

AMENDED IN ASSEMBLY APRIL 21, 2014

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2601

Introduced by Assembly Member Conway
(Coauthors: Assembly Members Harkey, Wagner, and Wilk)

February 21, 2014

An act to amend Section 100503 of the Government Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

AB 2601, as amended, Conway. California Health Benefit Exchange: 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.

Vote: majority. Appropriation: no. Fiscal committee: 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
30 shall seek to contract with carriers so as to provide health care
31 coverage choices that offer the optimal combination of choice,
32 value, quality, and service.

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

36 (e) Require, as a condition of participation in the Exchange,
37 carriers to fairly and affirmatively offer, market, and sell in the
38 Exchange at least one product within each of the five levels of

1 coverage contained in subsections (d) and (e) of Section 1302 of
2 the federal act. The board may require carriers to offer additional
3 products within each of those five levels of coverage. This
4 subdivision shall not apply to a carrier that solely offers
5 supplemental coverage in the Exchange under paragraph (10) of
6 subdivision (a) of Section 100504.

7 (f) (1) Except as otherwise provided in this section and Section
8 100504.5, require, as a condition of participation in the Exchange,
9 carriers that sell any products outside the Exchange to do both of
10 the following:

11 (A) Fairly and affirmatively offer, market, and sell all products
12 made available to individuals in the Exchange to individuals
13 purchasing coverage outside the Exchange.

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

17 (2) For purposes of this subdivision, “product” does not include
18 contracts entered into pursuant to Part 6.2 (commencing with
19 Section 12693) of Division 2 of the Insurance Code between the
20 Managed Risk Medical Insurance Board and carriers for enrolled
21 Healthy Families beneficiaries or contracts entered into pursuant
22 to Chapter 7 (commencing with Section 14000) of, or Chapter 8
23 (commencing with Section 14200) of, Part 3 of Division 9 of the
24 Welfare and Institutions Code between the State Department of
25 Health Care Services and carriers for enrolled Medi-Cal
26 beneficiaries. “Product” also does not include a bridge plan product
27 offered pursuant to Section 100504.5.

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

32 (g) Determine when an enrollee’s coverage commences and the
33 extent and scope of coverage.

34 (h) Provide for the processing of applications and the enrollment
35 and disenrollment of enrollees.

36 (i) Determine and approve cost-sharing provisions for qualified
37 health plans.

38 (j) Establish uniform billing and payment policies for qualified
39 health plans offered in the Exchange to ensure consistent

1 enrollment and disenrollment activities for individuals enrolled in
 2 the Exchange.

3 (k) Undertake activities necessary to market and publicize the
 4 availability of health care coverage and federal subsidies through
 5 the Exchange. The board shall also undertake outreach and
 6 enrollment activities that seek to assist enrollees and potential
 7 enrollees with enrolling and re-enrolling in the Exchange in the
 8 least burdensome manner, including populations that may
 9 experience barriers to enrollment, such as the disabled and those
 10 with limited English language proficiency.

11 (l) Select and set performance standards and compensation for
 12 navigators selected under subdivision (l) of Section 100502.

13 (m) Employ necessary staff.

14 (1) The board shall hire a chief fiscal officer, a chief operations
 15 officer, a director for the SHOP Exchange, a director of Health
 16 Plan Contracting, a chief technology and information officer, a
 17 general counsel, and other key executive positions, as determined
 18 by the board, who shall be exempt from civil service.

19 (2) (A) The board shall set the salaries for the exempt positions
 20 described in paragraph (1) and subdivision (i) of Section 100500
 21 in amounts that are reasonably necessary to attract and retain
 22 individuals of superior qualifications. The salaries shall be
 23 published by the board in the board's annual budget. The board's
 24 annual budget shall be posted on the Internet Web site of the
 25 Exchange. To determine the compensation for these positions, the
 26 board shall cause to be conducted, through the use of independent
 27 outside advisors, salary surveys of both of the following:

28 (i) Other state and federal health insurance exchanges that are
 29 most comparable to the Exchange.

30 (ii) Other relevant labor pools.

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

35 (C) The Department of Human Resources shall review the
 36 methodology used in the surveys conducted pursuant to
 37 subparagraph (A).

38 (3) The positions described in paragraph (1) and subdivision (i)
 39 of Section 100500 shall not be subject to otherwise applicable
 40 provisions of the Government Code or the Public Contract Code

1 and, for those purposes, the Exchange shall not be considered a
2 state agency or public entity.

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

15 (o) Authorize expenditures, as necessary, from the ~~California~~
16 ~~Health Trust Fund~~ *fund* to pay program expenses to administer the
17 Exchange.

18 (p) Keep an accurate accounting of all activities, receipts, and
19 expenditures, and annually submit to the United States Secretary
20 of Health and Human Services a report concerning that accounting.
21 Commencing January 1, 2016, the board shall conduct an annual
22 audit.

23 (q) (1) Annually prepare a written report on the implementation
24 and performance of the Exchange functions during the preceding
25 fiscal year, including, at a minimum, the manner in which funds
26 were expended and the progress toward, and the achievement of,
27 the requirements of this title. The report shall also include data
28 provided by health care service plans and health insurers offering
29 bridge plan products regarding the extent of health care provider
30 and health facility overlap in their Medi-Cal networks as compared
31 to the health care provider and health facility networks contracting
32 with the plan or insurer in their bridge plan contracts. This report
33 shall be transmitted to the Legislature and the Governor and shall
34 be made available to the public on the Internet Web site of the
35 Exchange. A report made to the Legislature pursuant to this
36 subdivision shall be submitted pursuant to Section 9795.

37 (2) The Exchange shall prepare, or contract for the preparation
38 of, an evaluation of the bridge plan program using the first three
39 years of experience with the program. The evaluation shall be
40 provided to the health policy and fiscal committees of the

1 Legislature in the fourth year following federal approval of the
2 bridge plan option. The evaluation shall include, but not be limited
3 to, all of the following:

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

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

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

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

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

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

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

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

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

27 (3) In addition to the evaluation required by paragraph (2), the
28 Exchange shall post the items in subparagraphs (A) to (F) *of*
29 *paragraph (2)*, inclusive, on its Internet Web site each year.

30 (4) In addition to the report described in paragraph (1), the board
31 shall be responsive to requests for additional information from the
32 Legislature, including providing testimony and commenting on
33 proposed state legislation or policy issues. The Legislature finds
34 and declares that activities including, but not limited to, responding
35 to legislative or executive inquiries, tracking and commenting on
36 legislation and regulatory activities, and preparing reports on the
37 implementation of this title and the performance of the Exchange,
38 are necessary state requirements and are distinct from the
39 promotion of legislative or regulatory modifications referred to in
40 subdivision (d) of Section 100520.

- 1 (r) Maintain enrollment and expenditures to ensure that
2 expenditures do not exceed the amount of revenue in the fund, and
3 if sufficient revenue is not available to pay estimated expenditures,
4 institute appropriate measures to ensure fiscal solvency.
- 5 (s) Exercise all powers reasonably necessary to carry out and
6 comply with the duties, responsibilities, and requirements of this
7 act and the federal act.
- 8 (t) Consult with stakeholders relevant to carrying out the
9 activities under this title, including, but not limited to, all of the
10 following:
- 11 (1) Health care consumers who are enrolled in health plans.
 - 12 (2) Individuals and entities with experience in facilitating
13 enrollment in health plans.
 - 14 (3) Representatives of small businesses and self-employed
15 individuals.
 - 16 (4) The State Medi-Cal Director.
 - 17 (5) Advocates for enrolling hard-to-reach populations.
- 18 (u) Facilitate the purchase of qualified health plans in the
19 Exchange by qualified individuals and qualified small employers
20 no later than January 1, 2014.
- 21 (v) Report, or contract with an independent entity to report, to
22 the Legislature by December 1, 2018, on whether to adopt the
23 option in Section 1312(c)(3) of the federal act to merge the
24 individual and small employer markets. In its report, the board
25 shall provide information, based on at least two years of data from
26 the Exchange, on the potential impact on rates paid by individuals
27 and by small employers in a merged individual and small employer
28 market, as compared to the rates paid by individuals and small
29 employers if a separate individual and small employer market is
30 maintained. A report made pursuant to this subdivision shall be
31 submitted pursuant to Section 9795.
- 32 (w) With respect to the SHOP Program, collect premiums and
33 administer all other necessary and related tasks, including, but not
34 limited to, enrollment and plan payment, in order to make the
35 offering of employee plan choice as simple as possible for qualified
36 small employers.
- 37 (x) Require carriers participating in the Exchange to immediately
38 notify the Exchange, under the terms and conditions established
39 by the board when an individual is or will be enrolled in or
40 disenrolled from any qualified health plan offered by the carrier.

1 (y) Ensure that the Exchange provides oral interpretation
2 services in any language for individuals seeking coverage through
3 the Exchange and makes available a toll-free telephone number
4 for the hearing and speech impaired. The board shall ensure that
5 written information made available by the Exchange is presented
6 in a plainly worded, easily understandable format and made
7 available in prevalent languages.

8 (z) This section shall become inoperative on the October 1 that
9 is five years after the date that federal approval of the bridge plan
10 option occurs, and, as of the second January 1 thereafter, is
11 repealed, unless a later enacted statute that is enacted before that
12 date deletes or extends the dates on which it becomes inoperative
13 and is repealed.

14 SEC. 2. Section 100503 of the Government Code, as added by
15 Section 5 of Chapter 5 of the First Extraordinary Session of the
16 Statutes of 2013, is amended to read:

17 100503. In addition to meeting the minimum requirements of
18 Section 1311 of the federal act, the board shall do all of the
19 following:

20 (a) Determine the criteria and process for eligibility, enrollment,
21 and disenrollment of enrollees and potential enrollees in the
22 Exchange and coordinate that process with the state and local
23 government entities administering other health care coverage
24 programs, including the State Department of Health Care Services,
25 the Managed Risk Medical Insurance Board, and California
26 counties, in order to ensure consistent eligibility and enrollment
27 processes and seamless transitions between coverage.

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

34 (c) Determine the minimum requirements a carrier must meet
35 to be considered for participation in the Exchange, and the
36 standards and criteria for selecting qualified health plans to be
37 offered through the Exchange that are in the best interests of
38 qualified individuals and qualified small employers. The board
39 shall consistently and uniformly apply these requirements,
40 standards, and criteria to all carriers. In the course of selectively

1 contracting for health care coverage offered to qualified individuals
2 and qualified small employers through the Exchange, the board
3 shall seek to contract with carriers so as to provide health care
4 coverage choices that offer the optimal combination of choice,
5 value, quality, and service.

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

9 (e) Require, as a condition of participation in the Exchange,
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11 Exchange at least one product within each of the five levels of
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13 the federal act. The board may require carriers to offer additional
14 products within each of those five levels of coverage. This
15 subdivision shall not apply to a carrier that solely offers
16 supplemental coverage in the Exchange under paragraph (10) of
17 subdivision (a) of Section 100504.

18 (f) (1) Require, as a condition of participation in the Exchange,
19 carriers that sell any products outside the Exchange to do both of
20 the following:

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

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

27 (2) For purposes of this subdivision, “product” does not include
28 contracts entered into pursuant to Part 6.2 (commencing with
29 Section 12693) of Division 2 of the Insurance Code between the
30 Managed Risk Medical Insurance Board and carriers for enrolled
31 Healthy Families beneficiaries or contracts entered into pursuant
32 to Chapter 7 (commencing with Section 14000) of, or Chapter 8
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34 Welfare and Institutions Code between the State Department of
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38 extent and scope of coverage.

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40 and disenrollment of enrollees.

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12 least burdensome manner, including populations that may
13 experience barriers to enrollment, such as the disabled and those
14 with limited English language proficiency.

15 (l) Select and set performance standards and compensation for
16 navigators selected under subdivision (l) of Section 100502.

17 (m) Employ necessary staff.

18 (1) The board shall hire a chief fiscal officer, a chief operations
19 officer, a director for the SHOP Exchange, a director of Health
20 Plan Contracting, a chief technology and information officer, a
21 general counsel, and other key executive positions, as determined
22 by the board, who shall be exempt from civil service.

23 (2) (A) The board shall set the salaries for the exempt positions
24 described in paragraph (1) and subdivision (i) of Section 100500
25 in amounts that are reasonably necessary to attract and retain
26 individuals of superior qualifications. The salaries shall be
27 published by the board in the board's annual budget. The board's
28 annual budget shall be posted on the Internet Web site of the
29 Exchange. To determine the compensation for these positions, the
30 board shall cause to be conducted, through the use of independent
31 outside advisors, salary surveys of both of the following:

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33 most comparable to the Exchange.

34 (ii) Other relevant labor pools.

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

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

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

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16 qualified health plans pursuant to this subdivision, or on
17 supplemental coverage pursuant to paragraph (10) of subdivision
18 (a) of Section 100504, on or after January 1, 2016, or increase that
19 charge thereafter, unless the charge or increase is enacted as a
20 statute.

21 (o) Authorize expenditures, as necessary, from the ~~California~~
22 ~~Health Trust Fund~~ *fund* to pay program expenses to administer the
23 Exchange.

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

29 (q) (1) Annually prepare a written report on the implementation
30 and performance of the Exchange functions during the preceding
31 fiscal year, including, at a minimum, the manner in which funds
32 were expended and the progress toward, and the achievement of,
33 the requirements of this title. This report shall be transmitted to
34 the Legislature and the Governor and shall be made available to
35 the public on the Internet Web site of the Exchange. A report made
36 to the Legislature pursuant to this subdivision shall be submitted
37 pursuant to Section 9795.

38 (2) 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,
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7 promotion of legislative or regulatory modifications referred to in
8 subdivision (d) of Section 100520.

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10 expenditures do not exceed the amount of revenue in the fund, and
11 if sufficient revenue is not available to pay estimated expenditures,
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14 comply with the duties, responsibilities, and requirements of this
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17 activities under this title, including, but not limited to, all of the
18 following:

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23 individuals.

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26 (u) Facilitate the purchase of qualified health plans in the
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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
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37 employers if a separate individual and small employer market is
38 maintained. A report made pursuant to this subdivision shall be
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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
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6 (x) Require carriers participating in the Exchange to immediately
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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 operative only if Section 4 of the
18 act that added this section becomes inoperative pursuant to
19 subdivision (z) of that Section 4.