

AMENDED IN ASSEMBLY APRIL 20, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2

Introduced by Assembly Member De La Torre

December 1, 2008

An act to add Sections 1389.9, 1389.10, 1389.11, 1389.13, 1389.14, 1389.15, 1389.16, 1389.17, 1389.18, 1389.19, 1389.20, 1389.22, and 1389.24 to, and to repeal and add Section 1389.1 of, the Health and Safety Code, and to amend Sections 10270.95, 10291.5, and 12957 of, and to add Sections 10384.1, 10384.12, 10384.14, 10384.16, 10384.18, 10384.2, 10384.22, 10384.24, 10384.26, 10384.28, 10384.29, 10384.3, 10384.32, and 10396 to, the Insurance Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

AB 2, as amended, De La Torre. Individual health care coverage.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care, and makes a willful violation of its provisions a crime. Existing law provides for the regulation of health insurers by the Department of Insurance. Existing law prohibits the Director of the Department of Managed Health Care and the Insurance Commissioner from approving a plan contract or health insurance policy without a finding that the application conforms to specified requirements. Existing law prohibits the cancellation or nonrenewal of an enrollment or subscription by a health care service plan except in specified circumstances, including for good cause as agreed upon in the contract. Existing law prohibits the nonrenewal of

individual health benefit plans by a health insurer except in specified circumstances, including for nonpayment.

This bill would require the director and the commissioner to jointly, by regulation, establish standard information and health history questions to be used by health care service plans and health insurers for their individual health care coverage application forms, as specified, and, on and after January 1, 2011, would require all *individual* health care service plan and health insurance applications to be reviewed and approved by the director or the commissioner, respectively, before use by a health care service plan or health insurer.

This bill would require all plans and insurers to complete medical underwriting prior to issuing a health care service plan contract or health insurance policy, and to meet certain requirements with regard to medical underwriting, *including a requirement that the plan or insurer review each application for accuracy and completeness, review specified claims information, make prescription drug database inquiries, and identify and inquire of the applicant about any omissions, ambiguities, or inconsistencies.* The bill would prohibit a plan or insurer from canceling or rescinding an individual health care service plan contract or individual health insurance policy unless specified conditions are met. The bill would also require a plan or insurer to annually report to the department the total number of individual health care service plan contracts or individual health insurance policies issued, canceled, or rescinded pursuant to these provisions during the preceding calendar year. The bill would require a health care service plan or health insurer to provide specified notices to subscribers and enrollees and insureds and policyholders. The bill would, commencing January 1, 2011, establish in the Department of Managed Health Care and the Department of Insurance an independent review process for the review of health care service plans' and health insurers' decisions to cancel or rescind *individual* health care service plan contracts and health insurance policies. The bill would enact related provisions.

Because this bill would impose additional requirements on health care service plans, the willful violation of which would be a crime, it would impose a state-mandated local program.

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.

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

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

1 SECTION 1. Section 1389.1 of the Health and Safety Code is
2 repealed.

3 SEC. 2. Section 1389.1 is added to the Health and Safety Code,
4 to read:

5 1389.1. (a) The director shall, by regulation, establish standard
6 information and health history questions that shall be used by all
7 health care service plans for their individual health care coverage
8 application forms. The director shall jointly develop the regulation
9 with the Insurance Commissioner. The regulation shall include a
10 pool of approved questions for use in health care service plan and
11 health insurance application forms for individual health plan
12 contracts and individual health insurance policies. ~~The application~~
13 ~~forms for individual health plan contracts and individual health~~
14 ~~insurance policies may only contain questions from the pool of~~
15 ~~approved questions established pursuant to this subdivision. The~~
16 *health care service plan and health insurance application forms*
17 *for individual health plan contracts and health insurance policies*
18 *may only contain questions approved by the director and*
19 *commissioner.*

20 (b) The standard information and health history questions
21 developed by the director shall contain clear and unambiguous
22 information and questions designed to ascertain the health history
23 of the applicant and shall be based on the medical information that
24 is reasonable and necessary for medical underwriting purposes.

25 (c) The application form shall include a prominently displayed
26 notice that shall read:

27
28 “California law prohibits an HIV test from being required or
29 used by health care service plans as a condition of obtaining
30 coverage.”

31
32 (d) The health history questions established under this section
33 shall include a limitation on how far back in time from the date of
34 the application the applicant was diagnosed with, or treated for,
35 the health condition specified in the questions.

(e) No later than six months after the adoption of the regulation under subdivision (a), all individual health care service plan application forms shall utilize only the pool of approved questions and the standardized information established pursuant to that subdivision.

(f) On and after January 1, 2011, all individual health care service plan applications shall be reviewed and approved by the director before they may be used by a health care service plan.

SEC. 3. Section 1389.9 is added to the Health and Safety Code, to read:

1389.9. (a) A health care service plan shall complete medical underwriting prior to issuing an enrollee or subscriber health care service plan contract.

(b) “Medical underwriting” means the completion of a reasonable investigation of the applicant’s health history information, which includes, but is not limited to, both of the following:

(1) Ensuring that the information submitted on the application form and the material submitted with the application form are complete and accurate.

(2) Resolving all reasonable questions arising from the application form or materials submitted with the application form or any information obtained by the health care service plan as part of its verification of the accuracy and completeness of the application form.

(c) A health care service plan shall adopt and implement written medical underwriting policies and procedures *to ensure that the health care service plan does all of the following with respect to an application for health care coverage:*

(1) Reviews all of the following:

(A) Information on the application and any materials submitted with the application form for accuracy and completeness.

(B) Claims information about the applicant that is within the health care service plan’s own claims information.

(C) At least one commercially available prescription drug database for information about the applicant.

(2) Identifies and makes inquiries, including contacting the applicant about any questions raised by omissions, ambiguities, or inconsistencies based upon the information collected pursuant to paragraph (1).

1 (d) The plan shall document all information collected during
2 the underwriting review process.

3 (e) On or before January 1, 2011, a health care service plan shall
4 file its medical underwriting policies and procedures with the
5 department pursuant to Section 1352.

6 SEC. 4. Section 1389.10 is added to the Health and Safety
7 Code, to read:

8 1389.10. (a) Within 10 business days of issuing a health care
9 service plan contract, the health care service plan shall send a copy
10 of the completed written application to the applicant with a copy
11 of the health care service plan contract issued by the health care
12 service plan, along with a notice that states all of the following:

13 (1) The applicant should review the completed application
14 carefully and notify the health care service plan within 30 days of
15 any inaccuracy in the application.

16 (2) Any intentional material misrepresentation or intentional
17 material omission in the information submitted in the application
18 may result in the cancellation or rescission of the plan contract.

19 (3) The applicant should retain a copy of the completed written
20 application for the applicant's records.

21 (b) If new information is provided by the applicant within the
22 30-day period permitted by subdivision (a), medical underwriting,
23 as defined in Section 1389.9, applies to the new information.

24 SEC. 5. Section 1389.11 is added to the Health and Safety
25 Code, to read:

26 1389.11. Once a plan has issued an individual health care
27 service plan contract, the health care service plan shall not rescind
28 or cancel the health care service plan contract unless all of the
29 following apply:

30 (a) There was a material misrepresentation or material omission
31 in the information submitted by the applicant in the written
32 application to the health care service plan prior to the issuance of
33 the health care service plan contract that would have prevented
34 the contract from being entered into.

35 (b) The health care service plan completed medical underwriting
36 pursuant to Section 1389.9 before issuing the plan contract.

37 (c) The health care service plan demonstrates that the applicant
38 intentionally misrepresented or intentionally omitted material
39 information on the application prior to the issuance of the plan

1 contract with the purpose of misrepresenting his or her health
2 history in order to obtain health care coverage.

3 (d) The application form was approved by the department
4 pursuant to Section 1389.1.

5 (e) The health care service plan sent a copy of the completed
6 written application to the applicant with a copy of the health care
7 service plan contract issued by the health care service plan, along
8 with the written notice required by Section 1389.10.

9 SEC. 6. Section 1389.13 is added to the Health and Safety
10 Code, to read:

11 1389.13. (a) If a health care service plan obtains information
12 after issuing an individual health care service plan contract that
13 the subscriber or enrollee may have intentionally omitted or
14 intentionally misrepresented material information during the
15 application for coverage process, the health care service plan may
16 investigate the potential omissions or misrepresentations in order
17 to determine whether the subscriber's or enrollee's health care
18 service plan contract should be rescinded or canceled.

19 (b) (1) Upon initiating a postcontract issuance investigation for
20 potential rescission or cancellation of health care coverage, the
21 plan shall provide a written notice to the enrollee or subscriber via
22 regular and certified mail that it has initiated an investigation of
23 intentional material misrepresentation or intentional material
24 omission on the part of the enrollee or subscriber and that the
25 investigation could lead to the rescission or cancellation of the
26 enrollee's or subscriber's health care service plan contract. The
27 notice shall be provided by the health care service plan within five
28 days of the initiation of the investigation.

29 (2) The written notice required under paragraph (1) shall include
30 full disclosure of the allegedly intentional material omission or
31 misrepresentation and a clear and concise explanation of why the
32 information has resulted in the health care service plan's initiation
33 of an investigation to determine whether rescission or cancellation
34 is warranted. The notice shall invite the enrollee or subscriber to
35 provide any evidence or information within 45 business days to
36 negate the plan's reasons for initiating the postissuance
37 investigation.

38 (c) (1) The plan shall complete its investigation no later than
39 90 days from the date of the notice sent to the enrollee or subscriber
40 pursuant to subdivision (b).

1 (2) Upon completion of its postissuance investigation, the plan
2 shall provide written notice via regular and certified mail to the
3 subscriber or enrollee that it has concluded its investigation and
4 has made one of the following determinations:

5 (A) The plan has determined that the enrollee or subscriber did
6 not intentionally misrepresent or intentionally omit material
7 information during the application process and that the subscriber's
8 or enrollee's health care coverage will not be canceled or rescinded.

9 (B) The plan intends to seek approval from the director to cancel
10 or rescind the enrollee's or subscriber's health care service plan
11 contract for intentional misrepresentation or intentional omission
12 of material information during the application for coverage process.

13 (3) The written notice required under subparagraph (B) of
14 paragraph (2) shall do all of the following:

15 (A) Include full disclosure of the nature and substance of any
16 information that led to the plan's determination that the enrollee
17 or subscriber intentionally misrepresented or intentionally omitted
18 material information on the application form.

19 (B) Provide the enrollee or subscriber with information
20 indicating that the health plan's determination shall not become
21 final until it is reviewed and approved by the department's
22 independent review process.

23 (C) Provide the enrollee or subscriber with information regarding
24 the department's independent review process and the right of the
25 enrollee or subscriber to opt out of that review process within 45
26 days of the date upon which an independent review organization
27 receives a request for independent review.

28 (D) Provide a statement that the health care service plan's
29 proposed decision to cancel or rescind the health care service plan
30 contract shall not become effective unless the department's
31 independent review organization upholds the health care service
32 plan's decision or unless the enrollee or subscriber has opted out
33 of the independent review.

34 SEC. 7. Section 1389.14 is added to the Health and Safety
35 Code, to read:

36 1389.14. (a) A health care service plan shall continue to
37 authorize and provide all medically necessary health care services
38 required to be covered under an enrollee's or subscriber's health
39 care service plan contract until the effective date of cancellation
40 or rescission.

(b) The effective date of the health care service plan's cancellation or the date upon which the plan may initiate a rescission shall be no earlier than the date that the enrollee or subscriber receives notification via regular and certified mail that the independent review organization has made a determination upholding the health care service plan's decision to rescind or cancel pursuant to Section 1389.11.

SEC. 8. Section 1389.15 is added to the Health and Safety Code, to read:

1389.15. (a) Commencing January 1, 2011, there is hereby established in the department the independent review process for the review of health care service plan decisions to cancel or rescind health care service plan contracts pursuant to Section 1389.11.

(b) All health care service plan decisions to cancel or rescind an enrollee's or subscriber's health care service plan contract pursuant to Section 1389.11 shall be reviewed, unless the enrollee or subscriber opts out of the independent review process.

(c) For purposes of this article, an enrollee or subscriber may designate an agent to act on his or her behalf.

(d) The independent review process authorized by this article is in addition to any other procedures or remedies that may be available.

(e) No later than January 1, 2011, in addition to the notice required pursuant to subdivision (b) of Section 1389.13, every health care service plan shall prominently display in every plan member handbook or relevant informational brochure, in every plan contract, on enrollee evidence of coverage forms, and on copies of plan procedures for resolving grievances, information concerning the right of an enrollee or subscriber to an automatic independent review, unless the enrollee or subscriber opts out, in cases where the health care service plan has decided to cancel or rescind the enrollee's or subscriber's health care service plan contract pursuant to Section 1389.11.

(f) (1) Upon the health care service plan's receipt of notice from the department, the plan shall provide to the independent review organization designated by the department a copy of all of the following documents within seven business days:

(A) A copy of all of the enrollee's or subscriber's medical records in the possession of the plan or its contracting providers

1 relevant to the plan's decision to cancel or rescind the enrollee's
2 or subscriber's health care service plan contract.

3 (B) A copy of the enrollee's or subscriber's application for
4 coverage with the health care service plan.

5 (C) A copy of all information provided to the enrollee or
6 subscriber by the plan concerning the health care service plan's
7 decision to cancel or rescind the enrollee's or subscriber's health
8 care service plan contract and a copy of any materials the enrollee
9 or subscriber, the enrollee's or subscriber's agent, or the enrollee's
10 or subscriber's provider submitted to the plan. The confidentiality
11 of any enrollee or subscriber medical information shall be
12 maintained pursuant to applicable state and federal laws.

13 (D) A copy of any other relevant documents or information used
14 by the plan for the following:

15 (i) To complete medical underwriting pursuant to Section
16 1389.9.

17 (ii) In determining that the enrollee's or subscriber's health care
18 service plan contract should be canceled or rescinded and any
19 statements by the plan explaining the reasons for the decision to
20 cancel or rescind the enrollee's or subscriber's health care service
21 plan contract.

22 (2) The plan shall concurrently provide a copy of documents
23 required by this subdivision to the enrollee or subscriber. The
24 department and the independent review organization shall maintain
25 the confidentiality of any information found by the director to be
26 the proprietary information of the plan.

27 SEC. 9. Section 1389.16 is added to the Health and Safety
28 Code, to read:

29 1389.16. (a) The department shall expeditiously review
30 independent review requests and immediately notify the enrollee
31 or subscriber, in writing, as follows:

32 (1) That the health care service plan has requested an
33 independent review that has been approved, in whole or in part,
34 or, if not approved, the reasons for disapproval.

35 (2) That the health care service plan's proposed decision to
36 cancel or rescind the enrollee's or subscriber's health care service
37 plan contract will not become effective unless the independent
38 review organization upholds the health care service plan's decision.

39 (3) That the enrollee or subscriber has 45 days from the date of
40 the organization's receipt of the request for an independent review

1 to submit any information that may be relevant to the independent
2 review.

3 (4) That an independent review does not limit the enrollee's or
4 subscriber's rights to pursue any other remedies available under
5 the law.

6 (b) The health care service plan shall promptly issue a
7 notification to the enrollee or subscriber, after submitting all of
8 the required material to the independent review organization, that
9 includes an annotated list of documents submitted and offer the
10 enrollee or subscriber the opportunity to request copies of those
11 documents from the plan.

12 (c) An independent review organization shall conduct the review
13 in accordance with Section 1389.18 and any regulations or orders
14 of the director adopted pursuant to that section and the
15 Administrative Procedure Act (Chapter 3.5 (commencing with
16 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
17 Code).

18 SEC. 10. Section 1389.17 is added to the Health and Safety
19 Code, to read:

20 1389.17. (a) On or before January 1, 2011, the department
21 shall contract or otherwise arrange with one or more independent
22 organizations in the state to conduct reviews for purposes of this
23 article. The independent review organizations shall be not-for-profit
24 and shall be independent of any health care service plan doing
25 business in this state. The director shall establish additional
26 requirements, including conflict-of-interest standards, consistent
27 with the purposes of this article, and an organization shall be
28 required to meet these requirements in order to qualify for
29 participation in the independent review process and to assist the
30 department in carrying out its responsibilities. The
31 conflict-of-interest standards established by the director shall also
32 be consistent with the conflict-of-interest provisions of Section
33 1374.32 to the extent applicable.

34 (b) The department shall include in its contract or other
35 arrangements with an independent review organization the
36 following requirements, with which the independent review
37 organization shall comply:

38 (1) Provide the department with a description of the system the
39 independent review organization uses to identify and recruit
40 arbitrators and expert consultants to review health care service

1 plan decisions to cancel or rescind health care service plan contracts
2 and the number of arbitrators and expert consultants.

3 (2) A description of how the independent review organization
4 ensures compliance with the conflict-of-interest provisions
5 established by the director pursuant to this section.

6 (3) Demonstrate that it has a quality assurance mechanism in
7 place that does all of the following:

8 (A) Ensures that the arbitrators retained are appropriately
9 licensed as attorneys and in good standing with the State Bar of
10 California.

11 (B) Ensures that the reviews provided by the arbitrator are
12 timely, clear, and credible, and that reviews are monitored for
13 quality on an ongoing basis.

14 (C) Ensures that the method of selecting an arbitrator for
15 individual cases achieves a fair and impartial panel of arbitrators
16 who are qualified to render recommendations regarding the health
17 care service plan's decision to cancel or rescind a health care
18 service plan contract.

19 (D) Ensures the confidentiality of medical records and the
20 review materials, consistent with the requirements of this section
21 and applicable state and federal law.

22 (E) Ensures the independence of the arbitrator retained to
23 perform the reviews and of the experts retained to provide expert
24 opinions through conflict-of-interest policies and prohibitions
25 consistent with the standards established by the director, and
26 ensures adequate screening for conflicts of interest.

27 (4) Ensures that arbitrators selected by independent review
28 organizations to review health care service plan decisions to cancel
29 or rescind a health care service plan contract meet the following
30 minimum requirements:

31 (A) Notwithstanding any other provision of law, the arbitrator
32 holds an unrestricted license to practice law in California.

33 (B) The arbitrator has no history of disciplinary action or
34 sanctions taken by the State Bar of California.

35 (C) The arbitrator does not represent health care service plans
36 or insurers.

37 (c) "Expert consultant" means an underwriter, actuary, physician
38 and surgeon, or other professional whose background, experience,
39 and knowledge are relevant to determining whether the health care
40 service plan completed medical underwriting or to determining

1 the issues raised in the review of the health care service plan's
2 decision to cancel or rescind the enrollee's or subscriber's health
3 care service plan contract.

4 (d) The department shall provide, upon the request of any
5 interested person, a copy of all nonproprietary information, as
6 determined by the director, filed with it by an independent review
7 organization seeking to contract under this article. The department
8 may charge a nominal fee to the interested person for photocopying
9 the requested information.

10 SEC. 11. Section 1389.18 is added to the Health and Safety
11 Code, to read:

12 1389.18. (a) (1) Upon receipt of information and documents
13 related to a case, the arbitrator selected to conduct the review by
14 the independent review organization shall promptly review all
15 pertinent records of the enrollee or subscriber, provider reports,
16 and any other information submitted to the organization as
17 authorized by the department or requested from any of the parties
18 to the dispute by the reviewers.

19 (2) If an arbitrator requests information from any of the parties,
20 a copy of the request and the response shall be provided to all of
21 the parties.

22 (3) The arbitrator may request an opinion of an expert consultant
23 with respect to specific questions raised in the review of whether
24 the health care service plan completed medical underwriting or
25 the health care service plan's decision to cancel or rescind an
26 enrollee's or subscriber's health care service plan contract where
27 the use of an expert is warranted. However, the expert consultant
28 may not render an opinion as to whether the enrollee or subscriber
29 intentionally misrepresented or intentionally omitted information
30 during the health care service plan application process.

31 (b) (1) The organization shall complete its review and make
32 its determination in writing, and in layperson's terms to the
33 maximum extent practicable, within 60 days of the receipt of the
34 application for review and supporting documentation.

35 (2) The enrollee or subscriber or the enrollee's or subscriber's
36 agent shall have 45 days from the date of the organization's receipt
37 of the request for an independent review to submit any information
38 that may be relevant to the independent review. If the organization
39 does not receive any information from the enrollee or subscriber
40 or the enrollee's or subscriber's agent at the end of the 45 days,

1 the organization shall issue a written analysis and determination
2 based on the information it has received by that date.

3 (3) Subject to the approval of the department, the deadline for
4 the analysis and determination of the review may be extended by
5 the director for up to three days in extraordinary circumstances or
6 for good cause.

7 (c) The arbitrator's analysis and determination shall state the
8 reasons for the determination, the relevant documents in the record,
9 and the relevant findings supporting the determination.

10 (d) The independent review organization shall provide the
11 director, the plan, the enrollee or subscriber, and the enrollee's or
12 subscriber's provider with the name of the arbitrator reviewing
13 the case, the analysis and determination of the arbitrator, and a
14 description of the qualifications of the arbitrator.

15 (e) The director shall immediately adopt the determination of
16 the independent review organization and shall promptly issue a
17 written decision to the parties that shall be binding on the plan.

18 (f) After removing the names of the parties, including, but not
19 limited to, the enrollee or subscriber, all medical providers, the
20 plan, and any of the insurer's employees or contractors, director
21 decisions adopting a determination of an independent review
22 organization shall be made available by the department to the
23 public upon request, at the department's cost and after considering
24 applicable laws governing disclosure of public records,
25 confidentiality, and personal privacy.

26 SEC. 12. Section 1389.19 is added to the Health and Safety
27 Code, to read:

28 1389.19. (a) A health care service plan shall not engage in any
29 conduct that has the effect of prolonging the independent review
30 process. Engaging in that conduct or the failure of the plan to
31 promptly implement an independent review process decision is a
32 violation of this chapter and, in addition to any other fines,
33 penalties, and other remedies available to the director under this
34 chapter, the plan shall be subject to an administrative penalty of
35 not less than five thousand dollars (\$5,000) for each day the
36 independent review process is prolonged or the decision is not
37 implemented. Administrative penalties shall be deposited in the
38 Managed Care Fund, and shall not be used to lower health care
39 service plans' assessments used to fund the department.

(b) The director shall perform an annual audit of independent review cases for the dual purposes of education and the opportunity to determine if any investigative or enforcement actions should be undertaken by the department, particularly if a plan repeatedly fails to act promptly and reasonably with respect to decisions to cancel, rescind, limit, or deny benefits under or raise premiums on a subscriber's or enrollee's health care service plan contract.

SEC. 13. Section 1389.20 is added to the Health and Safety Code, to read:

1389.20. (a) After considering the results of a competitive bidding process and any other relevant information on program costs, the director shall establish a reasonable, per-case reimbursement schedule to pay the costs of independent review organization reviews, which may vary depending upon relevant factors.

(b) The costs of the independent review system for enrollees and subscribers shall be borne by the affected health care service plans pursuant to an assessment fee system established by the director. Plans that do not cancel or rescind individual health care service plan contracts pursuant to Section 1389.11 shall not be considered by the director as "affected health care service plans" under this section. In determining the amount to be assessed, the director shall consider all appropriations available for the support of this chapter and existing fees paid to the department. The director may adjust fees upward or downward, on a schedule set by the department, to address shortages or overpayments, and to reflect utilization of the independent review process.

SEC. 14. Section 1389.22 is added to the Health and Safety Code, to read:

1389.22. (a) On and after January 1, 2010, every health care service plan shall annually report to the department the total number of individual health care service plan contracts issued, and the total number of individual health care service plan contracts where the plan initiated a cancellation or rescission or completed a cancellation or rescission pursuant to the provisions of this article for the preceding calendar year.

(b) On or before March 31, 2010, and annually thereafter, the department shall publish on its Internet Web site the information filed pursuant to this section.

SEC. 15. Section 1389.24 is added to the Health and Safety Code, to read:

1389.24. The requirements of this article shall not apply to health care service plan contracts for coverage issued under the Medi-Cal program, the Access for Infants and Mothers Program, the Healthy Families Program, or the federal Medicare Program.

SEC. 16. Section 10270.95 of the Insurance Code is amended to read:

10270.95. Without affecting the applicability or degree of applicability of other sections of this chapter, it is hereby specified that the provisions of Sections 10321, 10325, 10401, of subdivisions (a), (c), (e), (h) and (i) of Section 10320, of subdivision (a) of Section 10290, of paragraphs (2), (3), (4), (5), (6), (7), (8), (9), (10), (11) and (12) of subdivision (b) and subdivisions (c), (d), (e), (f), (g), and (i) of Section 10291.5 and of Section 10291.6, shall not apply to group disability insurance. The provisions of Section 10401 shall not apply to family expense disability insurance; provided, there is no discrimination between families of the same class.

SEC. 17. Section 10291.5 of the Insurance Code is amended to read:

10291.5. (a) The purpose of this section is to achieve both of the following:

(1) Prevent, in respect to disability insurance, fraud, unfair trade practices, and insurance economically unsound to the insured.

(2) Ensure that the language of all insurance policies can be readily understood and interpreted.

(b) The commissioner shall not approve any disability policy for insurance or delivery in this state in any of the following circumstances:

(1) If the commissioner finds that it contains any provision, or has any label, description of its contents, title, heading, backing, or other indication of its provisions that is unintelligible, uncertain, ambiguous, or abstruse, or likely to mislead a person to whom the policy is offered, delivered or issued.

(2) If it contains any provision for payment at a rate, or in an amount (other than the product of rate times the periods for which payments are promised) for loss caused by particular event or events (as distinguished from character of physical injury or illness of the insured) more than triple the lowest rate, or amount,

1 promised in the policy for the same loss caused by any other event
2 or events (loss caused by sickness, loss caused by accident, and
3 different degrees of disability each being considered, for the
4 purpose of this paragraph, a different loss); or if it contains any
5 provision for payment for any confining loss of time at a rate more
6 than six times the least rate payable for any partial loss of time or
7 more than twice the least rate payable for any nonconfining total
8 loss of time; or if it contains any provision for payment for any
9 nonconfining total loss of time at a rate more than three times the
10 least rate payable for any partial loss of time.

11 (3) If it contains any provision for payment for disability caused
12 by particular event or events (as distinguished from character of
13 physical injury or illness of the insured) payable for a term more
14 than twice the least term of payment provided by the policy for
15 the same degree of disability caused by any other event or events;
16 or if it contains any benefit for total nonconfining disability payable
17 for lifetime or for more than 12 months and any benefit for partial
18 disability, unless the benefit for partial disability is payable for at
19 least three months; or if it contains any benefit for total confining
20 disability payable for lifetime or for more than 12 months, unless
21 it also contains benefit for total nonconfining disability caused by
22 the same event or events payable for at least three months, and, if
23 it also contains any benefit for partial disability, unless the benefit
24 for partial disability is payable for at least three months. The
25 provisions of this paragraph shall apply separately to accident
26 benefits and to sickness benefits.

27 (4) (A) If it contains provision or provisions which would have
28 the effect, upon any termination of the policy, of reducing or ending
29 the liability as the insurer would have, but for the termination, for
30 loss of time resulting from accident occurring while the policy is
31 in force or for loss of time commencing while the policy is in force
32 and resulting from sickness contracted while the policy is in force
33 or for other losses resulting from accident occurring or sickness
34 contracted while the policy is in force, and also contains provision
35 or provisions reserving to the insurer the right to cancel or refuse
36 to renew the policy, unless it also contains other provision or
37 provisions the effect of which is that termination of the policy as
38 the result of the exercise by the insurer of any such right shall not
39 reduce or end the liability in respect to the hereinafter specified
40 losses as the insurer would have had under the policy, including

1 its other limitations, conditions, reductions, and restrictions, had
2 the policy not been so terminated.

3 (B) The specified losses referred to in subparagraph (A) are:

4 (i) Loss of time which commences while the policy is in force
5 and results from sickness contracted while the policy is in force.

6 (ii) Loss of time which commences within 20 days following
7 and results from accident occurring while the policy is in force.

8 (iii) Losses which result from accident occurring or sickness
9 contracted while the policy is in force and arise out of the care or
10 treatment of illness or injury and which occur within 90 days from
11 the termination of the policy or during a period of continuous
12 compensable loss or losses which period commences prior to the
13 end of such 90 days.

14 (iv) Losses other than those specified in clause (i), (ii), or (iii)
15 of this paragraph which result from accident occurring or sickness
16 contracted while the policy is in force and which losses occur
17 within 90 days following the accident or the contraction of the
18 sickness.

19 (5) If by any caption, label, title, or description of contents the
20 policy states, implies, or infers without reasonable qualification
21 that it provides loss of time indemnity for lifetime, or for any period
22 of more than two years, if the loss of time indemnity is made
23 payable only when house confined or only under special
24 contingencies not applicable to other total loss of time indemnity.

25 (6) If it contains any benefit for total confining disability payable
26 only upon condition that the confinement be of an abnormally
27 restricted nature unless the caption of the part containing any such
28 benefit is accurately descriptive of the nature of the confinement
29 required and unless, if the policy has a description of contents,
30 label, or title, at least one of them contain reference to the nature
31 of the confinement required.

32 (7) (A) If, irrespective of the premium charged therefor, any
33 benefit of the policy is, or the benefits of the policy as a whole are,
34 not sufficient to be of real economic value to the insured.

35 (B) In determining whether benefits are of real economic value
36 to the insured, the commissioner shall not differentiate between
37 insureds of the same or similar economic or occupational classes
38 and shall give due consideration to all of the following:

39 (i) The right of insurers to exercise sound underwriting judgment
40 in the selection and amounts of risks.

1 (ii) Amount of benefit, length of time of benefit, nature or extent
2 of benefit, or any combination of those factors.

3 (iii) The relative value in purchasing power of the benefit or
4 benefits.

5 (iv) Differences in insurance issued on an industrial or other
6 special basis.

7 (C) To be of real economic value, it shall not be necessary that
8 any benefit or benefits cover the full amount of any loss which
9 might be suffered by reason of the occurrence of any hazard or
10 event insured against.

11 (8) If it substitutes a specified indemnity upon the occurrence
12 of accidental death for any benefit of the policy, other than a
13 specified indemnity for dismemberment, which would accrue prior
14 to the time of that death or if it contains any provision which has
15 the effect, other than at the election of the insured exercisable
16 within not less than 20 days in the case of benefits specifically
17 limited to the loss by removal of one or more fingers or one or
18 more toes or within not less than 90 days in all other cases, of
19 doing any of the following:

20 (A) Of substituting, upon the occurrence of the loss of both
21 hands, both feet, one hand and one foot, the sight of both eyes or
22 the sight of one eye and the loss of one hand or one foot, some
23 specified indemnity for any or all benefits under the policy unless
24 the indemnity so specified is equal to or greater than the total of
25 the benefit or benefits for which such specified indemnity is
26 substituted and which, assuming in all cases that the insured would
27 continue to live, could possibly accrue within four years from the
28 date of such dismemberment under all other provisions of the
29 policy applicable to the particular event or events (as distinguished
30 from character of physical injury or illness) causing the
31 dismemberment.

32 (B) Of substituting, upon the occurrence of any other
33 dismemberment some specified indemnity for any or all benefits
34 under the policy unless the indemnity so specified is equal to or
35 greater than one-fourth of the total of the benefit or benefits for
36 which the specified indemnity is substituted and which, assuming
37 in all cases that the insured would continue to live, could possibly
38 accrue within four years from the date of the dismemberment under
39 all other provisions of the policy applicable to the particular event

1 or events (as distinguished from character of physical injury or
2 illness) causing the dismemberment.

3 (C) Of substituting a specified indemnity upon the occurrence
4 of any dismemberment for any benefit of the policy which would
5 accrue prior to the time of dismemberment.

6 As used in this section, loss of a hand shall be severance at or
7 above the wrist joint, loss of a foot shall be severance at or above
8 the ankle joint, loss of an eye shall be the irrecoverable loss of the
9 entire sight thereof, loss of a finger shall mean at least one entire
10 phalanx thereof and loss of a toe the entire toe.

11 (9) If it contains provision, other than as provided in Section
12 10369.3, reducing any original benefit more than 50 percent on
13 account of age of the insured.

14 (10) If the insuring clause or clauses contain no reference to the
15 exceptions, limitations, and reductions (if any) or no specific
16 reference to, or brief statement of, each abnormally restrictive
17 exception, limitation, or reduction.

18 (11) If it contains benefit or benefits for loss or losses from
19 specified diseases only unless:

20 (A) All of the diseases so specified in each provision granting
21 the benefits fall within some general classification based upon the
22 following:

23 (i) The part or system of the human body principally subject to
24 all such diseases.

25 (ii) The similarity in nature or cause of such diseases.

26 (iii) In case of diseases of an unusually serious nature and
27 protracted course of treatment, the common characteristics of all
28 such diseases with respect to severity of affliction and cost of
29 treatment.

30 (B) The policy is entitled and each provision granting the
31 benefits is separately captioned in clearly understandable words
32 so as to accurately describe the classification of diseases covered
33 and expressly point out, when that is the case, that not all diseases
34 of the classification are covered.

35 (12) If it does not contain provision for a grace period of at least
36 the number of days specified below for the payment of each
37 premium falling due after the first premium, during which grace
38 period the policy shall continue in force provided, that the grace
39 period to be included in the policy shall be not less than seven days
40 for policies providing for weekly payment of premium, not less

1 than 10 days for policies providing for monthly payment of
2 premium and not less than 31 days for all other policies.

3 (13) If it fails to conform in any respect with any law of this
4 state.

5 (c) The commissioner may, from time to time as conditions
6 warrant, after notice and hearing, promulgate such reasonable rules
7 and regulations, and amendments and additions thereto, as are
8 necessary or convenient, to establish, in advance of the submission
9 of policies, the standard or standards conforming to subdivision
10 (b), by which he or she shall disapprove or withdraw approval of
11 any disability policy.

12 In promulgating any such rule or regulation the commissioner
13 shall give consideration to the criteria herein established and to
14 the desirability of approving for use in policies in this state uniform
15 provisions, nationwide or otherwise, and is hereby granted the
16 authority to consult with insurance authorities of any other state
17 and their representatives individually or by way of convention or
18 committee, to seek agreement upon those provisions.

19 Any such rule or regulation shall be promulgated in accordance
20 with the procedure provided in Chapter 3.5 (commencing with
21 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
22 Code.

23 (d) The commissioner may withdraw approval of filing of any
24 policy or other document or matter required to be approved by the
25 commissioner, or filed with him or her, by this chapter when the
26 commissioner would be authorized to disapprove or refuse filing
27 of the same if originally submitted at the time of the action of
28 withdrawal.

29 Any such withdrawal shall be in writing and shall specify
30 reasons. An insurer adversely affected by any such withdrawal
31 may, within a period of 30 days following mailing or delivery of
32 the writing containing the withdrawal, by written request secure
33 a hearing to determine whether the withdrawal should be annulled,
34 modified, or confirmed. Unless, at any time, it is mutually agreed
35 to the contrary, a hearing shall be granted and commenced within
36 30 days following filing of the request and shall proceed with
37 reasonable dispatch to determination. Unless the commissioner in
38 writing in the withdrawal, or subsequent thereto, grants an
39 extension, any such withdrawal shall, in the absence of any such
40 request, be effective, prospectively and not retroactively, on the

1 91st day following the mailing or delivery of the withdrawal, and,
2 if request for the hearing is filed, on the 91st day following mailing
3 or delivery of written notice of the commissioner's determination.

4 (e) No proceeding under this section is subject to Chapter 5
5 (commencing with Section 11500) of Part 1 of Division 3 of Title
6 2 of the Government Code.

7 (f) Except as provided in subdivision (h), any action taken by
8 the commissioner under this section is subject to review by the
9 courts of this state and proceedings on review shall be in
10 accordance with the Code of Civil Procedure.

11 Notwithstanding any other provision of law to the contrary,
12 petition for any such review may be filed at any time before the
13 effective date of the action taken by the commissioner. No action
14 of the commissioner shall become effective before the expiration
15 of 20 days after written notice and a copy thereof are mailed or
16 delivered to the person adversely affected, and any action so
17 submitted for review shall not become effective for a further period
18 of 15 days after the filing of the petition in court. The court may
19 stay the effectiveness thereof for a longer period.

20 (g) This section shall be liberally construed to effectuate the
21 purpose and intentions herein stated; but shall not be construed to
22 grant the commissioner power to fix or regulate rates for disability
23 insurance or prescribe a standard form of disability policy, except
24 that the commissioner shall prescribe a standard supplementary
25 disclosure form for presentation with all disability insurance
26 policies, pursuant to Section 10603.

27 (h) Any such policy issued by an insurer to an insured on a form
28 approved by the commissioner, and in accordance with the
29 conditions, if any, contained in the approval, at a time when that
30 approval is outstanding shall, as between the insurer and the
31 insured, or any person claiming under the policy, be conclusively
32 presumed to comply with, and conform to, this section.

33 SEC. 18. Section 10384.1 is added to the Insurance Code, to
34 read:

35 10384.1. (a) The commissioner shall, by regulation, establish
36 standard information and health history questions that shall be
37 used by all health insurers for their individual health care coverage
38 application forms. The commissioner shall jointly develop the
39 regulation with the Director of the Department of Managed Health
40 Care. The regulation shall include a pool of approved questions

1 for use in health care service plan and health insurance application
2 forms for individual health plan contracts and individual health
3 ~~insurance policies. The application forms for individual health~~
4 ~~plan contracts and individual health insurance policies may only~~
5 ~~contain questions from the pool of approved questions established~~
6 ~~pursuant to this subdivision.~~ *insurance policies. The health care*
7 *service plan and health insurance application forms for individual*
8 *health plan contracts and health insurance policies may only*
9 *contain questions approved by the commissioner and director.*

10 (b) The standard information and health history questions
11 developed by the commissioner shall contain clear and
12 unambiguous information and questions designed to ascertain the
13 health history of the applicant and shall be based on the medical
14 information that is reasonable and necessary for medical
15 underwriting purposes.

16 (c) The application form shall include a prominently displayed
17 notice that shall read:

18
19 “California law prohibits an HIV test from being required or
20 used by health insurance companies as a condition of obtaining
21 health insurance coverage.”

22
23 (d) The health history questions established under this section
24 shall include a limitation on how far back in time from the date of
25 the application the applicant was diagnosed with, or treated for,
26 the health condition specified in the questions.

27 (e) No later than six months after the adoption of the regulation
28 under subdivision (a), all individual health insurance application
29 forms shall utilize only the pool of approved questions and the
30 standardized information established pursuant to that subdivision.

31 (f) On and after January 1, 2011, all individual health insurance
32 applications shall be reviewed and approved by the commissioner
33 before they may be used by a health insurer.

34 SEC. 19. Section 10384.12 is added to the Insurance Code, to
35 read:

36 10384.12. (a) A health insurer shall complete medical
37 underwriting prior to using a health insurance policy.

38 (b) “Medical underwriting” means the completion of a
39 reasonable investigation of the applicant’s health history

1 information, which includes, but is not limited to, both of the
2 following:

3 (1) Ensuring that the information submitted on the application
4 form and the material submitted with the application form are
5 complete and accurate.

6 (2) Resolving all reasonable questions arising from the
7 application form or materials submitted with the application form
8 or any information obtained by the health insurer as part of its
9 verification of the accuracy and completeness of the application
10 form.

11 (c) A health insurer shall adopt and implement written medical
12 underwriting policies and procedures *to ensure that the health*
13 *insurer does all of the following with respect to an application for*
14 *health insurance:*

15 (1) *Reviews all of the following:*

16 (A) *Information on the application and any materials submitted*
17 *with the application form for accuracy and completeness.*

18 (B) *Claims information about the applicant that is within the*
19 *health insurer's own claims information.*

20 (C) *At least one commercially available prescription drug*
21 *database for information about the applicant.*

22 (2) *Identifies and makes inquiries, including contacting the*
23 *applicant about any questions raised by omissions, ambiguities,*
24 *or inconsistencies based upon the information collected pursuant*
25 *to paragraph (1).*

26 (d) The health insurer shall document all information collected
27 during the underwriting review process.

28 (e) On or before January 1, 2011, a health insurer shall file its
29 medical underwriting policies and procedures with the department.

30 SEC. 20. Section 10384.14 is added to the Insurance Code, to
31 read:

32 10384.14. (a) Within 10 business days of issuing a health
33 insurance policy, the health insurer shall send a copy of the
34 completed written application to the applicant with a copy of the
35 health insurance policy issued by the health insurer, along with a
36 notice that states all of the following:

37 (1) The applicant should review the completed application
38 carefully and notify the health insurer within 30 days of any
39 inaccuracy in the application.

1 (2) Any intentional material misrepresentation or intentional
2 material omission in the information submitted in the application
3 may result in the cancellation or rescission of the policy.

4 (3) The applicant should retain a copy of the completed written
5 application for the applicant's records.

6 (b) If new information is provided by the applicant within the
7 30-day period permitted by subdivision (a), medical underwriting,
8 as defined in Section 10384.12, applies to the new information.

9 SEC. 21. Section 10384.16 is added to the Insurance Code, to
10 read:

11 10384.16. Once an insurer has issued an individual health
12 insurance policy, the insurer shall not rescind or cancel the policy
13 unless all of the following apply:

14 (a) There was a material misrepresentation or material omission
15 in the information submitted by the applicant in the written
16 application prior to the issuance of the health insurance policy that
17 would have prevented the contract from being entered into.

18 (b) The health insurer completed medical underwriting pursuant
19 to Section 10384.12 before issuing the policy.

20 (c) The health insurer demonstrates that the applicant
21 intentionally misrepresented or intentionally omitted material
22 information on the application to the health insurer prior to the
23 issuance of the policy with the purpose of misrepresenting his or
24 her health history in order to obtain health care coverage.

25 (d) The application form was approved by the department
26 pursuant to Section 10384.1.

27 (e) The health insurer sent a copy of the completed written
28 application to the applicant with a copy of the health insurance
29 policy issued by the health insurer, along with the written notice
30 required by Section 10384.14.

31 SEC. 22. Section 10384.18 is added to the Insurance Code, to
32 read:

33 10384.18. (a) If a health insurer obtains information after
34 issuing an individual health insurance policy that the subscriber
35 or enrollee may have intentionally omitted or intentionally
36 misrepresented material information during the application for
37 coverage process, the health insurer may investigate the potential
38 omissions or misrepresentations in order to determine whether the
39 insured's or policyholder's health insurance policy should be
40 rescinded or canceled.

1 (b) (1) Upon initiating a postcontract issuance investigation for
2 potential rescission or cancellation of health care coverage, the
3 insurer shall provide a written notice to the insured or policyholder
4 via regular and certified mail that it has initiated an investigation
5 of intentionally material misrepresentation or intentionally material
6 omission on the part of the insured or policyholder and that the
7 investigation could lead to the rescission or cancellation of the
8 insured's or policyholder's health insurance policy. The notice
9 shall be provided by the health insurer within five days of the
10 initiation of the investigation.

11 (2) The written notice required under paragraph (1) shall include
12 full disclosure of the allegedly intentional material omission or
13 misrepresentation and a clear and concise explanation of why the
14 information has resulted in the health insurer's initiation of an
15 investigation to determine whether rescission or cancellation is
16 warranted. The notice shall invite the insured or policyholder to
17 provide any evidence or information within 45 business days to
18 negate the insurer's reasons for initiating the postissuance
19 investigation.

20 (c) (1) The insurer shall complete its investigation no later than
21 90 days from the date of the notice sent to the insured or
22 policyholder pursuant to subdivision (b).

23 (2) Upon completion of its postissuance investigation, the insurer
24 shall provide written notice via regular and certified mail to the
25 insured or policyholder that it has concluded its investigation and
26 has made one of the following determinations:

27 (A) The insurer has determined that the insured or policyholder
28 did not intentionally misrepresent or intentionally omit material
29 information during the application process and that the insured's
30 or policyholder's health care coverage will not be canceled or
31 rescinded.

32 (B) The insurer intends to seek approval from the commissioner
33 to cancel or rescind the insured's or policyholder's health insurance
34 policy for intentional misrepresentation or intentional omission of
35 material information during the application for coverage process.

36 (3) The written notice required under subparagraph (B) of
37 paragraph (2) shall do all of the following:

38 (A) Include full disclosure of the nature and substance of any
39 information that led to the insurer's determination that the insured

1 or policyholder intentionally misrepresented or intentionally
2 omitted material information on the application form.

3 (B) Provide the insured or policyholder with information
4 indicating that the health insurer's determination shall not become
5 final until it is reviewed and approved by the department's
6 independent review process.

7 (C) The insurer shall provide the insured or policyholder with
8 information regarding the department's independent review process
9 and the right of the insured or policyholder to opt out of that review
10 process within 45 days of the date upon which an independent
11 review organization reviews a request for an independent review.

12 (D) Provide a statement that the health insurer's proposed
13 decision to cancel or rescind the health insurance policy shall not
14 become effective unless the department's independent review
15 organization upholds the health insurer's decision or unless the
16 insured has opted out of the independent review.

17 SEC. 23. Section 10384.2 is added to the Insurance Code, to
18 read:

19 10384.2. (a) A health insurer shall continue to authorize and
20 provide all medically necessary health care services required to
21 be covered under an insured's or policyholder's health insurance
22 policy until the effective date of cancellation or rescission.

23 (b) The effective date of the health insurer's cancellation or the
24 date upon which the insurer may initiate a rescission shall be no
25 earlier than the date that the insured or policyholder receives
26 notification via regular and certified mail that the independent
27 review organization has made a determination upholding the health
28 insurer's decision to rescind or cancel pursuant to Section
29 10384.16.

30 SEC. 24. Section 10384.22 is added to the Insurance Code, to
31 read:

32 10384.22. (a) Commencing January 1, 2011, there is hereby
33 established in the department the independent review process for
34 the review of health insurer decisions to cancel or rescind health
35 insurance policies pursuant to Section 10384.16.

36 (b) All health insurer decisions to cancel or rescind an insured's
37 or policyholder's health insurance policy pursuant to Section
38 10384.16 shall be reviewed, unless the insured opts out of the
39 independent review process.

1 (c) For purposes of this article, an insured or policyholder may
2 designate an agent to act on his or her behalf.

3 (d) The independent review process authorized by this article
4 is in addition to any other procedures or remedies that may be
5 available.

6 (e) No later than January 1, 2011, in addition to the notice
7 required pursuant to subdivision (b) of Section 10384.18, every
8 health insurer shall prominently display in every plan member
9 handbook or relevant informational brochure, in every policy, on
10 evidence of coverage forms, and on copies of policy procedures
11 for resolving grievances, information concerning the right of an
12 insured or policyholder to an automatic independent review, unless
13 the insured or policyholder opts out, in cases where the health
14 insurer has decided to cancel or rescind the insured's or
15 policyholder's health insurance policy, pursuant to Section
16 10384.16.

17 (f) (1) Upon the health insurer's receipt of notice from the
18 department, the insurer shall provide to the independent review
19 organization designated by the department a copy of all of the
20 following documents within seven business days:

21 (A) A copy of all of the insured's or policyholder's medical
22 records in the possession of the insurer or its contracting providers
23 relevant to the insurer's decision to cancel or rescind the insured's
24 or policyholder's health insurance policy.

25 (B) A copy of the insured's or policyholder's application for
26 coverage with the health insurer.

27 (C) A copy of all information provided to the insured or
28 policyholder by the insurer concerning the health insurer's decision
29 to cancel or rescind the insured's or policyholder's health insurance
30 policy and a copy of any materials the insured or policyholder, the
31 insured's or policyholder's agent, or the insured's or policyholder's
32 provider submitted to the plan. The confidentiality of any insured
33 or policyholder medical information shall be maintained pursuant
34 to applicable state and federal laws.

35 (D) A copy of any other relevant documents or information used
36 by the insurer for the following:

37 (i) To complete medical underwriting pursuant to Section
38 10384.12.

39 (ii) In determining that the insured's or policyholder's health
40 insurance policy should be canceled or rescinded and any

1 statements by the insurer explaining the reasons for the decision
2 to cancel or rescind the insured's or policyholder's health insurance
3 policy.

4 (2) The insurer shall concurrently provide a copy of documents
5 required by this subdivision to the insured or policyholder. The
6 department and the independent review organization shall maintain
7 the confidentiality of any information found by the commissioner
8 to be the proprietary information of the insurer.

9 SEC. 25. Section 10384.24 is added to the Insurance Code, to
10 read:

11 10384.24. (a) The department shall expeditiously review
12 independent review requests and immediately notify the insured
13 or policyholder, in writing, as follows:

14 (1) That the health insurer has requested an independent review
15 that has been approved, in whole or in part, or, if not approved,
16 the reasons for disapproval.

17 (2) That the health insurer's proposed decision to cancel or
18 rescind the insured's or policyholder's health insurance policy will
19 not become effective unless the independent review organization
20 upholds the health insurer's decision.

21 (3) That the insured or policyholder has 45 days from the date
22 of the organization's receipt of the request for an independent
23 review to submit any information that may be relevant to the
24 independent review.

25 (4) That an independent review does not limit the insured's or
26 policyholder's rights to pursue any other remedies available under
27 the law.

28 (b) The health insurer shall promptly issue a notification to the
29 insured or policyholder, after submitting all of the required material
30 to the independent review organization, that includes an annotated
31 list of documents submitted and offer the insured or policyholder
32 the opportunity to request copies of those documents from the
33 insurer.

34 (c) An independent review organization shall conduct the review
35 in accordance with Section 10384.28 and any regulations or orders
36 of the commissioner adopted pursuant to that section and the
37 Administrative Procedure Act (Chapter 3.5 (commencing with
38 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
39 Code).

1 SEC. 26. Section 10384.26 is added to the Insurance Code, to
2 read:

3 10384.26. (a) On or before January 1, 2011, the department
4 shall contract or otherwise arrange with one or more independent
5 organizations in the state to conduct reviews for purposes of this
6 article. The independent review organizations shall be not-for-profit
7 and shall be independent of any health insurer doing business in
8 this state. The commissioner shall establish additional
9 requirements, including conflict-of-interest standards, consistent
10 with the purposes of this article, and an organization shall be
11 required to meet these requirements in order to qualify for
12 participation in the independent review process and to assist the
13 department in carrying out its responsibilities. The
14 conflict-of-interest standards established by the commissioner shall
15 also be consistent with the conflict-of-interest provisions of Section
16 10169.2 to the extent applicable.

17 (b) The department shall include in its contract or other
18 arrangements with an independent review organization the
19 following requirements, with which the independent review
20 organization shall comply:

21 (1) Provide the department with a description of the system the
22 independent review organization uses to identify and recruit
23 arbitrators and expert consultants to review health insurer decisions
24 to cancel or rescind health insurance policies and the number of
25 arbitrators and expert consultants.

26 (2) A description of how the independent review organization
27 ensures compliance with the conflict-of-interest provisions
28 established by the commissioner pursuant to this section.

29 (3) Demonstrate that it has a quality assurance mechanism in
30 place that does all of the following:

31 (A) Ensures that the arbitrators retained are appropriately
32 licensed as attorneys and in good standing with the State Bar of
33 California.

34 (B) Ensures that the reviews provided by the arbitrator are
35 timely, clear, and credible, and that reviews are monitored for
36 quality on an ongoing basis.

37 (C) Ensures that the method of selecting an arbitrator for
38 individual cases achieves a fair and impartial panel of arbitrators
39 who are qualified to render recommendations regarding the health
40 insurer's decision to cancel or rescind a health insurance policy.

1 (D) Ensures the confidentiality of medical records and the
2 review materials, consistent with the requirements of this section
3 and applicable state and federal law.

4 (E) Ensures the independence of the arbitrator retained to
5 perform the reviews and of the experts retained to provide expert
6 opinions through conflict-of-interest policies and prohibitions
7 consistent with the standards established by the commissioner,
8 and ensures adequate screening for conflicts of interest.

9 (4) Ensures that arbitrators selected by independent review
10 organizations to review health insurer decisions to cancel or rescind
11 a health insurance policy meet the following minimum
12 requirements:

13 (A) Notwithstanding any other provision of law, the arbitrator
14 holds an unrestricted license to practice law in California.

15 (B) The arbitrator has no history of disciplinary action or
16 sanctions taken by the State Bar of California.

17 (C) The arbitrator does not represent insurers or health care
18 service plans.

19 (c) “Expert consultant” means an underwriter, actuary, physician
20 and surgeon, or other professional whose background, experience,
21 and knowledge are relevant to determining whether the health
22 insurer completed medical underwriting or to determining the
23 issues raised in the review of the health insurer’s decision to cancel
24 or rescind the insured’s or policyholder’s health insurance policy.

25 (d) The department shall provide, upon the request of any
26 interested person, a copy of all nonproprietary information, as
27 determined by the commissioner, filed with it by an independent
28 review organization seeking to contract under this article. The
29 commissioner may charge a nominal fee to the interested person
30 for photocopying the requested information.

31 SEC. 27. Section 10384.28 is added to the Insurance Code, to
32 read:

33 10384.28. (a) (1) Upon receipt of information and documents
34 related to a case, the arbitrator selected to conduct the review by
35 the independent review organization shall promptly review all
36 pertinent records of the insured or policyholder, provider reports,
37 and any other information submitted to the organization as
38 authorized by the department or requested from any of the parties
39 to the dispute by the reviewers.

1 (2) If an arbitrator requests information from any of the parties,
2 a copy of the request and the response shall be provided to all of
3 the parties.

4 (3) The arbitrator may request an opinion of an expert consultant
5 with respect to specific questions raised in the review of whether
6 the health insurer completed medical underwriting or the health
7 insurer's decision to cancel or rescind an insured's or
8 policyholder's health insurance policy where the use of an expert
9 is warranted. However, the expert consultant may not render an
10 opinion as to whether the insured or policyholder intentionally
11 misrepresented or intentionally omitted information during the
12 health insurance application process.

13 (b) (1) The organization shall complete its review and make
14 its determination in writing, and in layperson's terms to the
15 maximum extent practicable, within 60 days of the receipt of the
16 application for review and supporting documentation.

17 (2) The insured or policyholder or the insured's or policyholder's
18 agent shall have 45 days from the date of the organization's receipt
19 of the request for an independent review to submit any information
20 that may be relevant to the independent review. If the organization
21 does not receive any information from the insured or policyholder
22 or the insured's or policyholder's agent at the end of the 45 days,
23 the organization shall issue a written analysis and determination
24 based on the information it has received by that date.

25 (3) Subject to the approval of the department, the deadline for
26 the analysis and determination of the review may be extended by
27 the commissioner for up to three days in extraordinary
28 circumstances or for good cause.

29 (c) The arbitrator's analysis and determination shall state the
30 reasons for the determination, the relevant documents in the record,
31 and the relevant findings supporting the determination.

32 (d) The independent review organization shall provide the
33 commissioner, the insurer, the insured or policyholder, and the
34 insured's or policyholder's provider with the name of the arbitrator
35 reviewing the case, the analysis and determination of the arbitrator,
36 and a description of the qualifications of the arbitrator.

37 (e) The commissioner shall immediately adopt the determination
38 of the independent review organization and shall promptly issue
39 a written decision to the parties that shall be binding on the insurer.

(f) After removing the names of the parties, including, but not limited to, the insured or policyholder, all medical providers, the insurer, and any of the insurer's employees or contractors, commissioner decisions adopting a determination of an independent review organization shall be made available by the department to the public upon request, at the department's cost and after considering applicable laws governing disclosure of public records, confidentiality, and personal privacy.

SEC. 28. Section 10384.29 is added to the Insurance Code, to read:

10384.29. (a) A health insurer shall not engage in any conduct that has the effect of prolonging the independent review process. Engaging in that conduct or the failure of the insurer to promptly implement an independent review process decision is a violation of this chapter and, in addition to any other fines, penalties, and other remedies available to the director under this chapter, the insurer shall be subject to an administrative penalty of not less than five thousand dollars (\$5,000) for each day the independent review process is prolonged or the decision is not implemented. Administrative penalties shall be deposited in the General Fund.

(b) The commissioner shall perform an annual audit of independent review cases for the dual purposes of education and the opportunity to determine if any investigative or enforcement actions should be undertaken by the department, particularly if an insurer repeatedly fails to act promptly and reasonably with respect to decisions to cancel, rescind, limit, or deny benefits under or raise premiums on an insured's or policyholder's health insurance policy.

SEC. 29. Section 10384.3 is added to the Insurance Code, to read:

10384.3. (a) After considering the results of a competitive bidding process and any other relevant information on program costs, the commissioner shall establish a reasonable, per-case reimbursement schedule to pay the costs of independent review organization reviews, which may vary depending upon relevant factors.

(b) The costs of the independent review system for insureds and policyholders shall be borne by the affected health insurers pursuant to an assessment fee system established by the commissioner. Insurers that do not cancel or rescind individual

1 health insurance policies pursuant to Section 10384.16 shall not
2 be considered by the commissioner as “affected health insurers”
3 under this section. In determining the amount to be assessed, the
4 commissioner shall consider all appropriations available for the
5 support of this chapter and existing fees paid to the department.
6 The commissioner may adjust fees upward or downward, on a
7 schedule set by the department, to address shortages or
8 overpayments, and to reflect utilization of the independent review
9 process.

10 SEC. 30. Section 10384.32 is added to the Insurance Code, to
11 read:

12 10384.32. (a) On and after January 1, 2010, every health
13 insurer shall annually report to the department the total number of
14 individual health insurance policies issued, and the total number
15 of individual health insurance policies where the insurer initiated
16 a cancellation or rescission or completed a cancellation or
17 rescission pursuant to the provisions of this article for the preceding
18 calendar year.

19 (b) On or before March 31, 2010, and annually thereafter, the
20 department shall publish on its Internet Web site the information
21 filed pursuant to this section.

22 SEC. 31. Section 10396 is added to the Insurance Code, to
23 read:

24 10396. The requirements of Sections 10384.1, 10384.12,
25 10384.14, 10384.16, *10384.17*, 10384.18, 10384.2, 10384.22,
26 10394.24, 10384.26, 10384.28, 10384.29, 10384.3, and 10384.32
27 shall not apply to health insurance policies for coverage issued
28 under the Medi-Cal program, the Access for Infants and Mothers
29 Program, the Healthy Families Program, or the federal Medicare
30 Program.

31 SEC. 32. Section 12957 of the Insurance Code is amended to
32 read:

33 12957. The commissioner shall not withdraw approval of a
34 policy theretofore approved by him or her except upon those
35 grounds as, in his or her opinion, would authorize disapproval
36 upon original submission thereof. Any withdrawal of approval
37 shall be in writing and shall specify the ground thereof. If the
38 insurer demands a hearing on a withdrawal, the hearing shall be
39 granted and commenced within 30 days of filing of a written
40 demand therefor with the commissioner. Unless the hearing is so

1 commenced, the notice of withdrawal shall become ineffective
2 upon the 31st day from and after the date of filing of the demand.

3 This section shall not apply to policies subject to the provisions
4 of subdivision (d) of Section 10291.5, or to policies, contracts, or
5 agreements that were approved under an alternative filing and
6 approval procedure as provided for in subdivision (f) of Section
7 10506.4 or subdivision (c) of Section 10507.5.

8 SEC. 33. No reimbursement is required by this act pursuant to
9 Section 6 of Article XIII B of the California Constitution because
10 the only costs that may be incurred by a local agency or school
11 district will be incurred because this act creates a new crime or
12 infraction, eliminates a crime or infraction, or changes the penalty
13 for a crime or infraction, within the meaning of Section 17556 of
14 the Government Code, or changes the definition of a crime within
15 the meaning of Section 6 of Article XIII B of the California
16 Constitution.