

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1846**

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**Introduced by Assembly Member Gordon**

February 22, 2012

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An act to ~~amend Section 10704 of~~ *add Chapter 9.8 (commencing with Section 10961) to Part 2 of Division 2 of the Insurance Code, relating to health care coverage.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1846, as amended, Gordon. ~~Small employer health insurance. Consumer operated and oriented plans.~~

*Existing law, the federal Patient Protection and Affordable Care Act (PPACA), requires the Secretary of the United States Department of Health and Human Services to establish the Consumer Operated and Oriented Plan program for the purpose of fostering the creation of qualified nonprofit health insurance issuers to offer qualified health plans in the individual and small group markets in the states in which they are licensed to offer those plans. Existing law provides for the regulation of various forms of insurance by the Insurance Commissioner and requires insurers to obtain a certificate of authority from the commissioner in order to be admitted to transact insurance business in the state.*

*This bill would authorize the commissioner to issue a certificate of authority to a consumer operated and oriented plan (CO-OP) established consistent with PPACA, as specified. The bill would specify that a CO-OP issued a certificate of authority is subject to all other provisions of law relating to insurance and would further specify that a CO-OP insurer and any solvency loan obtained by the CO-OP from*

*the federal Centers for Medicare and Medicaid Services are subject to certain requirements imposed on mutual insurers. The bill would authorize the commissioner to request documentation relating to a CO-OP’s solvency or start-up loan. The bill would prohibit a CO-OP from converting or selling to a for-profit or nonconsumer-operated entity after receiving a solvency loan, would prohibit a CO-OP from implementing a governance structure that does not meet PPACA standards, and would authorize the commissioner to revoke a CO-OP insurer’s certificate of authority for violating those prohibitions. The bill would authorize the Department of Insurance to enact regulations implementing these provisions and would enact other related provisions.*

~~Existing law provides for the regulation of health insurers by the Insurance Commissioner and requires certain health insurers that write, issue, or administer health benefit plans that cover employees of small employers to comply with certain requirements. Existing law authorizes the commissioner to issue regulations necessary to carry out the purposes of those small employer health insurance requirements, as specified.~~

~~This bill would make various technical, nonsubstantive changes to that provision.~~

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

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

1     SECTION 1. Chapter 9.8 (commencing with Section 10961)  
 2     is added to Part 2 of Division 2 of the Insurance Code, to read:  
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 4     CHAPTER 9.8. CONSUMER OPERATED AND ORIENTED PLANS  
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 6     10961. (a) “Consumer operated and oriented plan” means a  
 7     nonprofit member organization or nonprofit member corporation  
 8     that has been established consistent with the requirements of  
 9     Section 1322 of PPACA and Subpart F (commencing with Section  
 10    156.500) of Part 156 of Subchapter B of Subtitle A of Title 45 of  
 11    the Code of Federal Regulations and remains in full compliance  
 12    with those requirements. A consumer operated and oriented plan  
 13    shall also be known as a “CO-OP.”  
 14    (b) “PPACA” means the federal Patient Protection and  
 15    Affordable Care Act (Public Law 111-148), as amended by the

1 *Health Care and Education Reconciliation Act of 2010 (Public*  
2 *Law 111-152), and any rules or regulations issued thereunder.*

3 (c) “Nonprofit member organization” or “nonprofit member  
4 corporation” means a nonprofit public benefit corporation  
5 organized under Part 2 (commencing with Section 5110) of  
6 Division 2 of Title 1 of the Corporations Code, a nonprofit mutual  
7 benefit corporation organized under Part 3 (commencing with  
8 Section 7110) of Division 2 of Title 1 of the Corporations Code,  
9 or a similar entity organized under applicable provisions of the  
10 Corporations Code, or in the case of a foreign corporation, a  
11 nonprofit public benefit corporation, a mutual benefit corporation,  
12 or a similar entity organized under nonprofit laws in a state other  
13 than California.

14 (d) “Solvency loan” means a loan provided by the federal  
15 Centers for Medicare and Medicaid Services to a nonprofit member  
16 organization or nonprofit member corporation seeking to become  
17 licensed as a CO-OP insurer, to be used to assist in meeting the  
18 state’s solvency and reserve requirements.

19 (e) “Start-up loan” means a loan provided by the federal  
20 Centers for Medicare and Medicaid Services to a nonprofit member  
21 organization or nonprofit member corporation seeking to become  
22 licensed as a CO-OP insurer, to be used for allowed expenses  
23 associated with establishing a CO-OP, as further specified by  
24 PPACA.

25 10961.1. The commissioner shall have the authority to issue  
26 a certificate of authority to a CO-OP that has been organized as  
27 a nonprofit member organization or nonprofit member corporation  
28 under the laws of this state. The commissioner may also issue a  
29 certificate of authority to a foreign CO-OP that has been organized  
30 as a nonprofit member organization or nonprofit member  
31 corporation under the laws of another state, provided that the  
32 entity meets the requirements governing CO-OPs under PPACA  
33 and this chapter. A CO-OP seeking or maintaining a certificate  
34 of authority pursuant to this chapter shall be subject to the same  
35 fees that are imposed on mutual insurers.

36 10961.2. A domestic or foreign insurer admitted as a CO-OP  
37 insurer shall be subject to the same “paid-in capital” or “capital  
38 paid-in” requirements as are imposed on domestic and foreign  
39 mutual insurers pursuant to Sections 36 and 4011.

1     10961.3. A domestic or foreign insurer admitted as a CO-OP  
2 insurer shall be subject to all of the provisions of this code and  
3 all applicable rules and regulations of the commissioner, including,  
4 but not limited to, the general provisions governing issuance of a  
5 certificate of authority in Article 3 (commencing with Section 699)  
6 of, the examination provisions in Article 4 (commencing with  
7 Section 729) of, the risk-based capital requirements in Article 4.1  
8 (commencing with Section 739) of, and the financial statement  
9 filing requirements in Article 10 (commencing with Section 900)  
10 of, Chapter 1 of Part 2 of Division 1. The provisions of this code  
11 and the rules and regulations of the commissioner shall be  
12 construed in consideration of the fundamental nature of a CO-OP  
13 insurer. In the event of any direct conflict between the other  
14 provisions of this code and the provisions of this chapter, the  
15 provisions of this chapter shall prevail.

16     10961.4. (a) A solvency loan obtained by a CO-OP shall be  
17 treated as a surplus note and shall be subject to the same  
18 requirements as are imposed on mutual insurers pursuant to Article  
19 4 (commencing with Section 4040) of Chapter 4 of Part 1 of  
20 Division 2. The commissioner may request any documentation  
21 relating to a CO-OP's start-up loan or solvency loan.

22     (b) A CO-OP shall be subject to the same securities permit  
23 requirements as are imposed upon mutual insurers pursuant to  
24 Section 4042; however, the commissioner shall have the authority  
25 to waive the requirements under Section 4042 upon a determination  
26 that they are not applicable following a full review of the CO-OP's  
27 plan of operations and any other documents as requested by the  
28 commissioner prior to the admission of the CO-OP.

29     10961.5. The provisions of Section 699.5 shall apply to any  
30 insurer admitted as a CO-OP insurer; however, any loans received  
31 by the CO-OP in the form of a solvency or start-up loan shall not  
32 be construed as any form of subsidy, ownership, or financial  
33 control of the CO-OP insurer within the meaning of Section 699.5.

34     10961.6. A CO-OP shall be subject at all times to the  
35 prohibitions in PPACA against converting or selling to a for-profit  
36 or nonconsumer-operated entity at any time after receiving a  
37 solvency loan. Furthermore, a CO-OP shall not undertake any  
38 transaction that would result in the CO-OP implementing a  
39 governance structure that does not meet the standards contained  
40 in PPACA. Any violation of these prohibitions shall constitute

1 grounds for revocation of the CO-OP insurer's certificate of  
2 authority, in addition to any other grounds in this code for  
3 revocation of the certificate.

4 10961.7. A CO-OP insurer is insolvent if its surplus becomes  
5 less than the amount of paid-in capital required of a capital stock  
6 company to qualify to transact the class of disability and health  
7 insurance. The conservation and liquidation provisions of Article  
8 14 (commencing with Section 1010) of Chapter 1 of Part 2 of  
9 Division 1 shall apply to CO-OP insurers.

10 10961.8. In addition to any applicable requirements in this  
11 code for maintaining a certificate of authority, a CO-OP is  
12 required at all times to be in full compliance with the requirements  
13 of PPACA governing CO-OPs. The commissioner may request the  
14 federal government's certification that a CO-OP is in compliance  
15 with the requirements of PPACA governing CO-OPs, as well as  
16 the status of the CO-OP's compliance with its obligations under  
17 any loan or loan modification agreement.

18 10961.9. The department may adopt regulations implementing  
19 this chapter pursuant to the Administrative Procedure Act (Chapter  
20 3.5 (commencing with Section 11340) of Part 1 of Division 3 of  
21 Title 2 of the Government Code).

22 SECTION 1. Section 10704 of the Insurance Code is amended  
23 to read:

24 ~~10704. The commissioner may issue regulations that are~~  
25 ~~necessary to carry out the purposes of this chapter. Prior to the~~  
26 ~~public comment period required with respect to the regulations~~  
27 ~~under the Administrative Procedure Act (Chapter 3.5 (commencing~~  
28 ~~with Section 11340) of Part 1 of Division 3 of Title 2 of the~~  
29 ~~Government Code), the commissioner shall provide the Director~~  
30 ~~of the Department of Managed Health Care with a copy of the~~  
31 ~~proposed regulations. The Director of the Department of Managed~~  
32 ~~Health Care shall have 30 days to notify the commissioner in~~  
33 ~~writing of any comments on the regulations. The Director of the~~  
34 ~~Department of Managed Health Care's comments shall be included~~  
35 ~~in the public notice issued on the regulations. Any rules and~~  
36 ~~regulations issued pursuant to this section may be adopted as~~  
37 ~~emergency regulations in accordance with the Administrative~~  
38 ~~Procedure Act (Chapter 3.5 (commencing with Section 11340) of~~  
39 ~~Part 1 of Division 3 of Title 2 of the Government Code). Until~~  
40 ~~December 31, 1994, the adoption of these regulations shall be~~

- 1 ~~deemed an emergency and necessary for the immediate~~
- 2 ~~preservation of the public peace, health, safety, or general welfare.~~
- 3 ~~The regulations shall be enforced by the director.~~

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