

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2601**

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**Introduced by Assembly Member ~~Morrell~~ Conway**

February 21, 2014

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An act to amend Section ~~100506~~ 100503 of the Government Code, relating to the California Health Benefit Exchange *health care coverage*.

LEGISLATIVE COUNSEL'S DIGEST

AB 2601, as amended, ~~Morrell~~ Conway. California Health Benefit Exchange: ~~appeals~~; *charge on qualified health plans*.

*Existing 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. Existing law requires the board to assess a charge on qualified health plans and supplemental coverage offered by carriers that is reasonable and necessary to support the development, operations, and prudent cash management of the Exchange.*

*This bill would prohibit the board from assessing a charge on qualified health plans or supplemental coverage, on or after January 1, 2016, or increasing that charge thereafter, unless the charge is enacted as a statute.*

~~Existing law created the California Health Benefit Exchange (Exchange) as an independent public entity in the state government, not affiliated with an agency or department. The Exchange is governed by an executive board consisting of 5 members. Existing law requires the board to establish an appeal process for prospective and current~~

~~enrollees of the Exchange that complies with all requirements of the federal Patient Protection and Affordable Care Act concerning the role of a state Exchange in facilitating federal appeals of Exchange-related determinations.~~

~~This bill would make technical, nonsubstantive changes to these provisions.~~

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. Section 100503 of the Government Code, as  
2 amended by Section 4 of Chapter 5 of the First Extraordinary  
3 Session of the Statutes of 2013, is amended to read:

4 100503. In addition to meeting the minimum requirements of  
5 Section 1311 of the federal act, the board shall do all of the  
6 following:

7 (a) Determine the criteria and process for eligibility, enrollment,  
8 and disenrollment of enrollees and potential enrollees in the  
9 Exchange and coordinate that process with the state and local  
10 government entities administering other health care coverage  
11 programs, including the State Department of Health Care Services,  
12 the Managed Risk Medical Insurance Board, and California  
13 counties, in order to ensure consistent eligibility and enrollment  
14 processes and seamless transitions between coverage.

15 (b) Develop processes to coordinate with the county entities  
16 that administer eligibility for the Medi-Cal program and the entity  
17 that determines eligibility for the Healthy Families Program,  
18 including, but not limited to, processes for case transfer, referral,  
19 and enrollment in the Exchange of individuals applying for  
20 assistance to those entities, if allowed or required by federal law.

21 (c) Determine the minimum requirements a carrier must meet  
22 to be considered for participation in the Exchange, and the  
23 standards and criteria for selecting qualified health plans to be  
24 offered through the Exchange that are in the best interests of  
25 qualified individuals and qualified small employers. The board  
26 shall consistently and uniformly apply these requirements,  
27 standards, and criteria to all carriers. In the course of selectively  
28 contracting for health care coverage offered to qualified individuals  
29 and qualified small employers through the Exchange, the board

1 shall seek to contract with carriers so as to provide health care  
2 coverage choices that offer the optimal combination of choice,  
3 value, quality, and service.

4 (d) Provide, in each region of the state, a choice of qualified  
5 health plans at each of the five levels of coverage contained in  
6 subsections (d) and (e) of Section 1302 of the federal act.

7 (e) Require, as a condition of participation in the Exchange,  
8 carriers to fairly and affirmatively offer, market, and sell in the  
9 Exchange at least one product within each of the five levels of  
10 coverage contained in subsections (d) and (e) of Section 1302 of  
11 the federal act. The board may require carriers to offer additional  
12 products within each of those five levels of coverage. This  
13 subdivision shall not apply to a carrier that solely offers  
14 supplemental coverage in the Exchange under paragraph (10) of  
15 subdivision (a) of Section 100504.

16 (f) (1) Except as otherwise provided in this section and Section  
17 100504.5, require, as a condition of participation in the Exchange,  
18 carriers that sell any products outside the Exchange to do both of  
19 the following:

20 (A) Fairly and affirmatively offer, market, and sell all products  
21 made available to individuals in the Exchange to individuals  
22 purchasing coverage outside the Exchange.

23 (B) Fairly and affirmatively offer, market, and sell all products  
24 made available to small employers in the Exchange to small  
25 employers purchasing coverage outside the Exchange.

26 (2) For purposes of this subdivision, “product” does not include  
27 contracts entered into pursuant to Part 6.2 (commencing with  
28 Section 12693) of Division 2 of the Insurance Code between the  
29 Managed Risk Medical Insurance Board and carriers for enrolled  
30 Healthy Families beneficiaries or contracts entered into pursuant  
31 to Chapter 7 (commencing with Section 14000) of, or Chapter 8  
32 (commencing with Section 14200) of, Part 3 of Division 9 of the  
33 Welfare and Institutions Code between the State Department of  
34 Health Care Services and carriers for enrolled Medi-Cal  
35 beneficiaries. “Product” also does not include a bridge plan product  
36 offered pursuant to Section 100504.5.

37 (3) Except as required by Section 1301(a)(1)(C)(ii) of the federal  
38 act, a carrier offering a bridge plan product in the Exchange may  
39 limit the products it offers in the Exchange solely to a bridge plan  
40 product contract.

- 1 (g) Determine when an enrollee’s coverage commences and the  
2 extent and scope of coverage.
- 3 (h) Provide for the processing of applications and the enrollment  
4 and disenrollment of enrollees.
- 5 (i) Determine and approve cost-sharing provisions for qualified  
6 health plans.
- 7 (j) Establish uniform billing and payment policies for qualified  
8 health plans offered in the Exchange to ensure consistent  
9 enrollment and disenrollment activities for individuals enrolled in  
10 the Exchange.
- 11 (k) Undertake activities necessary to market and publicize the  
12 availability of health care coverage and federal subsidies through  
13 the Exchange. The board shall also undertake outreach and  
14 enrollment activities that seek to assist enrollees and potential  
15 enrollees with enrolling and re enrolling in the Exchange in the  
16 least burdensome manner, including populations that may  
17 experience barriers to enrollment, such as the disabled and those  
18 with limited English language proficiency.
- 19 (l) Select and set performance standards and compensation for  
20 navigators selected under subdivision (l) of Section 100502.
- 21 (m) Employ necessary staff.
- 22 (1) The board shall hire a chief fiscal officer, a chief operations  
23 officer, a director for the SHOP Exchange, a director of Health  
24 Plan Contracting, a chief technology and information officer, a  
25 general counsel, and other key executive positions, as determined  
26 by the board, who shall be exempt from civil service.
- 27 (2) (A) The board shall set the salaries for the exempt positions  
28 described in paragraph (1) and subdivision (i) of Section 100500  
29 in amounts that are reasonably necessary to attract and retain  
30 individuals of superior qualifications. The salaries shall be  
31 published by the board in the board’s annual budget. The board’s  
32 annual budget shall be posted on the Internet Web site of the  
33 Exchange. To determine the compensation for these positions, the  
34 board shall cause to be conducted, through the use of independent  
35 outside advisors, salary surveys of both of the following:
  - 36 (i) Other state and federal health insurance exchanges that are  
37 most comparable to the Exchange.
  - 38 (ii) Other relevant labor pools.
- 39 (B) The salaries established by the board under subparagraph  
40 (A) shall not exceed the highest comparable salary for a position

1 of that type, as determined by the surveys conducted pursuant to  
2 subparagraph (A).

3 (C) The Department of Human Resources shall review the  
4 methodology used in the surveys conducted pursuant to  
5 subparagraph (A).

6 (3) The positions described in paragraph (1) and subdivision (i)  
7 of Section 100500 shall not be subject to otherwise applicable  
8 provisions of the Government Code or the Public Contract Code  
9 and, for those purposes, the Exchange shall not be considered a  
10 state agency or public entity.

11 (n) Assess a charge on the qualified health plans offered by  
12 carriers that is reasonable and necessary to support the  
13 development, operations, and prudent cash management of the  
14 Exchange. This charge shall not affect the requirement under  
15 Section 1301 of the federal act that carriers charge the same  
16 premium rate for each qualified health plan whether offered inside  
17 or outside the Exchange. *The board shall not assess a charge on*  
18 *qualified health plans pursuant to this subdivision, or on*  
19 *supplemental coverage pursuant to paragraph (10) of subdivision*  
20 *(a) of Section 100504, on or after January 1, 2016, or increase*  
21 *that charge thereafter, unless the charge or increase is enacted*  
22 *as a statute.*

23 (o) Authorize expenditures, as necessary, from the California  
24 Health Trust Fund to pay program expenses to administer the  
25 Exchange.

26 (p) Keep an accurate accounting of all activities, receipts, and  
27 expenditures, and annually submit to the United States Secretary  
28 of Health and Human Services a report concerning that accounting.  
29 Commencing January 1, 2016, the board shall conduct an annual  
30 audit.

31 (q) (1) Annually prepare a written report on the implementation  
32 and performance of the Exchange functions during the preceding  
33 fiscal year, including, at a minimum, the manner in which funds  
34 were expended and the progress toward, and the achievement of,  
35 the requirements of this title. The report shall also include data  
36 provided by health care service plans and health insurers offering  
37 bridge plan products regarding the extent of health care provider  
38 and health facility overlap in their Medi-Cal networks as compared  
39 to the health care provider and health facility networks contracting  
40 with the plan or insurer in their bridge plan contracts. This report

1 shall be transmitted to the Legislature and the Governor and shall  
2 be made available to the public on the Internet Web site of the  
3 Exchange. A report made to the Legislature pursuant to this  
4 subdivision shall be submitted pursuant to Section 9795.

5 (2) The Exchange shall prepare, or contract for the preparation  
6 of, an evaluation of the bridge plan program using the first three  
7 years of experience with the program. The evaluation shall be  
8 provided to the health policy and fiscal committees of the  
9 Legislature in the fourth year following federal approval of the  
10 bridge plan option. The evaluation shall include, but not be limited  
11 to, all of the following:

12 (A) The number of individuals eligible to participate in the  
13 bridge plan program each year by category of eligibility.

14 (B) The number of eligible individuals who elect a bridge plan  
15 option each year by category of eligibility.

16 (C) The average length of time, by region and statewide, that  
17 individuals remain in the bridge plan option each year by category  
18 of eligibility.

19 (D) The regions of the state with a bridge plan option, and the  
20 carriers in each region that offer a bridge plan, by year.

21 (E) The premium difference each year, by region, between the  
22 bridge plan and the first and second lowest cost plan for individuals  
23 in the Exchange who are not eligible for the bridge plan.

24 (F) The effect of the bridge plan on the premium subsidy amount  
25 for bridge plan eligible individuals each year by each region.

26 (G) Based on a survey of individuals enrolled in the bridge plan:

27 (i) Whether individuals enrolling in the bridge plan product are  
28 able to keep their existing health care providers.

29 (ii) Whether individuals would want to retain their bridge plan  
30 product, buy a different Exchange product, or decline to purchase  
31 health insurance if there was no bridge plan product available. The  
32 Exchange may include questions designed to elicit the information  
33 in this subparagraph as part of an existing survey of individuals  
34 receiving coverage in the Exchange.

35 (3) In addition to the evaluation required by paragraph (2), the  
36 Exchange shall post the items in subparagraphs (A) to (F),  
37 inclusive, on its Internet Web site each year.

38 (4) In addition to the report described in paragraph (1), the board  
39 shall be responsive to requests for additional information from the  
40 Legislature, including providing testimony and commenting on

1 proposed state legislation or policy issues. The Legislature finds  
2 and declares that activities including, but not limited to, responding  
3 to legislative or executive inquiries, tracking and commenting on  
4 legislation and regulatory activities, and preparing reports on the  
5 implementation of this title and the performance of the Exchange,  
6 are necessary state requirements and are distinct from the  
7 promotion of legislative or regulatory modifications referred to in  
8 subdivision (d) of Section 100520.

9 (r) Maintain enrollment and expenditures to ensure that  
10 expenditures do not exceed the amount of revenue in the fund, and  
11 if sufficient revenue is not available to pay estimated expenditures,  
12 institute appropriate measures to ensure fiscal solvency.

13 (s) Exercise all powers reasonably necessary to carry out and  
14 comply with the duties, responsibilities, and requirements of this  
15 act and the federal act.

16 (t) Consult with stakeholders relevant to carrying out the  
17 activities under this title, including, but not limited to, all of the  
18 following:

19 (1) Health care consumers who are enrolled in health plans.

20 (2) Individuals and entities with experience in facilitating  
21 enrollment in health plans.

22 (3) Representatives of small businesses and self-employed  
23 individuals.

24 (4) The State Medi-Cal Director.

25 (5) Advocates for enrolling hard-to-reach populations.

26 (u) Facilitate the purchase of qualified health plans in the  
27 Exchange by qualified individuals and qualified small employers  
28 no later than January 1, 2014.

29 (v) Report, or contract with an independent entity to report, to  
30 the Legislature by December 1, 2018, on whether to adopt the  
31 option in Section 1312(c)(3) of the federal act to merge the  
32 individual and small employer markets. In its report, the board  
33 shall provide information, based on at least two years of data from  
34 the Exchange, on the potential impact on rates paid by individuals  
35 and by small employers in a merged individual and small employer  
36 market, as compared to the rates paid by individuals and small  
37 employers if a separate individual and small employer market is  
38 maintained. A report made pursuant to this subdivision shall be  
39 submitted pursuant to Section 9795.

1 (w) With respect to the SHOP Program, collect premiums and  
 2 administer all other necessary and related tasks, including, but not  
 3 limited to, enrollment and plan payment, in order to make the  
 4 offering of employee plan choice as simple as possible for qualified  
 5 small employers.

6 (x) Require carriers participating in the Exchange to immediately  
 7 notify the Exchange, under the terms and conditions established  
 8 by the board when an individual is or will be enrolled in or  
 9 disenrolled from any qualified health plan offered by the carrier.

10 (y) Ensure that the Exchange provides oral interpretation  
 11 services in any language for individuals seeking coverage through  
 12 the Exchange and makes available a toll-free telephone number  
 13 for the hearing and speech impaired. The board shall ensure that  
 14 written information made available by the Exchange is presented  
 15 in a plainly worded, easily understandable format and made  
 16 available in prevalent languages.

17 (z) This section shall become inoperative on the October 1 that  
 18 is five years after the date that federal approval of the bridge plan  
 19 option occurs, and, as of the second January 1 thereafter, is  
 20 repealed, unless a later enacted statute that is enacted before that  
 21 date deletes or extends the dates on which it becomes inoperative  
 22 and is repealed.

23 *SEC. 2. Section 100503 of the Government Code, as added by*  
 24 *Section 5 of Chapter 5 of the First Extraordinary Session of the*  
 25 *Statutes of 2013, is amended to read:*

26 100503. In addition to meeting the minimum requirements of  
 27 Section 1311 of the federal act, the board shall do all of the  
 28 following:

29 (a) Determine the criteria and process for eligibility, enrollment,  
 30 and disenrollment of enrollees and potential enrollees in the  
 31 Exchange and coordinate that process with the state and local  
 32 government entities administering other health care coverage  
 33 programs, including the State Department of Health Care Services,  
 34 the Managed Risk Medical Insurance Board, and California  
 35 counties, in order to ensure consistent eligibility and enrollment  
 36 processes and seamless transitions between coverage.

37 (b) Develop processes to coordinate with the county entities  
 38 that administer eligibility for the Medi-Cal program and the entity  
 39 that determines eligibility for the Healthy Families Program,  
 40 including, but not limited to, processes for case transfer, referral,

1 and enrollment in the Exchange of individuals applying for  
2 assistance to those entities, if allowed or required by federal law.

3 (c) Determine the minimum requirements a carrier must meet  
4 to be considered for participation in the Exchange, and the  
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6 offered through the Exchange that are in the best interests of  
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24 subdivision shall not apply to a carrier that solely offers  
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26 subdivision (a) of Section 100504.

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32 purchasing coverage outside the Exchange.

33 (B) Fairly and affirmatively offer, market, and sell all products  
34 made available to small employers in the Exchange to small  
35 employers purchasing coverage outside the Exchange.

36 (2) For purposes of this subdivision, “product” does not include  
37 contracts entered into pursuant to Part 6.2 (commencing with  
38 Section 12693) of Division 2 of the Insurance Code between the  
39 Managed Risk Medical Insurance Board and carriers for enrolled  
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24 (l) Select and set performance standards and compensation for  
25 navigators selected under subdivision (l) of Section 100502.

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30 general counsel, and other key executive positions, as determined  
31 by the board, who shall be exempt from civil service.

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35 individuals of superior qualifications. The salaries shall be  
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37 annual budget shall be posted on the Internet Web site of the  
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39 board shall cause to be conducted, through the use of independent  
40 outside advisors, salary surveys of both of the following:

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3 (ii) Other relevant labor pools.

4 (B) The salaries established by the board under subparagraph  
5 (A) shall not exceed the highest comparable salary for a position  
6 of that type, as determined by the surveys conducted pursuant to  
7 subparagraph (A).

8 (C) The Department of Human Resources shall review the  
9 methodology used in the surveys conducted pursuant to  
10 subparagraph (A).

11 (3) The positions described in paragraph (1) and subdivision (i)  
12 of Section 100500 shall not be subject to otherwise applicable  
13 provisions of the Government Code or the Public Contract Code  
14 and, for those purposes, the Exchange shall not be considered a  
15 state agency or public entity.

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23 *qualified health plans pursuant to this subdivision, or on*  
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34 Commencing January 1, 2016, the board shall conduct an annual  
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37 and performance of the Exchange functions during the preceding  
38 fiscal year, including, at a minimum, the manner in which funds  
39 were expended and the progress toward, and the achievement of,  
40 the requirements of this title. This report shall be transmitted to

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2 the public on the Internet Web site of the Exchange. A report made  
3 to the Legislature pursuant to this subdivision shall be submitted  
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6 shall be responsive to requests for additional information from the  
7 Legislature, including providing testimony and commenting on  
8 proposed state legislation or policy issues. The Legislature finds  
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12 implementation of this title and the performance of the Exchange,  
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14 promotion of legislative or regulatory modifications referred to in  
15 subdivision (d) of Section 100520.

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17 expenditures do not exceed the amount of revenue in the fund, and  
18 if sufficient revenue is not available to pay estimated expenditures,  
19 institute appropriate measures to ensure fiscal solvency.

20 (s) Exercise all powers reasonably necessary to carry out and  
21 comply with the duties, responsibilities, and requirements of this  
22 act and the federal act.

23 (t) Consult with stakeholders relevant to carrying out the  
24 activities under this title, including, but not limited to, all of the  
25 following:

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28 enrollment in health plans.

29 (3) Representatives of small businesses and self-employed  
30 individuals.

31 (4) The State Medi-Cal Director.

32 (5) Advocates for enrolling hard-to-reach populations.

33 (u) Facilitate the purchase of qualified health plans in the  
34 Exchange by qualified individuals and qualified small employers  
35 no later than January 1, 2014.

36 (v) Report, or contract with an independent entity to report, to  
37 the Legislature by December 1, 2018, on whether to adopt the  
38 option in Section 1312(c)(3) of the federal act to merge the  
39 individual and small employer markets. In its report, the board  
40 shall provide information, based on at least two years of data from

1 the Exchange, on the potential impact on rates paid by individuals  
2 and by small employers in a merged individual and small employer  
3 market, as compared to the rates paid by individuals and small  
4 employers if a separate individual and small employer market is  
5 maintained. A report made pursuant to this subdivision shall be  
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7 (w) With respect to the SHOP Program, collect premiums and  
8 administer all other necessary and related tasks, including, but not  
9 limited to, enrollment and plan payment, in order to make the  
10 offering of employee plan choice as simple as possible for qualified  
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12 (x) Require carriers participating in the Exchange to immediately  
13 notify the Exchange, under the terms and conditions established  
14 by the board when an individual is or will be enrolled in or  
15 disenrolled from any qualified health plan offered by the carrier.

16 (y) Ensure that the Exchange provides oral interpretation  
17 services in any language for individuals seeking coverage through  
18 the Exchange and makes available a toll-free telephone number  
19 for the hearing and speech impaired. The board shall ensure that  
20 written information made available by the Exchange is presented  
21 in a plainly worded, easily understandable format and made  
22 available in prevalent languages.

23 (z) This section shall become operative only if Section 4 of the  
24 act that added this section becomes inoperative pursuant to  
25 subdivision (z) of that Section 4.

26 ~~SECTION 1.—Section 100506 of the Government Code is~~  
27 ~~amended to read:~~

28 ~~100506.—(a) The board shall establish an appeals process for~~  
29 ~~prospective and current enrollees of the Exchange that complies~~  
30 ~~with all requirements of the federal act concerning the role of a~~  
31 ~~state Exchange in facilitating federal appeals of Exchange-related~~  
32 ~~determinations. The scope of those appeals shall not be construed~~  
33 ~~to be broader than the requirements of the federal act in any event.~~  
34 ~~Once the federal regulations concerning appeals have been issued~~  
35 ~~in final form by the United States Secretary of Health and Human~~  
36 ~~Services, the board may establish additional requirements related~~  
37 ~~to appeals, provided that the board determines, prior to adoption,~~  
38 ~~that any additional requirement results in no cost to the General~~  
39 ~~Fund and no increase in the charge imposed under subdivision (n)~~  
40 ~~of Section 100503.~~

1     ~~(b) The board shall not be required to provide an appeal if the~~  
2 ~~subject of the appeal is within the jurisdiction of the Department~~  
3 ~~of Managed Health Care pursuant to the Knox-Keene Health Care~~  
4 ~~Service Plan Act of 1975 (Chapter 2.2 (commencing with Section~~  
5 ~~1340) of Division 2 of the Health and Safety Code) and its~~  
6 ~~implementing regulations, or within the jurisdiction of the~~  
7 ~~Department of Insurance pursuant to the Insurance Code and its~~  
8 ~~implementing regulations.~~

O