurance Code.~~

~~2095. Care for enrollees who have been identified by the participating health plan as potentially seriously emotionally disturbed shall be provided and paid for consistent with the equivalent requirements in Section 12693.61 of the Insurance Code.~~

~~2096. Care for an enrollee who is determined by the California Children's Services Program to be eligible for benefits~~

~~under that program pursuant to Article 5 (commencing with Section 123800) of Chapter 3 of Part 2 of the Division 106 of the Health and Safety Code shall be provided and paid for consistent with equivalent requirements in Sections 12693.62 and 12693.69 of the Insurance Code.~~

~~2097. The board shall encourage all health plans that provide services under the program to have protocols consistent with equivalent requirements in Section 12693.98 of the Insurance Code.~~

~~Article 8. Administration~~

~~2100. A contract entered pursuant to this part shall be exempt from any provision of law relating to competitive bidding, and shall be exempt from the review or approval of any division of the Department of General Services. The board shall not be required to specify the amounts encumbered for each contract, but may allocate funds to each contract based on the projected or actual enrollee enrollments to a total amount not to exceed the amount appropriate for the program including applicable contributions.~~

~~2110. (a) The State Health Purchasing Fund is hereby created in the State Treasury and, notwithstanding Section 13340 of the Government Code, is continuously appropriated to the board for the purposes specified in this part.~~

~~(b) The board shall authorize the expenditure from the fund of state funds or federal funds that are appropriated to and deposited into the fund, and applicable employer fees and employee contributions that are deposited into the fund. This shall include the authority for the board to authorize the State Department of Health Services to transfer funds appropriated to the department for the program to the State Health Purchasing Fund, and to also deposit those funds in, and to disburse those funds from, the State Health Purchasing Fund.~~

~~SEC. 4. Section 131 of the Unemployment Insurance Code is amended to read:~~

~~131. "Contributions" means the money payments to the Unemployment Fund, Employment Training Fund, State Health Purchasing Fund, or Unemployment Compensation Disability Fund that are required by this division.~~

~~SEC. 5. Section 976.7 is added to the Unemployment Insurance Code, to read:~~

~~976.7. In addition to other contributions required by this division, an employer, except an employer who provides proof of health care coverage consistent with the provisions of subdivision (a) or (b) of Section 2023.1 of the Labor Code, shall pay to the department for deposit into the State Health Purchasing Fund a fee in the amount set by the State Health Purchasing Board in accordance with Chapter 2 (commencing with Section 2040) of Part 8.5 of Division 2 of the Labor Code. The fees shall be collected in the same manner and at the same time as any contributions required under Sections 977 and 977.5.~~

~~SEC. 6. Section 14005.42 is added to the Welfare and Institutions Code, to read:~~

~~14005.42. (a) For persons enrolled in the State Health Purchasing Program created pursuant to Chapter 2 (commencing with Section 2040) of Part 8.5 of Division 2 of the Labor Code, the department shall exercise all options available under federal law to simplify eligibility for Medi-Cal benefits by exempting all resources in the determination of eligibility. Those individuals shall not be subject to subdivision (b) of Section 14005.30.~~

~~(b) The department shall seek a federal waiver for any group described in subdivision (a) for which an option is not available to apply the procedures required by subdivision (a).~~

~~SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.~~

O