Senate Bill No. 890

Passed the Senate August 31, 2010

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Secretary of the Senate

Passed the Assembly August 30, 2010

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Chief Clerk of the Assembly

This bill was received by the Governor this _____ day of _____, 2010, at _____ o'clock ___M.

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Private Secretary of the Governor

CHAPTER _____

An act to amend Section 1389.5 of, and to add Sections 1366.5, 1367.001, and 1367.003 to, the Health and Safety Code, and to amend Section 10119.1 of, and to add Sections 10112.1, 10112.3, and 10112.58 to, the Insurance Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

SB 890, Alquist. Health care coverage.

Existing law, the federal Patient Protection and Affordable Care Act, on and after January 1, 2014, requires a health insurance issuer offering health insurance coverage in the individual or group market to accept every employer and individual in the state that applies for that coverage, as specified, and requires issuers in the individual and small group markets to ensure that the coverage includes a specified essential benefits package. The act requires an essential health benefits package to provide coverage in one of 5 levels based on actuarial value, as specified.

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 the act a crime. Existing law provides for the regulation of health insurers by the Department of Insurance.

Existing law imposes various requirements with respect to individual contracts and policies issued by health care service plans and health insurers. Existing law requires a health care service plan to permit, at least once each year, an individual who has been covered for at least 18 months under an individual plan contract issued by the health care service plan to transfer, without medical underwriting, as defined, to another individual plan contract offered by the health care service plan having equal or lesser benefits, as specified. Existing law imposes a parallel requirement with respect to individual policies issued by health insurers.

This bill would eliminate the 18-month requirement and would require plans and insurers to allow an individual to transfer to another individual contract or policy without medical underwriting on the annual renewal date of his or her contract or policy.

Commencing July 1, 2011, the bill would require plans and insurers to categorize all products offered in the individual market into 5 tiers according to actuarial value, as specified, and would require plans and insurers to disclose this value and other information in certain disclosure forms.

Existing law prohibits a health care service plan from expending for administrative costs, as defined, an excessive amount of the payments the plan receives for providing health care services to its subscribers and enrollees. The Insurance Commissioner is required to withdraw approval of an individual or mass-marketed policy of disability insurance if the commissioner finds that the benefits provided under the policy are unreasonable in relation to the premium charged, as specified.

The federal Patient Protection and Affordable Care Act prohibits a health insurance issuer issuing health insurance coverage from establishing lifetime limits or unreasonable annual limits on the dollar value of benefits for any participant or beneficiary, as specified. The act also requires a health insurance issuer issuing health insurance coverage to provide an annual rebate to each enrollee if the ratio of the amount of the revenue expended by the issuer on costs to the total amount of premium revenue is less than a certain percentage, as specified.

This bill would require health care service plans and health insurers to comply with the requirements imposed under those provisions to the extent required under federal law.

Because a willful violation of the bill's requirements with respect to health care service plans would be a crime, the bill 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.

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

SECTION 1. Section 1366.5 is added to the Health and Safety Code, to read:

1366.5. (a) Effective July 1, 2011, a health care service plan shall categorize all products offered or renewed in the individual market in accordance with this section.

(b) From July 1, 2011, to December 31, 2013, inclusive, each product offered or renewed in the individual market shall be categorized on the basis of actuarial value into one of the following tiers:

(1) Bronze level for products with an actuarial value of 55 to 64 percent, inclusive.

(2) Silver level for products with an actuarial value of 65 to 74 percent, inclusive.

(3) Gold level for products with an actuarial value of 75 to 84 percent, inclusive.

(4) Platinum level for products with an actuarial value of 85 percent or greater.

(5) Catastrophic coverage for products with an actuarial value less than 55 percent.

(c) On and after January 1, 2014, each product offered or renewed in the individual market shall be categorized on the basis of actuarial value into one of the following tiers:

(1) Bronze level for products with an actuarial value equal to 60 percent.

(2) Silver level for products with an actuarial value equal to 70 percent.

(3) Gold level for products with an actuarial value equal to 80 percent.

(4) Platinum level for products with an actuarial value equal to 90 percent.

(5) Catastrophic coverage for products with an actuarial value less than 60 percent.

(d) In categorizing the actuarial value of products for purposes of subdivision (c), a health care service plan may have a de minimis variation from the actuarial values set forth in that subdivision.

(e) (1) By July 1, 2011, the department shall, jointly with the Department of Insurance, adopt a common actuarial model, which shall be used by health care service plans to categorize products in the individual market within one year of the date the model is adopted. The model shall be updated at least every three years and shall reflect the applicable method of calculating actuarial value described in subdivision (f). The adoption and update of the model

shall be exempt from the rulemaking provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) In lieu of establishing a common actuarial model under paragraph (1), the department may instead require health care service plans to categorize their products for purposes of this section using a qualified actuary and the applicable method of calculating actuarial value described in subdivision (f). A plan shall submit to the department a copy of the actuarial value calculations, as well as a certification signed by the qualified actuary, in a manner and format specified by the department.

(f) Until January 1, 2014, the benefits required to be covered under this chapter shall be used to determine the denominator of the actuarial value calculation using a standard population. On and after January 1, 2014, actuarial value shall be calculated using the method contained in subdivision (d) of Section 1302 of the federal Patient Protection and Affordable Care Act (Public Law 111-148) and the regulations adopted thereunder.

(g) A plan shall use a qualified actuary to certify the accuracy of its calculations under this section. After the implementation of the common actuarial model under paragraph (1) of subdivision (e), the plan shall use a qualified actuary to also certify that its categorization meets the requirements established in the actuarial model.

(h) (1) The department may review the categorization of any product under this section for accuracy, including, but not limited to, the methodology used by the plan to establish actuarial value.

(2) The department may require the submission of any information needed to categorize products pursuant to this section.

(i) As part of the disclosure form required by Section 1363 for an individual plan contract, a health care service plan shall include the actuarial value of the particular product reflected in the contract, as determined under this section, along with an explanation of actuarial value in easily understood language expressed as a percentage of expenses paid by the plan versus out of pocket. In addition, the disclosure shall include an estimate of the annual out-of-pocket expenses of an individual in average health who is enrolled in the product, and the total annual cost (the sum of the premium plus out-of-pocket costs) of an individual of average health who is enrolled in the product. The disclosure shall also

state that an individual's share of cost may be more or less depending on his or her age, illness, or health condition. The disclosure shall also include the following statement:

"Please examine the other features of this product carefully, including prescription drug coverage, exclusion of specific conditions, and other costs such as copayments and deductibles."

(j) This section shall not apply to Medicare supplement contracts or to specialized health care service plan contracts.

(k) For purposes of this section, "qualified actuary" means an actuary who is a member of the American Academy of Actuaries, who is qualified to perform such work, and who meets the Qualification Standards for Actuaries Issuing Statements of Actuarial Opinion in the United States as promulgated by the American Academy of Actuaries.

SEC. 2. Section 1367.001 is added to the Health and Safety Code, to read:

1367.001. To the extent required by federal law, every health care service plan that issues, sells, renews, or offers contracts for health care coverage in this state shall comply with the requirements of Section 2711 of the federal Public Health Service Act (42 U.S.C. Sec. 300gg-11) and any rules or regulations issued under that section, in addition to any state laws or regulations that do not prevent the application of those requirements.

SEC. 3. Section 1367.003 is added to the Health and Safety Code, to read:

1367.003. To the extent required by federal law, every health care service plan that issues, sells, renews, or offers contracts for health care coverage in this state shall comply with the requirements of Section 2718 of the federal Public Health Service Act (42 U.S.C. Sec. 300gg-18) and any rules or regulations issued under that section.

SEC. 4. Section 1389.5 of the Health and Safety Code is amended to read:

1389.5. (a) This section shall apply to a health care service plan that provides coverage under an individual plan contract that is issued, amended, delivered, or renewed on or after January 1, 2011.

(b) Upon the annual renewal date of an individual health care service plan contract, the health care service plan shall permit an individual covered under the contract to transfer, without medical

underwriting, to any other individual plan contract offered by that same health care service plan that provides equal or lesser benefits, as determined by the plan.

"Without medical underwriting" means that the health care service plan shall not decline to offer coverage to, or deny enrollment of, the individual or impose any preexisting condition exclusion on the individual who transfers to another individual plan contract pursuant to this section.

(c) The plan shall establish, for the purposes of subdivision (b), a ranking of the individual plan contracts it offers to individual purchasers and post the ranking on its Internet Web site or make the ranking available upon request. The plan shall update the ranking whenever a new benefit design for individual purchasers is approved.

(d) The plan shall notify in writing all enrollees of the right to transfer to another individual plan contract pursuant to this section, at a minimum, when the plan changes the enrollee's premium rate. Posting this information on the plan's Internet Web site shall not constitute notice for purposes of this subdivision. The notice shall adequately inform enrollees of the transfer rights provided under this section, including information on the process to obtain details about the individual plan contracts available to that enrollee and advising that the enrollee may be unable to return to his or her current individual plan contract if the enrollee transfers to another individual plan contract.

(e) The requirements of this section shall not apply to the following:

(1) A federally eligible defined individual, as defined in subdivision (c) of Section 1399.801, who is enrolled in an individual health benefit plan contract offered pursuant to Section 1366.35.

(2) An individual offered conversion coverage pursuant to Section 1373.6.

(3) Individual coverage under a specialized health care service plan contract.

(4) An individual enrolled in the Medi-Cal program pursuant to Chapter 7 (commencing with Section 14000) of Division 9 of Part 3 of the Welfare and Institutions Code.

(5) An individual enrolled in the Access for Infants and Mothers Program pursuant to Part 6.3 (commencing with Section 12695) of Division 2 of the Insurance Code.

(6) An individual enrolled in the Healthy Families Program pursuant to Part 6.2 (commencing with Section 12693) of Division 2 of the Insurance Code.

(f) It is the intent of the Legislature that individuals shall have more choice in their health coverage when health care service plans guarantee the right of an individual to transfer to another product based on the plan's own ranking system.

SEC. 5. Section 10112.1 is added to the Insurance Code, to read:

10112.1. To the extent required by federal law, every health insurer that issues, sells, renews, or offers policies for health care coverage in this state shall comply with the requirements of Section 2711 of the federal Public Health Service Act (42 U.S.C. Sec. 300gg-11) and any rules or regulations issued under that section, in addition to any state laws or regulations that do not prevent the application of those requirements.

SEC. 6. Section 10112.3 is added to the Insurance Code, to read:

10112.3. To the extent required by federal law, every health insurer that issues, sells, renews, or offers policies for health care coverage in this state shall comply with the requirements of Section 2718 of the federal Public Health Service Act (42 U.S.C. Sec. 300gg-18) and any rules or regulations issued under that section.

SEC. 7. Section 10112.58 is added to the Insurance Code, to read:

10112.58. (a) Effective July 1, 2011, a health insurer shall categorize all products offered or renewed in the individual market in accordance with this section.

(b) From July 1, 2011, to December 31, 2013, inclusive, each product offered or renewed in the individual market shall be categorized on the basis of actuarial value into one of the following tiers:

(1) Bronze level for products with an actuarial value of 55 to 64 percent, inclusive.

(2) Silver level for products with an actuarial value of 65 to 74 percent, inclusive.

(3) Gold level for products with an actuarial value of 75 to 84 percent, inclusive.

(4) Platinum level for products with an actuarial value of 85 percent or greater.

(5) Catastrophic coverage for products with an actuarial value less than 55 percent.

(c) On and after January 1, 2014, each product offered or renewed in the individual market shall be categorized on the basis of actuarial value into one of the following tiers:

(1) Bronze level for products with an actuarial value equal to 60 percent.

(2) Silver level for products with an actuarial value equal to 70 percent.

(3) Gold level for products with an actuarial value equal to 80 percent.

(4) Platinum level for products with an actuarial value equal to 90 percent.

(5) Catastrophic coverage for products with an actuarial value less than 60 percent.

(d) In categorizing the actuarial value of products for purposes of subdivision (c), a health insurer may have a de minimis variation from the actuarial values set forth in that subdivision.

(e) (1) By July 1, 2011, the department shall, jointly with the Department of Managed Health Care, adopt a common actuarial model, which shall be used by health insurers to categorize products in the individual market within one year of the date the model is adopted. The model shall be updated at least every three years and shall reflect the applicable method of calculating actuarial value described in subdivision (f). The adoption and update of the model shall be exempt from the rulemaking provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) In lieu of establishing a common actuarial model under paragraph (1), the department may instead require health insurers to categorize their products for purposes of this section using a qualified actuary and the applicable method of calculating actuarial value described in subdivision (f). An insurer shall submit to the department a copy of the actuarial value calculations, as well as a certification signed by the qualified actuary, in a manner and format specified by the department.

(f) Until January 1, 2014, the benefits required to be covered under the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) shall be used to determine the denominator of the actuarial value calculation using a standard population. Nothing in this subdivision shall be construed to require an insurer to provide the benefits required under the Knox-Keene Health Care Service Plan Act of 1975. On and after January 1, 2014, actuarial value shall be calculated using the method contained in subdivision (d) of Section 1302 of the federal Patient Protection and Affordable Care Act (Public Law 111-148) and the regulations adopted thereunder.

(g) An insurer shall use a qualified actuary to certify the accuracy of its calculations under this section. After the implementation of the common actuarial model under paragraph (1) of subdivision (e), the insurer shall use a qualified actuary to also certify that its categorization meets the requirements established in the actuarial model.

(h) (1) The department may review the categorization of any product under this section for accuracy, including, but not limited to, the methodology used by the insurer to establish actuarial value.

(2) The department may require the submission of any information needed to categorize products pursuant to this section.

(i) As part of the disclosure form required by Section 10603 for an individual health insurance policy, a health insurer shall include the actuarial value of the particular product reflected in the policy, as determined under this section, along with an explanation of actuarial value in easily understood language expressed as a percentage of expenses paid by insurance versus out of pocket. In addition, the disclosure shall include an estimate of the annual out-of-pocket expenses of an individual in average health who is enrolled in the product, and the total annual cost (the sum of the premium plus out-of-pocket costs) of an individual of average health who is enrolled in the product. The disclosure shall also state that an individual’s share of cost may be more or less depending on his or her age, illness, or health condition. The disclosure shall also include the following statement:

“Please examine the other features of this product carefully, including prescription drug coverage, exclusion of specific conditions, and other costs such as copayments and deductibles.”

(j) This section shall not apply to Medicare supplement, CHAMPUS-supplement, specified disease, TRICARE supplement, or accident-only insurance policies, to specialized health insurance policies, or to insurance policies excluded from the definition of "health insurance" under subdivision (b) of Section 106.

(k) For purposes of this section, "qualified actuary" means an actuary who is a member of the American Academy of Actuaries, who is qualified to perform such work, and who meets the Qualification Standards for Actuaries Issuing Statements of Actuarial Opinion in the United States as promulgated by the American Academy of Actuaries.

SEC. 8. Section 10119.1 of the Insurance Code is amended to read:

10119.1. (a) This section shall apply to a health insurer that covers hospital, medical, or surgical expenses under an individual health benefit plan, as defined in subdivision (a) of Section 10198.6, that is issued, amended, renewed, or delivered on or after January 1, 2011.

(b) Upon the annual renewal date of an individual health benefit plan, a health insurer shall permit an individual covered under the health benefit plan to transfer, without medical underwriting, to any other individual health benefit plan offered by that same health insurer that provides equal or lesser benefits as determined by the insurer.

"Without medical underwriting" means that the health insurer shall not decline to offer coverage to, or deny enrollment of, the individual or impose any preexisting condition exclusion on the individual who transfers to another individual health benefit plan pursuant to this section.

(c) The insurer shall establish, for the purposes of subdivision (b), a ranking of the individual health benefit plans it offers to individual purchasers and post the ranking on its Internet Web site or make the ranking available upon request. The insurer shall update the ranking whenever a new benefit design for individual purchasers is approved.

(d) The insurer shall notify in writing all insureds of the right to transfer to another individual health benefit plan pursuant to this section, at a minimum, when the insurer changes the insured's premium rate. Posting this information on the insurer's Internet Web site shall not constitute notice for purposes of this subdivision.

The notice shall adequately inform insureds of the transfer rights provided under this section including information on the process to obtain details about the individual health benefit plans available to that insured and advising that the insured may be unable to return to his or her current individual health benefit plan if the insured transfers to another individual health benefit plan.

(e) The requirements of this section shall not apply to the following:

(1) A federally eligible defined individual, as defined in subdivision (e) of Section 10900, who purchases individual coverage pursuant to Section 10785.

(2) An individual offered conversion coverage pursuant to Sections 12672 and 12682.1.

(3) An individual enrolled in the Medi-Cal program pursuant to Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code.

(4) An individual enrolled in the Access for Infants and Mothers Program, pursuant to Part 6.3 (commencing with Section 12695).

(5) An individual enrolled in the Healthy Families Program pursuant to Part 6.2 (commencing with Section 12693).

(f) It is the intent of the Legislature that individuals shall have more choice in their health care coverage when health insurers guarantee the right of an individual to transfer to another product based on the insurer's own ranking system.

SEC. 9. 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.

Approved _____, 2010

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Governor