

AMENDED IN SENATE MAY 2, 2012
AMENDED IN SENATE APRIL 18, 2012
AMENDED IN SENATE APRIL 10, 2012

SENATE BILL

No. 1313

Introduced by Senator Lieu

February 23, 2012

An act to amend Section 1361 of, and to add Sections 1360.2, 1361.4, 1363.06, 1367.004, and 1367.041 to, the Health and Safety Code, and to amend Section 781 of, and to add Sections 790.16, 1748.1, 10112.26, 10127.14, 10127.45, and 10133.10 to, the Insurance Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

SB 1313, as amended, Lieu. Health care coverage.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975 (Knox-Keene Act), 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 also provides for the regulation of health insurers by the Department of Insurance. Existing law prohibits a health care service plan from publishing or distributing an advertisement unless a copy thereof has first been filed with the Director of the Department of Managed Health Care at least 30 days prior to that use and the director has not found the advertisement to be untrue, misleading, deceptive, or in violation of the Knox-Keene Act within those 30 days, except as specified. Under existing law, if an advertisement fails to comply with the Knox-Keene Act, the director has the authority to require a plan to publish a correction or retraction of an untrue, misleading, or deceptive statement contained in the

advertisement and to prohibit the plan from publishing the advertisement or a material revision thereof without filing a copy with the director, as specified. Existing law authorizes the director to exempt a plan or advertisement from these requirements.

This bill would, until January 1, 2020, ~~prohibit a plan from publishing or distributing an advertisement unless a copy has first been filed with the director at least 60 days prior to that use and the director has not found the advertisement to be untrue, misleading, deceptive, or in violation of the Knox-Keene Act within those 60 days. The bill would authorize the director to extend this period of review by an additional 60 90 days. Under the bill, if an advertisement fails to comply with the Knox-Keene Act, the director would be mandated to require a plan to publish a correction or retraction of an untrue, misleading, or deceptive statement contained in the advertisement and to prohibit the plan from publishing the advertisement or a material revision thereof without filing a copy with the director, as specified. The bill would also prohibit the director from exempting certain types of materials from these requirements. The bill would also require health insurers and specified insurance agents to comply with similar advertising requirements.~~

Existing law prohibits a plan, solicitor, solicitor firm, or representative from using any advertising or solicitation, or making or permitting the use of any verbal statement, that is untrue or misleading or any form of evidence of coverage that is deceptive, as specified. Existing law prohibits an insurer, agent, or broker from causing to be issued a misrepresentation of the terms of the policy issued by the insurer, among other things, and makes a violation of that requirement a crime. Existing law, the federal Patient Protection and Affordable Care Act (PPACA), enacts various health care coverage market reforms. Among other things, commencing January 1, 2014, PPACA requires every individual to be covered under minimum essential coverage, as specified, and requires every health insurance issuer offering coverage in the individual or small group markets to ensure that the coverage includes a specified essential health benefits package.

This bill would ~~make it an unfair business practice for~~ *prohibit* an insurer or agent ~~to use~~ *from using* any advertising or solicitation, or ~~make or permit~~ *making or permitting* the use of any verbal statement, that is untrue or misleading or any form of evidence of coverage that is deceptive, as specified. The bill would prohibit a ~~person~~ *health care service plan, insurer, and specified persons* from making any statement to a person that is known, or should have been known, to be *deceptive*

or a misrepresentation regarding the requirements of PPACA. The bill would prohibit a specialized health care service plan, *with certain exceptions*, from offering, issuing, selling, or renewing an individual or group plan contract that does not, at a minimum, cover basic health care services unless the individual or group has proof of enrollment in minimum essential coverage, as defined. The bill would also prohibit ~~an entity~~ a *discount health plan* that arranges for the provision of health care services from offering or selling a product to an individual or group unless the individual enrollee has proof of enrollment in minimum essential coverage. The bill would prohibit a health insurer, a specialized health insurer, or an insurer offering policies or certificates of specified disease or hospital confinement indemnity insurance from offering, issuing, selling, or renewing an individual or small group health insurance policy that does not, at a minimum, cover essential health benefits, as defined, unless the individual or group has proof of enrollment in minimum essential coverage, as defined, *with certain exceptions*. The bill would require a health care service plan or health insurer that offers, issues, or sells a plan contract or health insurance policy that provides coverage that does not constitute minimum essential coverage to include in all solicitations, marketing materials, and the evidence of coverage a clear and easily identified disclosure to that effect, as specified. The bill would enact other related provisions.

Existing law requires the Department of Managed Health Care and the Department of Insurance to adopt regulations establishing standards and requirements to provide enrollees and insureds with appropriate access to language assistance in obtaining health care services, as specified. Existing law requires plans and insurers to translate specified vital documents into a language when a certain proportion of its enrollees or insureds indicate a preference for written materials in that language.

Under this bill, if a solicitor or an insurance agent advertises or markets health care service plan contracts or health insurance policies in a language other than English, the plan or insurer would be required to comply with those language assistance requirements. The bill would require a solicitor, solicitor firm, or insurance agent to disclose to the plan or insurer the non-English languages in which the solicitor, solicitor firm, or insurance agent markets, advertises, negotiates, or solicits contracts or policies offered by the plan or insurer, as specified. The bill would require a health care service plan or health insurer that advertises or markets in a language in which vital documents do not

have to be translated to translate certain documents into that language. *These provisions would not apply to the Medi-Cal program or the Healthy Families Program.*

Because a violation of certain of the bill’s requirements 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.

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 1360.2 is added to the Health and Safety
2 Code, to read:

3 1360.2. ~~(a) It is unlawful for any person, including a plan,~~
4 ~~subject to this chapter to~~ *No plan, solicitor, solicitor firm, or*
5 *representative shall* make any statement ~~to any other person~~ that
6 is known or should have been known to be *deceptive or* a
7 misrepresentation regarding the requirements of the federal Patient
8 Protection and Affordable Care Act (Public Law 111-148), as
9 amended by the federal Health Care and Education Reconciliation
10 Act of 2010 (Public Law 111-152). *Nothing in this section shall*
11 *be construed to limit or restrict in any way the department’s*
12 *authority under any provision of this chapter.*

13 ~~(b) For purposes of subdivision (a), a written or printed~~
14 ~~statement or item of information shall be deemed to be a~~
15 ~~misrepresentation whether or not it is literally true if, in the total~~
16 ~~context in which the statement is made or the item of information~~
17 ~~is communicated, the statement or item of information may be~~
18 ~~understood by a person not possessing special knowledge regarding~~
19 ~~health care coverage as indicating any benefit or advantage, or the~~
20 ~~absence of any exclusion, limitation, or disadvantage, of possible~~
21 ~~significance to an enrollee, potential enrollee, or potential~~
22 ~~subscriber in a plan, and such is not the case.~~

23 SEC. 2. Section 1361 of the Health and Safety Code is amended
24 to read:

1 1361. (a) Except as provided in subdivision (b), no plan shall
2 publish or distribute, or allow to be published or distributed on its
3 behalf, any advertisement not subject to Section 1352.1 unless
4 both of the following requirements are met:

5 ~~(1) Effective on or after January 1, 2013, to December 31, 2019,~~
6 ~~inclusive, a~~ true copy thereof has first been filed with the director
7 at least ~~60~~ 30 days prior to any such use, or any shorter period as
8 the director by rule or order may allow. Between January 1, 2013,
9 and December 31, 2019, inclusive, the director may, at his or her
10 discretion, extend the period of review by up to ~~60~~ 90 days.
11 ~~Commencing January 1, 2020, this copy shall be filed at least 30~~
12 ~~days prior to any such use, or any shorter period as the director by~~
13 ~~rule or order may allow.~~

14 (2) The director by notice has not found the advertisement,
15 wholly or in part, to be untrue, misleading, deceptive, or otherwise
16 not in compliance with this chapter or the rules thereunder, and
17 specified the deficiencies, within the period specified in paragraph
18 (1), or any shorter time as the director by rule or order may allow.

19 (b) Except as provided in subdivision (c), a licensed plan that
20 has been continuously licensed under this chapter for the preceding
21 18 months may publish or distribute, or allow to be published or
22 distributed on its behalf, an advertisement not subject to Section
23 1352.1 without having filed the same for the director's prior
24 approval if the plan and the material comply with each of the
25 following conditions:

26 (1) The advertisement or a material provision thereof has not
27 been previously disapproved by the director by written notice to
28 the plan and the plan reasonably believes that the advertisement
29 does not violate any requirement of this chapter or the rules
30 thereunder.

31 (2) The plan files a true copy of each new or materially revised
32 advertisement, used by it or by any person acting on behalf of the
33 plan, with the director not later than 10 business days after
34 publication or distribution of the advertisement or within such
35 additional period as the director may allow by rule or order.

36 (c) If the director finds that any advertisement of a plan has
37 materially failed to comply with this chapter or the rules
38 thereunder, the director ~~shall~~ *may*, by order, require the plan to
39 publish in the same or similar medium, an approved correction or
40 retraction of any untrue, misleading, or deceptive statement

1 contained in the advertising, and ~~shall~~ *may* prohibit the plan from
 2 publishing or distributing, or allowing to be published or distributed
 3 on its behalf, the advertisement or any new materially revised
 4 advertisement without first having filed a copy thereof with the
 5 director 30 days prior to the publication or distribution thereof, or
 6 any shorter period specified in the order. An order issued under
 7 this subdivision shall be effective for 12 months from its issuance,
 8 and may be renewed by order if the advertisements submitted
 9 under this subdivision indicate difficulties of voluntary compliance
 10 with the applicable provisions of this chapter and the rules
 11 thereunder.

12 (d) A licensed plan or other person regulated under this chapter
 13 may, within 30 days after receipt of any notice or order under this
 14 section, file a written request for a hearing with the director.

15 (e) The director, *by rule or order*, may classify plans and
 16 advertisements and exempt certain classes, wholly or in part, either
 17 unconditionally or upon specified terms and conditions or for
 18 specified periods, from the application of subdivisions (a) and ~~(b)~~,
 19 ~~except for the following: (b).~~

20 ~~(1) Advertisements or marketing materials that include~~
 21 ~~endorsements or ratings about quality of care.~~

22 ~~(2) Advertisement or marketing materials about new health care~~
 23 ~~products.~~

24 ~~(3) Enrollment-related materials, including, but not limited to,~~
 25 ~~disclosure forms, contract documents, and enrollment forms.~~

26 ~~(4) Any other materials as provided by regulation.~~

27 SEC. 3. Section 1361.4 is added to the Health and Safety Code,
 28 to read:

29 1361.4. A person licensed pursuant to Section 1351 whose
 30 license is revoked or suspended pursuant to the grounds set forth
 31 in this article, Article 3 (commencing with Section 1349), or Article
 32 5 (commencing with Section 1367), and a person who engages in
 33 solicitation, as defined in subdivision (l) of Section 1345 who is
 34 disciplined pursuant to Section 1388, shall be prohibited from
 35 doing any of the following:

36 (a) Becoming a navigator as determined by the California Health
 37 Benefit Exchange pursuant to subdivision (l) of Section 100502
 38 of the Government Code in accordance with subdivision (i) of
 39 Section 1311 of the federal Patient Protection and Affordable Care

1 Act (Public Law 111-148), as amended by the federal Health Care
2 and Education Reconciliation Act of 2010 (Public Law 111-152).

3 (b) Becoming licensed as a life licensee agent as defined in
4 Section 1622 of the Insurance Code.

5 (c) Becoming a designated individual or organization authorized
6 to receive a fee under Section 12693.32 of the Insurance Code.

7 SEC. 4. Section 1363.06 is added to the Health and Safety
8 Code, to read:

9 1363.06. The director shall adopt rules to implement Section
10 2715 of the federal Public Health Service Act (42 U.S.C. Sec.
11 300gg-15). In so doing, the director shall minimize duplication
12 with disclosure requirements under California law.

13 SEC. 5. Section 1367.004 is added to the Health and Safety
14 Code, to read:

15 1367.004. (a) (1) On and after January 1, 2014, a specialized
16 health care service plan shall not offer, issue, sell, or renew for
17 any group a plan contract that does not, at a minimum, cover basic
18 health care services unless the group provides proof of coverage
19 that constitutes minimum essential coverage, as defined in Section
20 5000A(f) of the Internal Revenue Code and any rules or regulations
21 issued thereunder.

22 (2) On and after January 1, 2014, a specialized health care
23 service plan shall not offer, issue, sell, or renew for any individual
24 a plan contract that does not, at a minimum, cover basic health
25 care services unless the individual enrollee has proof of enrollment
26 in coverage that constitutes minimum essential coverage, as defined
27 in Section 5000A(f) of the Internal Revenue Code and any rules
28 or regulations issued thereunder.

29 (3) For products offered through the California Health Benefit
30 Exchange, the Exchange may provide proof of coverage of essential
31 health benefits for an individual or small group.

32 (b) On and after January 1, 2014, ~~any entity~~ *a discount health*
33 *plan* that arranges for the provision of health care services shall
34 not offer or sell a product or service to an individual or group
35 unless the individual enrollee has proof of enrollment in coverage
36 that constitutes minimum essential coverage as defined in Section
37 5000A(f) of the Internal Revenue Code and any rules or regulations
38 issued thereunder.

39 (c) *This section shall not apply to the offer, sale, issuance, or*
40 *renewal of specialized health care service plan contracts that*

1 *include only limited-scope dental or vision benefits meeting the*
2 *requirements of Section 9832(c)(2)(A) of the Internal Revenue*
3 *Code, except that all solicitation, marketing materials, and the*
4 *evidence of coverage relating to those contracts shall include the*
5 *disclosure required in subdivision (d) and a clear disclosure of*
6 *whether or not the contract covers the pediatric oral or vision*
7 *services required by Section 1302(b)(1)(J) of the federal Patient*
8 *Protection and Affordable Care Act (Public Law 111-148).*

9 (e)

10 (d) On and after January 1, 2014, a health care service plan,
11 including a specialized health care service plan, that offers, issues,
12 or sells a plan contract that provides coverage that does not
13 constitute minimum essential coverage, as defined in Section
14 5000A(f) of the Internal Revenue Code and any rules or regulations
15 issued thereunder, shall include in all solicitations, marketing
16 materials, and the evidence of coverage a clear and easily identified
17 disclosure that the contract does not meet the requirements of
18 federal law with respect to minimum essential coverage and may
19 expose an individual enrolled in the contract to significant federal
20 tax penalties unless the individual also obtains coverage that
21 provides minimum essential coverage as required by federal law.

22 SEC. 6. Section 1367.041 is added to the Health and Safety
23 Code, to read:

24 1367.041. (a) A health care service plan that advertises or
25 markets in a language other than English, which language does
26 not meet the minimum enrollee thresholds established under
27 Sections 1367.04 and 1367.07 or the regulations adopted
28 thereunder, shall translate into that language the documents listed
29 in clauses (i), (iii), and (v) of subparagraph (B) of paragraph (1)
30 of subdivision (b) of Section 1367.04 and in subparagraphs (F)
31 and (G) of paragraph (7) of subdivision (b) of Section 1300.67.04
32 of Title 28 of the California Code of Regulations.

33 (b) Once the enrollee population of the non-English-language
34 population meets a threshold listed in subparagraph (A) of
35 paragraph (1) of subdivision (b) of Section 1367.04, the plan shall
36 translate all vital documents as required under Sections 1367.04
37 and 1367.07 and the regulations adopted thereunder.

38 (c) If a solicitor *or solicitor firm* advertises or markets health
39 care service plan contracts in a language other than English, the
40 health care service plan for which the solicitor *or solicitor firm* is

1 advertising or marketing shall meet the requirements of Sections
2 1367.04 and 1367.07 and, if applicable, Section 1367.041, and
3 any rules or regulations adopted thereunder.

4 (d) A solicitor or solicitor firm shall disclose to the health care
5 service plan for which the solicitor or solicitor firm markets,
6 advertises, or solicits health care service plan coverage each of the
7 non-English languages in which the solicitor or solicitor firm
8 markets, advertises, or solicits that coverage.

9 (e) *This section shall not apply to the Medi-Cal program or the*
10 *Healthy Families Program.*

11 SEC. 7. Section 781 of the Insurance Code is amended to read:

12 781. (a) A person shall not make any statement that is known,
13 or should have been known, to be a misrepresentation (1) to any
14 other person for the purpose of inducing, or tending to induce, the
15 other person either to take out a policy of insurance, or to refuse
16 to accept a policy issued upon an application therefor and instead
17 take out any policy in another insurer, or (2) to a policyholder in
18 any insurer for the purpose of inducing or tending to induce him
19 or her to forfeit or surrender his or her insurance therein, or
20 inducing or tending to induce a lapse in that insurance.

21 (b) A person shall not make any representation or comparison
22 of insurers or policies to an insured that is misleading for the
23 purpose of inducing or tending to induce him or her to forfeit,
24 change, or surrender his or her insurance, or inducing or tending
25 to induce a lapse in that insurance, whether on a temporary or
26 permanent plan.

27 (c) ~~(1) A person shall not~~ *No health insurer, or agent as defined*
28 *in Section 1622, shall make any statement to any other person that*
29 *is known or should have been known to be deceptive or a*
30 *misrepresentation regarding the requirements of the federal Patient*
31 *Protection and Affordable Care Act (Public Law 111-148), as*
32 *amended by the federal Health Care and Education Reconciliation*
33 *Act of 2010 (Public Law 111-152).*

34 (d) *Nothing in this section shall be construed to limit or restrict*
35 *in any way the department's authority under any other provision*
36 *of this chapter.*

37 ~~(2) For purposes of this subdivision, a written or printed~~
38 ~~statement or item of information shall be deemed to be a~~
39 ~~misrepresentation whether or not it is literally true if, in the total~~
40 ~~context in which the statement is made or the item of information~~

1 is communicated, the statement or item of information may be
 2 understood by a person not possessing special knowledge regarding
 3 health care coverage as indicating any benefit or advantage, or the
 4 absence of any exclusion, limitation, or disadvantage, of possible
 5 significance to an insured, potential insured, or potential
 6 policyholder, and such is not the case.

7 SEC. 8. Section 790.16 is added to the Insurance Code, to read:

8 790.16. (a) It is an unfair method of competition and an unfair
 9 and deceptive act or practice in the business of insurance for an
 10 insurer or agent, as defined in Section 1622, to use or permit the
 11 use of any advertising or solicitation that is untrue or misleading,
 12 or any form of evidence of coverage that is deceptive. For purposes
 13 of this section:

14 (1) A written or printed statement or item of information shall
 15 be deemed untrue if it does not conform to fact in any respect
 16 which is, or may be significant to an insured or policyholder, or
 17 potential insured or policyholder of a policy.

18 (2) A written or printed statement or item of information shall
 19 be deemed misleading whether or not it may be literally true, if,
 20 in the total context in which the statement is made or such item of
 21 information is communicated, such statement or item of
 22 information may be understood by a person not possessing special
 23 knowledge regarding health care coverage, as indicating any benefit
 24 or advantage, or the absence of any exclusion, limitation, or
 25 disadvantage of possible significance to an insured, or potential
 26 insured or policyholder, of a policy, and such is not the case.

27 (3) An evidence of coverage shall be deemed to be deceptive
 28 if the evidence of coverage taken as a whole and with consideration
 29 given to typography and format, as well as language, shall be such
 30 as to cause a reasonable person, not possessing special knowledge
 31 of policies, and evidence of coverage therefor to expect benefits,
 32 service charges, or other advantages which the evidence of
 33 coverage does not provide or which the insurer issuing such
 34 coverage or evidence of coverage does not regularly make available
 35 to insureds or policyholders covered under such evidence of
 36 coverage.

37 (b) It is an unfair method of competition and an unfair and
 38 deceptive act or practice for an insurer or agent, as defined in
 39 Section 1622, to use or permit the use of any verbal statement that
 40 is untrue, misleading, or deceptive or make any representations

1 ~~about coverage offered by the insurer or its cost that does not~~
2 ~~conform to fact. All verbal statements are to be held to the same~~
3 ~~standards as those for printed matter provided in subdivision (a).~~

4 790.16. (a) *No health insurer, or agent as defined in Section*
5 *1622, shall use or permit the use of any advertising or solicitation*
6 *that is untrue or misleading, or any form of evidence of coverage*
7 *that is deceptive. For purposes of this section:*

8 (1) *A written or printed statement or item of information shall*
9 *be deemed untrue if it does not conform to fact in any respect which*
10 *is, or may be, significant to an insured or policyholder, or potential*
11 *insured or policyholder, of a policy.*

12 (2) *A written or printed statement or item of information shall*
13 *be deemed misleading whether or not it may be literally true, if,*
14 *in the total context in which the statement is made or the item of*
15 *information is communicated, the statement or item of information*
16 *may be understood by a person not possessing special knowledge*
17 *regarding health care coverage as indicating any benefit or*
18 *advantage, or the absence of any exclusion, limitation, or*
19 *disadvantage of possible significance to an insured, or potential*
20 *insured or policyholder, of a policy, and such is not the case.*

21 (3) *An evidence of coverage shall be deemed to be deceptive if*
22 *the evidence of coverage taken as a whole and with consideration*
23 *given to typography and format, as well as language, is such as*
24 *to cause a reasonable person, not possessing special knowledge*
25 *of policies and evidence of coverage therefor to expect benefits,*
26 *service charges, or other advantages which the evidence of*
27 *coverage does not provide or which the insurer issuing the*
28 *coverage or evidence of coverage does not regularly make*
29 *available to insureds or policyholders covered under the evidence*
30 *of coverage.*

31 (b) *No health insurer, or agent as defined in Section 1622, shall*
32 *use or permit the use of any verbal statement that is untrue,*
33 *misleading, or deceptive or make any representations about*
34 *coverage offered by the insurer or its cost that does not conform*
35 *to fact. All verbal statements shall be held to the same standards*
36 *as those for printed matter provided in subdivision (a).*

37 SEC. 9. Section 1748.1 is added to the Insurance Code, to read:

38 1748.1. A person licensed pursuant to Section 1622 whose
39 license is revoked or suspended pursuant to the grounds set forth
40 in Article 6 (commencing with Section 1666) of Chapter 5 of Part

1 2 of Division 1, or an insurer whose certificate of authority is
2 revoked or suspended, shall be prohibited from doing any of the
3 following:

4 (a) Becoming a navigator as determined by the California Health
5 Benefit Exchange pursuant to subdivision (l) of Section 100502
6 of the Government Code in accordance with subdivision (i) of
7 Section 1311 of the federal Patient Protection and Affordable Care
8 Act (Public Law 111-148), as amended by the federal Health Care
9 and Education Reconciliation Act of 2010 (Public Law 111-152).

10 (b) Engaging in solicitation, as defined in Section 1345 of the
11 Health and Safety Code, or being approved by the Department of
12 Managed Health Care to become a solicitor or solicitor firm.

13 (c) Being approved for licensure by the Department of Managed
14 Health Care, as set forth in Section 1351 of the Health and Safety
15 Code.

16 (d) Becoming a designated individual or organization authorized
17 to receive a fee under Section 12693.32.

18 SEC. 10. Section 10112.26 is added to the Insurance Code, to
19 read:

20 10112.26. (a) (1) On and after January 1, 2014, a health
21 insurer, as defined in subdivision (b) of Section 106, shall not
22 offer, issue, sell, or renew for any individual or any small group
23 a policy of health insurance that does not, at a minimum, cover
24 essential health benefits, as defined by the state pursuant to
25 regulations, rules, or guidance, adopted pursuant to the federal
26 Patient Protection and Affordable Care Act (Public Law 111-148),
27 as amended by the federal Health Care and Education
28 Reconciliation Act of 2010 (Public Law 111-152), unless the
29 individual insured has proof of enrollment in coverage that
30 constitutes minimum essential coverage, as defined in Section
31 5000A(f) of the Internal Revenue Code and any rules or regulations
32 issued thereunder. *This paragraph shall not apply to a policy that*
33 *qualifies as a grandfathered health plan, within the meaning of*
34 *Section 1251 of the federal Patient Protection and Affordable Care*
35 *Act (Public law 111-148).*

36 (2) On and after January 1, 2014, a specialized health insurer
37 and an insurer offering policies or certificates of specified disease
38 or hospital confinement indemnity insurance shall not offer, issue,
39 sell, or renew for any small group a policy of health insurance that
40 does not, at a minimum, cover essential health benefits, as defined

1 by the state pursuant to regulations, rules, or guidance, adopted
2 pursuant to the federal Patient Protection and Affordable Care Act
3 (Public Law 111-148), as amended by the federal Health Care and
4 Education Reconciliation Act of 2010 (Public Law 111-152), unless
5 the group provides proof of enrollment in coverage that constitutes
6 minimum essential coverage, as defined in Section 5000A(f) of
7 the Internal Revenue Code and any rules or regulations issued
8 thereunder.

9 (3) On and after January 1, 2014, a specialized health insurer
10 and an insurer offering policies or certificates of specified disease
11 or hospital confinement indemnity insurance shall not offer, issue,
12 sell, or renew for any individual a policy of health insurance that
13 does not, at a minimum, cover essential health benefits, as defined
14 by the state pursuant to regulations, rules, or guidance, adopted
15 pursuant to the federal Patient Protection and Affordable Care Act
16 (Public Law 111-148), as amended by the federal Health Care and
17 Education Reconciliation Act of 2010 (Public Law 111-152), unless
18 the individual insured has proof of enrollment in coverage that
19 constitutes minimum essential coverage, as defined in Section
20 5000A(f) of the Internal Revenue Code and any rules or regulations
21 issued thereunder.

22 (4) For products offered through the California Health Benefit
23 Exchange, the Exchange may provide proof of coverage of essential
24 health benefits for an individual or small group.

25 (b) On and after January 1, 2014, a health insurer, including a
26 specialized health insurer, that offers, issues, or sells a policy of
27 health insurance that provides coverage that does not constitute
28 minimum essential coverage, as defined in Section 5000A(f) of
29 the Internal Revenue Code and any rules or regulations issued
30 thereunder, shall include in all solicitations, marketing materials,
31 and the evidence of coverage a clear and easily identified disclosure
32 that the policy does not meet the requirements of federal law with
33 respect to minimum essential coverage and may expose an
34 individual covered under the policy to significant federal tax
35 penalties unless the individual also obtains coverage that provides
36 minimum essential coverage as required by federal law.

37 (c) *This section shall not apply to the offer, sale, issuance, or*
38 *renewal of specialized health insurance contracts that include only*
39 *limited-scope dental or vision benefits meeting the requirements*
40 *of Section 9832(c)(2)(A) of the Internal Revenue Code, except that*

1 *all solicitation, marketing materials, and the evidence of coverage*
2 *relating to those contracts shall include the disclosure required*
3 *in subdivision (b) and a clear disclosure of whether or not the*
4 *contract covers the pediatric oral or vision services required by*
5 *Section 1302(b)(1)(J) of the federal Patient Protection and*
6 *Affordable Care Act (Public Law 111-148).*

7 SEC. 11. Section 10127.14 is added to the Insurance Code, to
8 read:

9 10127.14. The commissioner shall adopt rules to implement
10 Section 2715 of the federal Public Health Service Act (42 U.S.C.
11 Sec. 300gg-15). In so doing, the commissioner shall minimize
12 duplication with disclosure requirements under California law.

13 SEC. 12. Section 10127.45 is added to the Insurance Code, to
14 read:

15 10127.45. (a) Except as provided in subdivision (b), no insurer
16 offering policies of health insurance, as defined in subdivision (b)
17 of Section 106, or categories of coverage described in subdivision
18 (a) of Section 10604, shall publish or distribute, or allow to be
19 published or distributed on its behalf, any advertisement until both
20 of the following occur:

21 (1) A true copy thereof has first been filed with the
22 commissioner; at least ~~60~~ 30 days prior to any such use ~~beginning~~
23 ~~January 1, 2013, to December 31, 2019, inclusive,~~ or any shorter
24 period as the commissioner by rule or order may allow. Between
25 January 1, 2013, and December 31, 2019, inclusive, the
26 commissioner may, at his or her discretion, extend the period of
27 review by up to ~~60~~ 90 days. ~~Commencing January 1, 2020, this~~
28 ~~copy shall be filed at least 30 days prior to any such use, or any~~
29 ~~shorter period, as the commissioner by rule or order may allow.~~

30 (2) The commissioner by notice has not found the advertisement,
31 wholly or in part, to be untrue, misleading, deceptive, or otherwise
32 not in compliance with this code or the rules thereunder, and
33 specified the deficiencies, within the period specified in paragraph
34 (1), or any shorter time as the commissioner by rule or order may
35 allow.

36 (b) Except as provided in subdivision (c), an insurer ~~or agent~~
37 that has been continuously licensed under this code for the
38 preceding 18 months may publish or distribute, or allow to be
39 published or distributed on its behalf, an advertisement without
40 having filed the advertisement for the commissioner’s prior

1 approval, if the insurer ~~or agent~~ and the material comply with each
2 of the following conditions:

3 (1) The advertisement or a material provision thereof has not
4 been previously disapproved by the commissioner by written notice
5 to the insurer ~~or agent~~ and the insurer ~~or agent~~ reasonably believes
6 that the advertisement does not violate any requirement of this
7 code or the rules thereunder.

8 (2) The insurer ~~or agent~~ files a true copy of each new or
9 materially revised advertisement, used by it or by any person acting
10 on behalf of the insurer ~~or agent~~, with the commissioner not later
11 than 10 business days after publication or distribution of the
12 advertisement or within such additional period as the commissioner
13 may allow by rule or order.

14 (c) If the commissioner finds that any advertisement of an
15 insurer ~~or agent~~ has materially failed to comply with this code or
16 the rules thereunder, the commissioner ~~shall~~ *may*, by order, require
17 the insurer ~~or agent~~ to publish in the same or similar medium, an
18 approved correction or retraction of any untrue, misleading, or
19 deceptive statement contained in the advertising, and ~~shall~~ *may*
20 prohibit the insurer ~~or agent~~ from publishing or distributing, or
21 allowing to be published or distributed on its behalf the
22 advertisement or any new materially revised advertisement without
23 first having filed a copy thereof with the commissioner 30 days
24 prior to the publication or distribution thereof, or any shorter period
25 specified in the order. An order issued under this subdivision shall
26 be effective for 12 months from its issuance, and may be renewed
27 by order if the advertisements submitted under this subdivision
28 indicate difficulties of voluntary compliance with the applicable
29 provisions of this code and the rules thereunder.

30 (d) An insurer ~~or agent~~ or other person regulated under this code
31 may, within 30 days after receipt of any notice or order under this
32 section, file a written request for a hearing with the commissioner.

33 (e) The commissioner may classify certain types of insurance
34 and advertisements and exempt certain classes, wholly or in part,
35 either unconditionally or upon specified terms and conditions or
36 for specified periods, from the application of subdivisions (a) and
37 ~~(b), except for the following: (b).~~

38 ~~(1) Advertisements or marketing materials that include~~
39 ~~endorsements or ratings about quality of care.~~

1 ~~(2) Advertisement or marketing materials about new health care~~
2 ~~products.~~

3 ~~(3) Enrollment-related materials, including, but not limited to,~~
4 ~~disclosure forms, contract documents, and enrollment forms.~~

5 ~~(4) Any products described in subdivision (a) of Section~~
6 ~~10112.26.~~

7 ~~(5) Any other materials as provided by regulation.~~

8 (f) Two copies of a proposed advertisement, marketing
9 document, or educational material shall be filed. To minimize the
10 expense of changes in advertising copy, the advertisement may be
11 submitted in draft form for preliminary review subject to the later
12 filing of a proof or final copy, and the later filing of a proof or
13 final copy may be waived when the draft copy is presented in a
14 manner reasonably representing the final appearance of the
15 advertisement. The text of audio-visual advertising shall indicate
16 any directions for presentation, including voice qualities and the
17 juxtaposition of the visual materials with the text. The
18 commissioner shall allow insurers and agents to file these materials
19 electronically.

20 (g) The commissioner shall not issue letters of nondisapproval
21 of advertising. If the person submitting the advertisement requests
22 an order shortening the 30-day or 90-day waiting period specified
23 in paragraph (1) of subdivision (a), that order shall be issued when
24 an appropriate showing of the need therefor is made.

25 SEC. 13. Section 10133.10 is added to the Insurance Code, to
26 read:

27 10133.10. (a) An insurer that markets, advertises, or produces
28 educational materials for health insurance policies in a language
29 other than English, which language does not meet the minimum
30 insured thresholds established under Sections 10133.8 and 10133.9
31 or the regulations adopted thereunder, shall translate into that
32 language the documents listed in clauses (i), (iii), and (v) of
33 subparagraph (B) of paragraph (3) of subdivision (b) of Section
34 10133.8 and in paragraphs (6) and (7) of subdivision (k) of Section
35 2538.2 of Title 10 of the California Code of Regulations.

36 (b) Once the insured population of the non-English-language
37 population meets a threshold listed in subparagraph (A) of
38 paragraph (3) of subdivision (b) of Section 10133.8, the insurer
39 shall translate all vital documents as required under Sections
40 10133.8 and 10133.9 and the regulations adopted thereunder.

1 (c) If an agent ~~advertises or~~ *licensed to sell health insurance*
2 *pursuant to Section 1622* markets, *sells, advertises, or negotiates*
3 health insurance policies in a language other than English, the
4 insurer for which that individual is an agent shall meet the
5 requirements of Sections 10133.8 and 10133.9 and, if applicable,
6 Section 10133.10, and any rules or regulations promulgated
7 thereunder.

8 (d) An agent licensed to sell health insurance policies pursuant
9 to Section 1622 shall disclose to the insurer or insurers for which
10 the agent markets, sells, advertises, or negotiates health insurance
11 policies each of the languages in which the agent markets, sells,
12 advertises, or negotiates health insurance policies.

13 (e) *This section shall not apply to the Medi-Cal program or the*
14 *Healthy Families Program.*

15 SEC. 14. No reimbursement is required by this act pursuant to
16 Section 6 of Article XIII B of the California Constitution because
17 the only costs that may be incurred by a local agency or school
18 district will be incurred because this act creates a new crime or
19 infraction, eliminates a crime or infraction, or changes the penalty
20 for a crime or infraction, within the meaning of Section 17556 of
21 the Government Code, or changes the definition of a crime within
22 the meaning of Section 6 of Article XIII B of the California
23 Constitution.