

Assembly Bill No. 1846

Passed the Assembly August 27, 2012

Chief Clerk of the Assembly

Passed the Senate August 23, 2012

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2012, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Article 11.1 (commencing with Section 1399.80) to Chapter 2.2 of Division 2 of the Health and Safety Code, and to add Chapter 9.6 (commencing with Section 10930) to Part 2 of Division 2 of the Insurance Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

AB 1846, Gordon. 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 and makes start-up and solvency loans available for those purposes, 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 that act a crime. Existing law also 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 Director of the Department of Managed Health Care to issue a health care service plan license, and the Insurance 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 license or a certificate of authority is subject to all other provisions of law relating to health care service plans or insurance, respectively, and would further specify that a CO-OP insurer and any solvency loan obtained by the CO-OP pursuant to PPACA are subject to certain requirements imposed on mutual insurers. The bill would authorize the director and 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 require a CO-OP to comply with specified governance 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 with respect to CO-OP insurers and would enact other related provisions. Because a willful violation of the bill's requirements by a health care service plan 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. (a) It is the intent of the Legislature in enacting this act to ensure all of the following:

(1) That all insureds and enrollees in a consumer operated and oriented plan (CO-OP) be afforded the numerous consumer protections available to all other individuals covered by health insurance and health care service plans.

(2) That a CO-OP operated as a health insurer in California be subject to all state requirements applicable to health insurers, including, but not limited to, the requirements of certificates of authority, state reserves, risk-based capital, and financial statements filings.

(3) That a CO-OP operated as a health care service plan in California be subject to all state requirements applicable to health care service plans, including, but not limited to, licensure requirements, operation and renewal requirements, and financial responsibility requirements.

(b) The Legislature intends and declares that a CO-OP must comply with the same state and federal standards as other health insurers or health care service plans.

SEC. 2. Article 11.1 (commencing with Section 1399.80) is added to Chapter 2.2 of Division 2 of the Health and Safety Code, to read:

Article 11.1. Consumer Operated and Oriented Plans

1399.80. For purposes of this article, the following definitions shall apply:

(a) “Consumer operated and oriented plan” means a nonprofit member organization or nonprofit member corporation that has been established consistent with the requirements of Section 1322 of PPACA and Subpart F (commencing with Section 156.500) of Part 156 of Subchapter B of Subtitle A of Title 45 of the Code of Federal Regulations and remains in full compliance with those requirements. A consumer operated and oriented plan shall also be known as a “CO-OP.”

(b) “Formation board” means the initial board of directors of a CO-OP before it has begun accepting enrollment and had an election by the members of the CO-OP to the board of directors.

(c) “Member” includes all individuals, including dependents, 18 years of age or older covered under health care service plan contracts issued by the CO-OP health care service plan.

(d) “Operational board” means the board of directors elected by the members of the CO-OP after it has begun accepting enrollment under its health care service plan contracts.

(e) “PPACA” means the federal Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), and any rules or regulations issued thereunder.

(f) “Nonprofit member organization” or “nonprofit member corporation” means a nonprofit public benefit corporation organized under Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code, a nonprofit mutual benefit corporation organized under Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code, or a similar entity organized under applicable provisions of the Corporations Code, or in the case of a foreign corporation, a nonprofit public benefit corporation, a mutual benefit corporation, or a similar entity organized under nonprofit laws in a state other than California.

(g) “Solvency loan” means a loan provided by the federal Centers for Medicare and Medicaid Services to a nonprofit member organization or nonprofit member corporation seeking to become licensed as a CO-OP health care service plan, to be used to assist in meeting the state’s fiscal soundness and solvency requirements.

(h) “Start-up loan” means a loan provided by the federal Centers for Medicare and Medicaid Services to a nonprofit member organization or nonprofit member corporation seeking to become licensed as a CO-OP health care service plan, to be used for allowed expenses associated with establishing a CO-OP, as further specified by PPACA.

1399.81. The director shall have the authority to issue a license to act as a health care service plan to a CO-OP that has been organized as a nonprofit member organization or nonprofit member corporation under the laws of this state. The director may also issue a license to act as a health care service plan to a foreign CO-OP that has been organized as a nonprofit member organization or nonprofit member corporation under the laws of another state, provided that the entity meets the requirements governing CO-OPs under PPACA and this article. A CO-OP seeking or maintaining a license pursuant to this article shall be subject to the same fees that are imposed on other health care service plans pursuant to Article 3 (commencing with Section 1349).

1399.83. (a) A domestic or foreign CO-OP licensed as a health care service plan pursuant to this article shall be subject to all of the provisions of this chapter and all applicable rules and regulations of the director, including, but not limited to, the general provisions governing the issuance of a license in Article 3 (commencing with Section 1349), the operation and renewal provisions in Article 6 (commencing with Section 1375), and the financial responsibility requirements in Article 9 (commencing with Section 1300.75) of Chapter 2 of Division 1 of Title 28 of the California Code of Regulations.

(b) In compliance with Section 1322(c)(5) of PPACA (42 U.S.C. Sec. 18042(c)(5)), and any rules or regulations issued under that section, a domestic or foreign CO-OP licensed as a health care service plan shall be subject to any state laws that do not prevent the application of requirements under PPACA.

1399.84. The director may request any documentation relating to a CO-OP’s start-up loan or solvency loan.

1399.86. (a) A CO-OP shall be subject at all times to the prohibitions in PPACA against converting or selling to a for-profit or nonconsumer-operated entity at any time after receiving a solvency loan.

(b) A CO-OP shall do all of the following, in addition to any other requirements imposed under Section 156.515 of Title 45 of the Code of Federal Regulations:

(1) Implement policies and procedures to foster and ensure member control of the organization. For purposes of this paragraph, a CO-OP shall meet the following requirements:

(A) The CO-OP shall have governing documents that incorporate governing rules that ensure that the directors of the operational board are elected by a majority vote of a quorum of the CO-OP members.

(B) All members of the CO-OP shall be eligible to vote for each director on the CO-OP's operational board.

(C) Each member of the CO-OP shall have one vote in the election of each director of the CO-OP's operational board.

(D) The first elected directors of the CO-OP's operational board shall be elected no later than one year after the effective date on which the CO-OP provides coverage to its first member; the entire operational board shall be elected no later than two years after the same date.

(E) Elections of the directors on the CO-OP's operational board shall be contested so that the total number of candidates for vacant positions on the operational board exceeds the number of vacant positions, except in cases where a seat is vacated midterm due to death, resignation, or removal.

(F) A majority of the voting directors on the operational board shall be members of the CO-OP.

(2) Have an operational board of directors that meets the following requirements:

(A) Each director shall have one vote unless he or she is a nonvoting director.

(B) Positions on the board of directors may be designated for individuals with specialized expertise, experience, or affiliation (for example, providers, employers, including small business consortia, and unions); however, those positions shall not constitute a majority of the operational board even if the individuals in those positions are also members of the CO-OP.

(C) (i) No representative of any federal, state, or local government, or of any political subdivision or instrumentality thereof, and no representative of any organization described in Section 156.510(b)(1)(i) of Title 45 of the Code of Federal Regulations may serve as staff of the CO-OP or on the CO-OP's formation board or operational board.

(ii) No board member or staff of the CO-OP shall enter into an agreement or transaction that would jeopardize member control as required by Section 156.515 of Title 45 of the Code of Federal Regulations. A board member or staff of the CO-OP shall only enter into arm's length transactions as described in Section 156.510(b)(2)(ii) of Title 45 of the Code of Federal Regulations.

(3) Have governing documents that incorporate ethics, conflict of interest, and disclosure standards. These standards shall protect against health care coverage industry involvement and interference. In addition, these standards shall ensure that each director acts in the sole interest of the CO-OP, its members, and its local geographic community, as appropriate, and acts consistently with the terms of the CO-OP's governance documents and applicable state and federal law. At a minimum, these standards shall include the following:

(A) A mechanism to identify potential ethical or other conflicts of interest.

(B) A duty on the CO-OP's executive officers and directors to publicly disclose all potential conflicts of interest pursuant to the same standards required for state boards or commissions.

(C) A process to determine the extent to which a conflict exists.

(D) A process to address any conflict of interest.

(E) A process to be followed in the event a director or executive officer of the CO-OP violates the standards described in this paragraph.

1399.88. In addition to any applicable requirements in this chapter for maintaining a license, a CO-OP is required at all times to be in full compliance with the requirements of PPACA governing CO-OPs. The department may request the federal government's certification that a CO-OP is in compliance with the requirements of PPACA governing CO-OPs, as well as the status of the CO-OP's compliance with its obligations under any loan or loan modification agreement.

SEC. 3. Chapter 9.6 (commencing with Section 10930) is added to Part 2 of Division 2 of the Insurance Code, to read:

CHAPTER 9.6. CONSUMER OPERATED AND ORIENTED PLANS

10930. For purposes of this chapter, the following definitions shall apply:

(a) “Consumer operated and oriented plan” means a nonprofit member organization or nonprofit member corporation that has been established consistent with the requirements of Section 1322 of PPACA and Subpart F (commencing with Section 156.500) of Part 156 of Subchapter B of Subtitle A of Title 45 of the Code of Federal Regulations and remains in full compliance with those requirements. A consumer operated and oriented plan shall also be known as a “CO-OP.”

(b) “Formation board” means the initial board of directors of a CO-OP before it has begun accepting enrollment and had an election by the members of the CO-OP to the board of directors.

(c) “Member” includes all individuals, including dependents, 18 years of age or older covered under health insurance policies issued by the CO-OP insurer.

(d) “Operational board” means the board of directors elected by the members of the CO-OP after it has begun accepting enrollment under its health insurance policies.

(e) “PPACA” means the federal Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), and any rules or regulations issued thereunder.

(f) “Nonprofit member organization” or “nonprofit member corporation” means a nonprofit public benefit corporation organized under Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code, a nonprofit mutual benefit corporation organized under Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code, or a similar entity organized under applicable provisions of the Corporations Code, or in the case of a foreign corporation, a nonprofit public benefit corporation, a mutual benefit corporation, or a similar entity organized under nonprofit laws in a state other than California.

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

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

10930.1. (a) The commissioner shall have the authority to issue a certificate of authority as a disability insurer to a CO-OP that has been organized as a nonprofit member organization or nonprofit member corporation under the laws of this state. The commissioner may also issue a certificate of authority as a disability insurer to a foreign CO-OP that has been organized as a nonprofit member organization or nonprofit member corporation under the laws of another state, provided that the entity meets the requirements governing CO-OPs under PPACA and this chapter. A CO-OP seeking or maintaining a certificate of authority pursuant to this chapter shall be subject to the same fees that are imposed on mutual insurers.

(b) A CO-OP admitted as a CO-OP insurer shall be subject to the same premium taxes as are imposed on for-profit health insurers with a certificate of authority from the commissioner.

10930.2. A domestic or foreign insurer admitted as a CO-OP insurer shall be subject to the same “paid-in capital” or “capital paid-in” requirements as are imposed on domestic and foreign mutual insurers pursuant to Sections 36 and 4011.

10930.3. (a) A domestic or foreign CO-OP admitted as a CO-OP insurer shall be subject to all of the provisions of this code that are applicable to insurers issuing policies of health insurance in the state and all applicable rules and regulations of the commissioner, including, but not limited to, the general provisions governing issuance of a certificate of authority in Article 3 (commencing with Section 699) of, the examination provisions in Article 4 (commencing with Section 729) of, the risk-based capital requirements in Article 4.1 (commencing with Section 739) of, and the financial statement filing requirements in Article 10

(commencing with Section 900) of, Chapter 1 of Part 2 of Division 1.

(b) In compliance with Section 1322(c)(5) of PPACA (42 U.S.C. Sec. 18042(c)(5)), and any rules or regulations issued under that section, a domestic or foreign CO-OP admitted as a CO-OP insurer shall be subject to any state laws that do not prevent the application of requirements under PPACA.

10930.4. (a) A solvency loan obtained by a CO-OP shall be treated as a surplus note and shall be subject to the same requirements as are imposed on mutual insurers pursuant to Article 4 (commencing with Section 4040) of Chapter 4 of Part 1 of Division 2. The commissioner may request any documentation relating to a CO-OP's start-up loan or solvency loan.

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

10930.5. The provisions of Section 699.5 shall apply to any insurer admitted as a CO-OP insurer; however, any loans received by the CO-OP in the form of a solvency or start-up loan shall not be construed as any form of subsidy, ownership, or financial control of the CO-OP insurer within the meaning of Section 699.5.

10930.6. (a) A CO-OP shall be subject at all times to the prohibitions in PPACA against converting or selling to a for-profit or nonconsumer-operated entity at any time after receiving a solvency loan.

(b) A CO-OP shall do all of the following, in addition to any other requirements imposed under Section 156.515 of Title 45 of the Code of Federal Regulations:

(1) Implement policies and procedures to foster and ensure member control of the organization. For purposes of this paragraph, a CO-OP shall meet the following requirements:

(A) The CO-OP shall have governing documents that incorporate governing rules that ensure that the directors of the operational board are elected by a majority vote of a quorum of the CO-OP members.

(B) All members of the CO-OP shall be eligible to vote for each director on the CO-OP's operational board.

(C) Each member of the CO-OP shall have one vote in the election of each director of the CO-OP's operational board.

(D) The first elected directors of the CO-OP's operational board shall be elected no later than one year after the effective date on which the CO-OP provides coverage to its first member; the entire operational board shall be elected no later than two years after the same date.

(E) Elections of the directors on the CO-OP's operational board shall be contested so that the total number of candidates for vacant positions on the operational board exceeds the number of vacant positions, except in cases where a seat is vacated midterm due to death, resignation, or removal.

(F) A majority of the voting directors on the operational board shall be members of the CO-OP.

(2) Have an operational board of directors that meets the following requirements:

(A) Each director shall have one vote unless he or she is a nonvoting director.

(B) Positions on the board of directors may be designated for individuals with specialized expertise, experience, or affiliation (for example, providers, employers, including small business consortia, and unions); however, those positions shall not constitute a majority of the operational board even if the individuals in those positions are also members of the CO-OP.

(C) (i) No representative of any federal, state, or local government, or of any political subdivision or instrumentality thereof, and no representative of any organization described in Section 156.510(b)(1)(i) of Title 45 of the Code of Federal Regulations may serve as staff of the CO-OP or on the CO-OP's formation board or operational board.

(ii) No board member or staff of the CO-OP shall enter into an agreement or transaction that would jeopardize member control as required by Section 156.515 of Title 45 of the Code of Federal Regulations. A board member or staff of the CO-OP shall only enter into arm's length transactions as described in Section 156.510(b)(2)(ii) of Title 45 of the Code of Federal Regulations.

(3) Have governing documents that incorporate ethics, conflict of interest, and disclosure standards. These standards shall protect

against insurance industry involvement and interference. In addition, these standards shall ensure that each director acts in the sole interest of the CO-OP, its members, and its local geographic community, as appropriate, and acts consistently with the terms of the CO-OP's governance documents and applicable state and federal law. At a minimum, these standards shall include the following:

(A) A mechanism to identify potential ethical or other conflicts of interest.

(B) A duty on the CO-OP's executive officers and directors to publicly disclose all potential conflicts of interest pursuant to the same standards required for state boards or commissions.

(C) A process to determine the extent to which a conflict exists.

(D) A process to address any conflict of interest.

(E) A process to be followed in the event a director or executive officer of the CO-OP violates the standards described in this paragraph.

(c) A violation of any of the requirements of this section shall constitute grounds for revocation of the CO-OP insurer's certificate of authority, in addition to any other grounds in this code for revocation of the certificate.

10930.7. A CO-OP insurer is insolvent if its surplus becomes less than the amount of paid-in capital required of a capital stock company to qualify to transact the class of disability and health insurance. The conservation and liquidation provisions of Article 14 (commencing with Section 1010) of Chapter 1 of Part 2 of Division 1 shall apply to CO-OP insurers.

10930.8. In addition to any applicable requirements in this code for maintaining a certificate of authority, a CO-OP is required at all times to be in full compliance with the requirements of PPACA governing CO-OPs. The commissioner may request the federal government's certification that a CO-OP is in compliance with the requirements of PPACA governing CO-OPs, as well as the status of the CO-OP's compliance with its obligations under any loan or loan modification agreement.

10930.9. The department may adopt regulations implementing this chapter pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

SEC. 4. 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 _____, 2012

Governor