

ASSEMBLY BILL

No. 1877

Introduced by Assembly Member Cooley
(Coauthors: Assembly Members Dickinson, Beth Gaines, and Pan)
(Coauthor: Senator Gaines)

February 19, 2014

An act to add Title 22.1 (commencing with Section 100600) to the Government Code, relating to health care coverage, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1877, as introduced, Cooley. California Vision Care Access Council.

Existing law, the federal Patient Protection and Affordable Care Act, requires each state to establish an American Health Benefits Exchange to facilitate the purchase of qualified health plans by qualified individuals and small employers. PPACA prohibits an Exchange from making available any health plan other than a qualified health plan, except for certain stand-alone dental plans. Existing state law establishes the California Health Benefit Exchange within state government, specifies the powers and duties of the board governing the Exchange, and requires the board to facilitate the purchase of qualified health plans through the Exchange by qualified individuals and small employers by January 1, 2014.

This bill would establish the California Vision Care Access Council within state government and would require that the Council be governed by a board composed of 5 members appointed by the Governor and the Legislature, as specified. The would require the Council to construct,

manage, and maintain a marketplace for the purchase of vision plans through participating carriers by qualified individuals and qualified employers and would require the Council to work with the Exchange to establish a direct link between the Internet Web site of the Exchange and the Internet Web site of the Council in order to connect consumers of the Exchange to the marketplace established by the Council. The bill would also require the Council to establish the requirements for carrier participation in the marketplace and would enact other related provisions. The bill would create the California Vision Care Access Trust Fund as a continuously appropriated fund, thereby making an appropriation, would authorize the Council to assess a charge on the vision plans offered by participating carriers through the Council that is reasonable and necessary to support the development, operations, and prudent cash management of the Council, and would make the implementation of the bill’s provisions contingent on a determination by the board that at least \$250,000 exists in the fund.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.
 State-mandated local program: no.

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

- 1 SECTION 1. This act shall be known and may be cited as the
- 2 California Vision Care Access Act.
- 3 SEC. 2. It is the intent of the Legislature to make the statutory
- 4 changes to California law necessary to establish a Vision Care
- 5 Access Council in California and its administrative board in a
- 6 manner that is consistent with the rules, regulations, and guidance
- 7 implementing 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 hereafter the federal act. In doing so, it is the intent of the
- 11 Legislature to do all of the following:
- 12 (a) Provide Californians an organized, transparent marketplace
- 13 for the purchase of affordable, quality vision care coverage,
- 14 augmenting and supplementing the essential health benefits
- 15 available through the California Health Benefit Exchange.

1 (b) Guarantee the availability of vision coverage through the
2 private health insurance market to qualified individuals and
3 employees of qualified employers.

4 (c) Offer specialized vision health care service plan and health
5 insurance coverage in the individual and group markets on the
6 basis of price, quality, and service.

7 (d) Meet the requirements of the federal act and all applicable
8 federal guidance, rules, regulations.

9 SEC. 3. Title 22.1 (commencing with Section 100600) is added
10 to the Government Code, to read:

11
12 TITLE 22.1. CALIFORNIA VISION CARE ACCESS
13 MARKETPLACE
14

15 100600. For purposes of this title, the following definitions
16 shall apply:

17 (a) "Board" means the board described in subdivision (a) of
18 Section 100601.

19 (b) "Carrier" means either a private health insurer holding a
20 valid outstanding certificate of authority from the Insurance
21 Commissioner or a health care service plan, as defined under
22 subdivision (f) of Section 1345 of the Health and Safety Code,
23 licensed by the Department of Managed Health Care.

24 (c) "Council" means the Vision Care Access Council created
25 by Section 100601.

26 (d) "Exchange" means the California Health Benefit Exchange
27 established by Section 100500.

28 (e) "Federal act" means the federal Patient Protection and
29 Affordable Care Act (Public Law 111-148), as amended by the
30 federal Health Care and Education Reconciliation Act of 2010
31 (Public Law 111-152), and any amendments to, or regulations or
32 guidance issued under, those acts.

33 (f) "Fund" means the California Vision Care Access Trust Fund
34 established by Section 100620.

35 (g) "Marketplace" means the marketplace established under
36 Section 100603.

37 (h) "Qualified individual" means an individual who is eligible
38 to purchase coverage through the Exchange.

39 (i) "Qualified employer" means an employer that is eligible to
40 purchase coverage through the Exchange.

1 (j) “Vision plan” means a specialized health care service plan
2 contract, as defined in Section 1345 of the Health and Safety Code,
3 covering vision care services or a specialized health insurance
4 policy, as defined in Section 106 of the Insurance Code, covering
5 vision care services.

6 100601. (a) There is in the state government the California
7 Vision Care Access Council, an independent public entity not
8 affiliated with an agency or department, which shall be known as
9 the Council. The Council shall be governed by an executive board
10 consisting of five members who are residents of California. Of the
11 members of the board, three shall be appointed by the Governor,
12 one shall be appointed by the Senate Committee on Rules, and one
13 shall be appointed by the Speaker of the Assembly.

14 (b) Members of the board shall be appointed for a term of four
15 years, except that the initial appointment by the Senate Committee
16 on Rules shall be for a term of three years, and the initial
17 appointment by the Speaker of the Assembly shall be for a term
18 of two years. Appointments by the Governor made on or after
19 January 1, 2016, shall be subject to confirmation by the Senate. A
20 member of the board may continue to serve until the appointment
21 and qualification of his or her successor. Vacancies shall be filled
22 by appointment for the unexpired term. The board shall elect a
23 chairperson on an annual basis.

24 (c) (1) Each person appointed to the board shall have
25 demonstrated and acknowledged expertise in at least two of the
26 following areas:

27 (A) Individual health care coverage.

28 (B) Small employer health care coverage.

29 (C) Health benefits plan administration.

30 (2) Appointing authorities shall consider the expertise of the
31 other members of the board and attempt to make appointments so
32 that the board’s composition reflects a diversity of expertise.

33 (d) Each member of the board shall have the responsibility and
34 duty to meet the requirements of this title, the federal act, and all
35 applicable state and federal laws and regulations, to serve the public
36 interest of the individuals and small businesses seeking health care
37 coverage through the Council, and to ensure the operational
38 well-being and fiscal solvency of the Council.

39 (e) A board member shall not receive compensation for his or
40 her service on the board but may receive a per diem and

1 reimbursement for travel and other necessary expenses, as provided
2 in Section 103 of the Business and Professions Code, while
3 engaged in the performance of official duties of the board.

4 (f) There shall not be any liability in a private capacity on the
5 part of the board or any member of the board, or any officer or
6 employee of the board, for or on account of any act performed or
7 obligation entered into in an official capacity, when done in good
8 faith, without the intent to defraud, and in connection with the
9 administration, management, or conduct of this title or affairs
10 related to this title.

11 (g) (1) The board shall hire an executive director to organize,
12 administer, and manage the operations of the Council. The
13 executive director shall be exempt from civil service and shall
14 serve at the pleasure of the board.

15 (2) The board shall identify and fill other key executive
16 positions, as determined necessary by the board, who shall be
17 exempt from civil service to the extent permitted by law.

18 (3) The board shall set the salaries for the exempt positions
19 described in paragraphs (1) and (2) in amounts that are reasonably
20 necessary to attract and retain individuals of superior qualifications.
21 The salaries shall be published by the board and shall be posted
22 on the Internet Web site of the Council.

23 (h) The board shall be subject to the Bagley-Keene Open
24 Meeting Act (Article 9 (commencing with Section 11120) of
25 Chapter 1 of Part 1 of Division 3 of Title 2), except that the board
26 may hold closed sessions when considering matters related to
27 litigation, personnel, contracting, and rates.

28 100603. The Council shall, at a minimum, do all of the
29 following:

30 (a) Construct, manage, and maintain a marketplace for the
31 purchase of vision plans through participating carriers by qualified
32 individuals and qualified employers. The marketplace shall offer
33 full and complete carrier information to consumers, shall ensure
34 a secure purchase functionality, and shall allow enrollees and
35 prospective enrollees to obtain standardized comparative
36 information on the plans offered through the marketplace.

37 (b) Maintain an Internet Web site through which enrollees and
38 prospective enrollees of vision plans may obtain standardized
39 comparative information on the plans offered in the marketplace.

1 (c) Work cooperatively with the Exchange to establish a direct
2 link from the Internet Web site maintained by the Exchange to an
3 Internet Web site maintained by the Council to connect Exchange
4 consumers to the marketplace.

5 (d) Make the marketplace available to individuals without access
6 to the Internet.

7 (e) Determine the minimum requirements a carrier shall meet
8 to be considered for participation in the marketplace, and the
9 standards and criteria for selecting vision plans to be offered
10 through the marketplace that are in the best interests of consumers.
11 The board shall consistently and uniformly apply these
12 requirements, standards, and criteria to all carriers. These
13 requirements shall, at a minimum, include the following:

14 (1) A requirement that a carrier meet a minimum net asset
15 threshold as determined by the Council to ensure that it is both
16 well established and can demonstrate that it offers a proven model
17 for providing vision care coverage in California. The Council may
18 also consider the usefulness of setting a minimum annual premium
19 revenue as evidence of the soundness of the carrier.

20 (2) A requirement that a carrier have, and continuously maintain,
21 an established Internet Web site.

22 (3) A requirement that a carrier demonstrate to the Council
23 adequate vision care coverage networks sufficient to ensure
24 convenient geographic access to vision care in California.

25 (4) A requirement that a carrier demonstrate to the Council
26 adequate, multilingual, consumer service and benefit delivery
27 capabilities.

28 (5) Any other requirements determined necessary by the board
29 based on input from health care consumer advocacy organizations,
30 representatives of the optometry and ophthalmology industries,
31 health insurers, and health care service plans.

32 (f) Require vision plans offered in the marketplace to do both
33 of the following:

34 (1) (A) Make available to the public, and the Insurance
35 Commissioner or the Department of Managed Health Care, as
36 applicable, accurate and timely disclosure of the following
37 information:

38 (i) Claims payment policies and practices.

39 (ii) Periodic financial disclosures.

40 (iii) Data on enrollment.

- 1 (iv) Data on disenrollment.
- 2 (v) Data on the number of claims that are denied.
- 3 (vi) Information on cost sharing and payments with respect to
- 4 any out-of-network coverage.
- 5 (B) The information required under subparagraph (A) shall be
- 6 provided in plain language.
- 7 (2) Permit individuals to learn, in a timely manner upon the
- 8 request of the individual, the amount of cost sharing, including,
- 9 but not limited to, deductibles, copayments, and coinsurance, under
- 10 the individual's plan or coverage that the individual would be
- 11 responsible for paying with respect to the furnishing of a specific
- 12 item or service by a participating provider. At a minimum, this
- 13 information shall be made available to the individual through an
- 14 Internet Web site and through other means for individuals without
- 15 access to the Internet.
- 16 (g) Provide for the operation of a toll-free telephone hotline to
- 17 respond to requests for assistance.
- 18 (h) Establish and make available by electronic means a
- 19 calculator to determine the actual cost of a vision plan for a
- 20 consumer.
- 21 (i) Conduct public education activities to raise awareness of the
- 22 availability of vision plans through the Council.
- 23 (j) Distribute fair and impartial information concerning
- 24 enrollment in coverage offered through the Council.
- 25 (k) Facilitate enrollment of qualified individuals and qualified
- 26 employers in vision plans offered through the council.
- 27 (l) Provide referrals to any applicable office of health insurance
- 28 consumer assistance or health insurance ombudsman, or any other
- 29 appropriate state agency or agencies, for any enrollee with a
- 30 grievance, complaint, or question regarding a participating carrier,
- 31 coverage purchased pursuant to this title, or a determination by
- 32 the carrier or under that coverage.
- 33 (m) Provide information in a manner that is culturally and
- 34 linguistically appropriate to the needs of the population being
- 35 served by the Council.
- 36 (n) Undertake activities necessary to market and publicize the
- 37 availability of vision plans through the Council, ensuring clear
- 38 communication to consumers that federal subsidies are not
- 39 available for this coverage. The board shall also undertake outreach
- 40 and enrollment activities that seek to assist enrollees and potential

- 1 enrollees with enrolling and reenrolling in the coverage offered
2 by the Council in the least burdensome manner, including
3 populations that may experience barriers to enrollment, such as
4 the disabled and those with limited English language proficiency.
- 5 (o) Employ necessary staff.
- 6 (p) Assess a charge on the vision plans offered by participating
7 carriers through the marketplace established by the Council that
8 is reasonable and necessary to support the development, operations,
9 and prudent cash management of the Council.
- 10 (q) Authorize expenditures, as necessary, from the fund to pay
11 program expenses to administer the Council.
- 12 (r) Keep an accurate accounting of all activities, receipts, and
13 expenditures, and annually publish a report concerning that
14 accounting.
- 15 (s) (1) Annually publish a report on the implementation and
16 performance of the Council functions during the preceding fiscal
17 year, that shall be made available to the public on the Internet Web
18 site of the Council.
- 19 (2) In addition to the report described in paragraph (1), the
20 Council shall be responsive to requests for additional information
21 from the Legislature, including providing testimony and
22 commenting on proposed state legislation or policy issues.
- 23 (t) Exercise all powers reasonably necessary to carry out and
24 comply with the duties, responsibilities, and requirements of this
25 act.
- 26 (u) Consult with stakeholders relevant to carrying out the
27 activities under this title, including, but not limited to, all of the
28 following:
- 29 (1) Health care consumers who are enrolled in vision plans.
- 30 (2) Individuals and entities with experience in facilitating
31 enrollment in vision plans.
- 32 (3) Representatives of small businesses and self-employed
33 individuals.
- 34 (v) Require participating carriers to regularly, as determined by
35 the Council, provide the Council with enrollment or disenrollment
36 data.
- 37 (w) Ensure that the Council provides oral interpretation services
38 in any language for individuals seeking coverage through the
39 Council and makes available a toll-free telephone number for the
40 hearing and speech impaired. The Council shall ensure that written

1 information made available by the Council is presented in a plainly
2 worded, easily understandable format and made available in
3 California's prevalent languages.

4 100605. The Council may do any of the following:

5 (a) Enter into contracts.

6 (b) Adopt an official seal.

7 (c) Sue and be sued.

8 (d) Receive and accept gifts, grants, or donations of moneys
9 from any agency of the United States, any agency of the state, any
10 municipality, county, or other political subdivision of the state.

11 (e) Receive and accept gifts, grants, or donations from
12 individuals, associations, private foundations, or corporations, in
13 compliance with the conflict of interest provisions to be adopted
14 by the board at a public meeting.

15 (f) Adopt rules and regulations as necessary.

16 100607. (a) Notwithstanding any other provision of law, the
17 Council shall not be subject to licensure or regulation by the
18 Department of Insurance or the Department of Managed Health
19 Care.

20 (b) Carriers that contract with the Council shall have and
21 maintain a license or certificate of authority from, and shall be in
22 good standing with, their respective regulatory agencies.

23 100609. Records of the Council that reveal any of the following
24 shall be exempt from disclosure under the California Public
25 Records Act (Chapter 3.5 (commencing with Section 6250) of
26 Division 7 of Title 1):

27 (a) The deliberative processes, discussions, communications,
28 or any other portion of the negotiations with entities contracting
29 or seeking to contract with the Council, entities with which the
30 Council is considering a contract, or entities with which the Council
31 is considering or enters into any other arrangement under which
32 the Council provides, receives, or arranges services or
33 reimbursement.

34 (b) The impressions, opinions, recommendations, meeting
35 minutes, research, work product, theories, or strategy of the board
36 or its staff, or records that provide instructions, advice, or training
37 to employees.

38 100620. (a) The California Vision Care Access Trust Fund is
39 hereby created in the State Treasury for the purpose of this title.
40 Moneys collected pursuant to this title shall be deposited in the

1 fund. Notwithstanding Section 13340, all moneys in the fund shall
2 be continuously appropriated without regard to fiscal year for the
3 purposes of this title. Any moneys in the fund that are unexpended
4 or unencumbered at the end of a fiscal year may be carried forward
5 to the next succeeding fiscal year.

6 (b) Notwithstanding any other provision of law, moneys
7 deposited in the fund shall not be loaned to, or borrowed by, any
8 other special fund or the General Fund, or a county general fund
9 or any other county fund.

10 (c) The Council shall establish and maintain a prudent reserve
11 in the fund.

12 (d) The board or staff of the Council shall not utilize any funds
13 intended for the administrative and operational expenses of the
14 Council for staff retreats, promotional giveaways, excessive
15 executive compensation, or promotion of federal or state legislative
16 or regulatory modifications.

17 (e) Notwithstanding Section 16305.7, all interest earned on the
18 moneys that have been deposited into the fund shall be retained
19 in the fund and used for purposes consistent with the fund.

20 100621. (a) The implementation of the provisions of this title,
21 other than this section and Sections 100601 and 100605, shall be
22 contingent on a determination by the board that at least two
23 hundred fifty thousand dollars (\$250,000) exists in the fund.

24 (b) The board shall provide notice to the Joint Legislative Budget
25 Committee and the Director of Finance when the financial
26 threshold set forth in subdivision (c) has been reached.

27 SEC. 4. The Legislature finds and declares that Section 3 of
28 this act, which adds Section 100609 to the Government Code,
29 imposes a limitation on the public's right of access to the meetings
30 of public bodies or the writings of public officials and agencies
31 within the meaning of Section 3 of Article I of the California
32 Constitution. Pursuant to that constitutional provision, the
33 Legislature makes the following findings to demonstrate the interest
34 protected by this limitation and the need for protecting that interest:

35 In order to ensure that the California Vision Care Access Council
36 is not constrained in exercising its fiduciary powers and obligations
37 to provide consumers with the most accessible and affordable
38 vision care benefits augmenting the benefits available through the
39 California Health Benefit Exchange, the limitations on the public's
40 right of access imposed by Section 3 of this act are necessary.

1 SEC. 5. This act is an urgency statute necessary for the
2 immediate preservation of the public peace, health, or safety within
3 the meaning of Article IV of the Constitution and shall go into
4 immediate effect. The facts constituting the necessity are:

5 In order to provide Californians an organized, transparent
6 marketplace for the purchase of affordable, quality vision care
7 coverage, augmenting and supplementing the essential health
8 benefits available through the California Health Benefit Exchange
9 in a manner consistent with evolving federal rules, regulations,
10 and official guidance implementing the federal Patient Protection
11 and Affordable Care Act (Public Law 111-148), as amended by
12 the federal Health Care and Education Reconciliation Act of 2010
13 (Public Law 111-152), it is necessary that this act take effect
14 immediately.

O