

Assembly Bill No. 2842

CHAPTER 744

An act to add Section 1361.1 to the Health and Safety Code, and to add Section 790.037 to the Insurance Code, relating to health care coverage.

[Approved by Governor September 30, 2008. Filed with
Secretary of State September 30, 2008.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2842, Berg. Solicitation: unfair business practices.

Existing law provides for licensing and regulation of health care service plans by the Department of Managed Health Care. Existing law provides for regulation of health insurers by the Insurance Commissioner. Existing law regulates the solicitation of health care service plan products and health insurance. Existing law prohibits certain unfair insurance practices specifically and unfair business practices in general. Existing law provides that a willful violation of provisions governing health care service plans is a crime.

This bill would provide that it is an unfair business practice for health insurance agents or brokers and various parties engaged in the solicitation of health care service plans to engage in cold lead advertising, as defined, when marketing a Medicare product or to use an appointment made to discuss a particular Medicare product to solicit the sale of another Medicare product or other health care coverage or health insurance products, except as specified. Because a willful violation of provisions governing health care service plans would be a crime, this bill would impose a state-mandated local program by creating a new crime.

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.

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

SECTION 1. Section 1361.1 is added to the Health and Safety Code, to read:

1361.1. It is an unfair business practice for a solicitor, solicitor firm, or representative of a health care service plan to sell, solicit, or negotiate the purchase of health care coverage products by any of the following methods:

(a) The use of a marketing technique known as cold lead advertising when marketing a Medicare product. As used in this section, "cold lead

advertising” means making use directly or indirectly of a method of marketing that fails to disclose in a conspicuous manner that a purpose of the marketing is health care service plan sales solicitation and that contact will be made by a solicitor, solicitor firm, or representative of a health care service plan.

(b) The use of an appointment that was made to discuss a particular Medicare product or to solicit the sale of a particular Medicare product in order to solicit the sale of another Medicare product or other health care coverage products, unless the consumer specifically agrees in advance of the appointment to discuss that other Medicare product or other types of health care coverage products during the same appointment. As used in this section, “Medicare product” includes Medicare Parts A, B, C, and D, and Medicare supplement plans.

SEC. 2. Section 790.037 is added to the Insurance Code, to read:

790.037. It is an unfair business practice for a health insurance agent or broker to sell, solicit, or negotiate the purchase of health insurance by any of the following methods:

(a) The use of a marketing technique known as cold lead advertising when marketing a Medicare product. As used in this section, “cold lead advertising” means making use directly or indirectly of a method of marketing that fails to disclose in a conspicuous manner that a purpose of the marketing is health insurance sales solicitation and that contact will be made by a health insurance agent or broker.

(b) The use of an appointment that was made to discuss a particular Medicare product or to solicit the sale of a particular Medicare product in order to solicit the sale of another Medicare product or other health insurance products, unless the consumer specifically agrees in advance of the appointment to discuss that other Medicare product or other types of health insurance products during the same appointment. As used in this section, “Medicare product” includes Medicare Parts A, B, C, and D, and Medicare supplement plans.

SEC. 3. 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.